

**ACTS**  
**OF THE**  
**LEGISLATURE**  
**OF**  
**WEST VIRGINIA**



**Regular Session, 2006**  
**First Extraordinary Session, 2006**  
**Fourth Extraordinary Session, 2005**  
**Fifth Extraordinary Session, 2005**

**Volume I**  
**Chapters 1 – 139**

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CLERK OF THE HOUSE



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## FOREWORD

These volumes contain the Acts of the Second Regular Session of the 77th Legislature, 2006, and the First Extraordinary Session of the 77th Legislature, 2006.

### Second Regular Session, 2006

The Second Regular Session of the 77th Legislature convened on January 11, 2006. The constitutional sixty-day limit on the duration of the session was midnight, March 11, 2006. The Governor issued Proclamations on March 8 and March 17, extending the session for the purpose of considering the Budget bill, and the Legislature adjourned *sine die* on March 19, 2005.

Bills totaling 2,301 were introduced in the two houses during the session (1,506 House, 643 of which were carryover bills from the 2005 Regular session, and 795 Senate). The Legislature passed 266 bills, 135 House and 131 Senate.

The Governor vetoed four House bills (**Com. Sub. for H. B. 4172**, Authorizing the Department of Administration to promulgate legislative rules; **Com. Sub. for H. B. 4256**, Providing a procedure for removal of county, district or municipal officers; **H. B. 4353**, Requiring law enforcement officers have a valid complaint, signed by a magistrate or municipal judge, with a showing of probable cause before reporting said offense to the commissioner of the department of motor vehicles; **H. B. 4728**, Increasing the membership of the Environmental Protection Advisory Council from seven to eight members) and five Senate bills (**Com. Sub. for S. B. 107**, Relating to venue for certain suits against state; **S. B. 370**, Creating personal property tax exemption for certain property used exclusively in agriculture; **Com. Sub. for S. B. 490**, Providing gasoline excise tax exemption for certain county aging programs; **S. B. 760**, Allowing former WVU School of Mines' Director serve on Mine Inspectors' Examining Board; and **S. B. 787**, Creating Transportation Coordinating Council). The Legislature amended and again passed **Com. Sub. for H. B. 4172** and reconsidered

and again passed **S. B. 370**, notwithstanding the objections of the Governor, leaving a net total of 259 bills, 132 House and 127 Senate, which became law.

There were 198 Concurrent Resolutions introduced during the session, 104 House and 94 Senate, of which 34 House and 22 Senate were adopted. There were 30 House Joint Resolutions (14 of which were carryover House Joint Resolutions) and 16 Senate Joint Resolutions introduced, proposing amendments to the State Constitution, none of which were adopted. The House introduced 37 House Resolutions, and the Senate introduced 54 Senate Resolutions, of which 30 House and 52 Senate were adopted.

The Senate failed to pass 91 House bills passed by the House, and 49 Senate bills failed passage by the House.

\* \* \* \* \*

### **First Extraordinary Session, 2006**

The Proclamation calling the Legislature into Extraordinary Session at 5:00 P.M., June 13, 2006, contained 13 items for consideration.

The Legislature passed 22 bills, 15 House bills and 7 Senate bills. The Legislature adopted 18 House Concurrent Resolutions and 4 Senate Concurrent Resolutions and the Senate adopted 6 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* at 4:58 p.m., June 14, 2006.

\* \* \* \* \*

### **Fourth Extraordinary Session, 2005**

The Proclamation calling the Legislature into Extraordinary Session at 12:00 P.M., September 7, 2005, contained sixteen items for consideration.

The Legislature passed 21 bills, 13 House bills and 8 Senate bills. The House introduced House Concurrent Resolutions and the Senate introduced 4 Senate Concurrent Resolutions and 5 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* at 8:29 P.M., September 13, 2005.

\* \* \* \* \*

### **Fifth Extraordinary Session, 2005**

The Proclamation calling the Legislature into Extraordinary Session at 6:00 P.M., November 13, 2005, contained five items for consideration.

The Legislature passed 1 bill, **H. B. 501**, Relating to the West Virginia Employers' Mutual Insurance Company. The Senate introduced and adopted 4 Senate Resolutions.

The Legislature adjourned the Extraordinary Session *sine die* at 6:45 P.M., November 14, 2005.

\* \* \* \* \*

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

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

GREGORY M. GRAY  
*Clerk of the House and  
Keeper of the Rolls.*



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## REGULAR SESSION, 2006

### 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-77th                                 |
|                | Randy Swartzmiller (D)        | New Cumberland        | 75th-77th                                 |
| Second         | Timothy R. Ennis (D)          | Wellsburg             | 72nd-77th                                 |
|                | Jack Yost (D)                 | Wellsburg             | 76th-77th                                 |
| Third          | Christopher Wakim (R)         | Wheeling              | 76th-77th                                 |
|                | L. Gil White (R)              | Wheeling              | 70th-71st; 73rd-77th                      |
| Fourth         | Kenneth D. Tucker (D)         | Moundsville           | 73rd-77th                                 |
|                | Scott G. Varner (D)           | Moundsville           | 71st-77th                                 |
| Fifth          | Dave Pethel (D)               | Hundred               | 69th-71st; 74th-77th                      |
| Sixth          | William Rogers Romine (R)     | West Union            | 75th-77th                                 |
| Seventh        | Otis A. Leggett (R)           | St. Marys             | 68th-77th                                 |
| Eighth         | Everette W. Anderson, Jr. (R) | Williamstown          | 71st-77th                                 |
| Ninth          | Larry W. Border (R)           | Davisville            | 70th-77th                                 |
| Tenth          | Tom Azinger (R)               | Vienna                | 72nd-77th                                 |
|                | J. D. Beane (D)               | Parkersburg           | 70th-77th                                 |
|                | John Ellem (R)                | Parkersburg           | Appt. 1/4/01, 75th; 76th-77th             |
| Eleventh       | Bob Ashley (R)                | Spencer               | 67th-73rd; 75th-77th                      |
| Twelfth        | Mitch Carmichael (R)          | Ripley                | 75th-77th                                 |
| Thirteenth     | Dale Martin (D)               | Poca                  | 75th-77th                                 |
|                | Brady Paxton (D)              | Liberty               | 71st; Appt. 4/22/99, 74th; 75th-77th      |
| Fourteenth     | Mike Hall (R)                 | Hurricane             | 72nd-77th                                 |
|                | Patti Eagloski Schoen (R)     | Scott Depot           | 76th-77th                                 |
| Fifteenth      | Kevin J. Craig (D)            | Huntington            | 75th-77th                                 |
|                | Margarette R. Leach (D)       | Huntington            | 71st-77th                                 |
|                | Jim Morgan (D)                | Huntington            | 69th-70th; Appt. 2/23/01, 75th; 76th-77th |
| Sixteenth      | Greg Howard (R)               | Huntington            | 76th-77th                                 |
|                | Kelli Sobonya (R)             | Huntington            | 76th-77th                                 |
|                | Dale Stephens (D)             | Huntington            | 75th; 77th                                |
| Seventeenth    | Don C. Perdue (D)             | Prichard              | 74th-77th                                 |
|                | Richard Thompson (D)          | Lavalette             | 65th, Resigned 6/81; 75th-77th            |
| Eighthteenth   | Larry W. Barker (D)           | Madison               | 77th                                      |
| Nineteenth     | Greg Butcher (D)              | Chapmanville          | 73rd-77th                                 |
|                | Jeff Eldridge (D)             | Harts                 | 77th                                      |
|                | Joe C. Ferrell (D)            | Logan                 | 66th; 68th-70th; 74th-77th                |
|                | Lidella Wilson Hrutkay (D)    | Logan                 | 75th-77th                                 |
| Twentieth      | K. Steven Kominar (D)         | Kermit                | 72nd; Appt. 12/6/96, 73rd; 74th-77th      |
| Twenty-first   | Harry Keith White (D)         | Gilbert               | Appt. 9/11/92, 70th; 71st-77th,           |
| Twenty-second  | Richard Browning (D)          | Oceana                | 69th-72nd; 75th-77th                      |
|                | Rick Staton (D)               | Wyoming               | 69th-77th                                 |
| Twenty-third   | Cliff Moore (D)               | Thorpe                | 77th                                      |
| Twenty-fourth  | Eustace Frederick (D)         | Bluefield             | Appt. 10/17/93, 71st; 72nd-77th           |
| Twenty-fifth   | Marshall Long (D)             | Mercer                | Appt. 9/17/02, 75th; 76th-77th            |
|                | Thomas Mike Porter (R)        | Princeton             | 77th                                      |
| Twenty-sixth   | Gerald Crosier (D)            | Union                 | 76th-77th                                 |
| Twenty-seventh | Robert S. Kiss (D)            | Beckley               | 69th-77th                                 |
|                | Virginia Mahan (D)            | Green Sulphur Springs | 73rd-77th                                 |
|                | Linda Sumner (R)              | Beckley               | 76th-77th                                 |
|                | Sally Matz Susman (D)         | Beckley               | 74th-77th                                 |
|                | Ron Thompson (D)              | Beckley               | 72nd-77th                                 |



## MEMBERS OF THE HOUSE OF DELEGATES - Continued

| District       | Name                         | Address          | Legislative Service             |
|----------------|------------------------------|------------------|---------------------------------|
| Twenty-eighth  | Thomas W. Campbell (D)       | Lewisburg        | 73rd-77th                       |
|                | Ray Canterbury (R)           | Ronceverte       | 75th-77th                       |
| Twenty-ninth   | Tom Louisos (D)              | Oak Hill         | 67th-68th; 70th-77th            |
|                | David G. Perry (D)           | Oak Hill         | 75th-77th                       |
|                | John Pino (D)                | Oak Hill         | 67th-68th; 71st-77th            |
| Thirtieth      | Jon Amores (D)               | Charleston       | 72nd-77th                       |
|                | Bonnie Brown (D)             | South Charleston | 66th-68th; 70th-71st; 75th-77th |
|                | Barbara Burruss Hatfield (D) | South Charleston | 67th-69th; 74th-77th            |
|                | Mark Hunt (D)                | Charleston       | 72nd-75th; 77th                 |
|                | Corey Palumbo (D)            | Charleston       | 76th-77th                       |
|                | Sharon Spencer (D)           | Charleston       | 66th; 68th-71st; 73rd-77th      |
|                | Danny Wells (D)              | Charleston       | 77th                            |
| Thirty-first   | Carrie Webster (D)           | Charleston       | 75th-77th                       |
| Thirty-second  | Tim Armstead (R)             | Elkview          | Appt. 9/5/98, 73rd; 74th-77th   |
|                | Patrick Lane (R)             | Cross Lanes      | 77th                            |
|                | Ron Walters (R)              | Charleston       | 71st-73rd; 75th-77th            |
| Thirty-third   | William F. Stemple (D)       | Arnoldsburg      | 73rd-77th                       |
| Thirty-fourth  | Brent Boggs (D)              | Gassaway         | 73rd-77th                       |
| Thirty-fifth   | Sam J. Argento (D)           | Mt. Nebo         | 77th                            |
| Thirty-sixth   | Joe Talbott (D)              | Webster          | 71st-72nd; 76th-77th            |
| Thirty-seventh | William G. Hartman (D)       | Elkins           | 76th-77th                       |
|                | Bill Proudfoot (D)           | Elkins           | 70th-77th                       |
| Thirty-eighth  | Doug Stalnaker (D)           | Weston           | 72nd-77th                       |
| Thirty-ninth   | Bill Hamilton (R)            | Buckhannon       | 76th-77th                       |
| Fortieth       | Mary M. Poling (D)           | Moatsville       | 75th-77th                       |
| Forty-first    | Samuel J. Cann (D)           | Clarksburg       | 72nd-77th                       |
|                | Ron Fragale (D)              | Clarksburg       | 70th-73rd; 75th-77th            |
|                | Richard J. Iaquina (D)       | Clarksburg       | 76th-77th                       |
|                | Tim Miley (D)                | Clarksburg       | 77th                            |
| Forty-second   | Jeffery L. Tansill (R)       | Grafton          | 77th                            |
| Forty-third    | Michael Caputo (D)           | Fairmont         | 73rd-77th                       |
|                | Linda Longstreth (D)         | Fairmont         | 77th                            |
|                | Tim Manchin (D)              | Fairmont         | Appt. 11/03, 76th; 77th         |
| Forty-fourth   | Robert D. Beach (D)          | Morgantown       | Appt. 5/98, 74th; 75th-77th     |
|                | Cindy Frich (R)              | Morgantown       | 76th-77th                       |
|                | Nancy Houston (D)            | Morgantown       | 74th; 76th-77th                 |
|                | Charlene Marshall (D)        | Morgantown       | 74th-75th; 77th                 |
| Forty-fifth    | Larry A. Williams (D)        | Tunnelton        | Appt. 10/08/93, 71st; 72nd-77th |
| Forty-sixth    | Debbie Stevens (R)           | Parsons          | 77th                            |
| Forty-seventh  | Harold K. Michael (D)        | Moorefield       | 69th-77th                       |
| Forty-eighth   | Allen V. Evans (R)           | Dorcas           | 70th-77th                       |
| Forty-ninth    | Robert A. Schadler (R)       | Keyser           | 69th-70th; 74th-77th            |
| Fiftieth       | Ruth Rowan (R)               | Points           | 77th                            |
| Fifty-first    | Charles S. Trump IV (R)      | Berkeley Springs | 71st-77th                       |
| Fifty-second   | Craig P. Blair (R)           | Martinsburg      | 76th-77th                       |
| Fifty-third    | Victor A. Roberts, Jr. (R)   | Gerrardstown     | 77th                            |
| Fifty-fourth   | Walter E. Duke (R)           | Martinsburg      | 76th-77th                       |
| Fifty-fifth    | John Overington (R)          | Martinsburg      | 67th-77th                       |
| Fifty-sixth    | Robert C. Tabb (D)           | Kearneysville    | 76th-77th                       |
| Fifty-seventh  | John Doyle (D)               | Shepherdstown    | 66th; 71st-77th                 |
| Fifty-eighth   | Locke Wysong (D)             | Charles Town     | 77th                            |
|                | (D) Democrats                |                  | 68                              |
|                | (R) Republicans              |                  | 32                              |
|                | TOTAL                        |                  | 100                             |

# MEMBERS OF THE SENATE

## REGULAR SESSION, 2006

### OFFICERS

*President* — Earl Ray Tomblin, Chapmanville

*Clerk* — Darrell E. Holmes, Charleston

*Sergeant at Arms* — Howard Wellman, Bluefield

*Doorkeeper* — Andrew J. Trail, Charleston

| District        | Name                        | Address          | Legislative Service   |
|-----------------|-----------------------------|------------------|---|
| First           | Edwin J. Bowman (D)         | Weirton          | 72nd-77th   |
|                 | Andy McKenzie (R)           | Wheeling         | 73rd-77th   |
| Second          | Larry J. Edgell (D)         | New Martinsburg  | 74th-77th   |
|                 | Jeffrey V. Kessler (D)      | Glen Dale        | Appt. 11/97, 73rd; 74th-77th                                    |
| Third           | Donna J. Boley (R)          | St. Marys        | Appt. 5/14/85, 67th; 68th-77th                                  |
|                 | J. Frank Deem (R)           | Vienna           | (House 52nd-56th); 57th-64th;<br>(House 69th); 72nd-77th        |
| Fourth          | Karen L. Facemyer (R)       | Ripley           | (House 71st-74th); 75th-77th                                    |
|                 | Charles C. Lanham (R)       | Point Pleasant   | Appt. 1/7/05, 77th  |
| Fifth           | Evan H. Jenkins (D)         | Huntington       | (House 72nd-74th); 76th-77th                                    |
|                 | Robert H. Plymale (D)       | Ceredo           | 71st-77th   |
| Sixth           | H. Truman Chafin (D)        | Williamson       | 66th-77th   |
|                 | John Pat Fanning (D)        | Iaeger           | Appt. 6/10/68, 58th; 59th-64th;<br>67th-68th; 73rd-77th         |
| Seventh         | Tracy Dempsey (D)           | Harts            | (House 70th-75th); 76th-77th                                    |
|                 | Earl Ray Tomblin (D)        | Chapmanville     | (House 62nd-64th); 65th-77th                                    |
| Eighth          | Steve Harrison (R)          | Cross Lanes      | (House 71st-75th); 76th-77th                                    |
|                 | Vic Sprouse (R)             | South Charleston | (House 72nd); 73rd-77th   |
| Ninth           | Billy Wayne Bailey, Jr. (D) | Pineville        | Appt. 1/9/91, 70th; 71st-77th                                   |
|                 | Russ Weeks (R)              | Beckley          | 76th-77th   |
| Tenth           | Donald T. Caruth (R)        | Athens           | (House 76th); 77th  |
|                 | Jesse O. Guillis (R)        | Lewisburg        | 76th-77th   |
| Eleventh        | Shirley Love (D)            | Oak Hill         | Appt. 8/14/94, 71st; 72nd-77th                                  |
|                 | C. Randy White (D)          | Webster Springs  | (House 73rd-75th); 76th-77th                                    |
| Twelfth         | Joseph M. Minard (D)        | Clarksburg       | (House Appt. 1/10/83, 66th;<br>67th-69th); 70th-71st; 74th-77th |
|                 | William R. Sharpe, Jr. (D)  | Weston           | 55th-64th; 67th-77th  |
| Thirteenth      | Michael A. Oliverio, II (D) | Morgantown       | (House 71st); 72nd-77th   |
|                 | Roman W. Prezioso, Jr. (D)  | Fairmont         | (House 69th-72nd); 73rd-77th                                    |
| Fourteenth      | Jon Blair Hunter (D)        | Clarksburg       | 73rd-77th   |
|                 | Sarah M. Minear (R)         | Davis            | 72nd-77th   |
| Fifteenth       | Clark Barnes (R)            | Elkins           | 77th  |
|                 | Walt Helmick (D)            | Marlinton        | (House 1 yr., 69th); Appt. 9/13/89,<br>69th; 70th-77th          |
| Sixteenth       | John R. Unger II (D)        | Martinsburg      | 74th-77th   |
|                 | John Yoder (R)              | Harpers Ferry    | 71st-72nd; 77th   |
| Seventeenth     | Dan Foster (D)              | Charleston       | (House 76th); 77th  |
|                 | Brooks F. McCabe, Jr. (D)   | Charleston       | 74th-77th   |
| (D) Democrats   |                             |                  | 21  |
| (R) Republicans |                             |                  | 13  |
| TOTAL           |                             |                  | 34  |

**COMMITTEES OF THE HOUSE OF DELEGATES**  
**Regular Session, 2006**

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**STANDING**

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**AGRICULTURE AND NATURAL RESOURCES**

Beach (*Agriculture Chair*), Tabb (*Agriculture Vice Chair*), Stemple (*Natural Resources Chair*), Crosier (*Natural Resources Vice Chair*), Argento, Ennis, Fragale, Louisos, Martin, Eldridge, Paxton, Pethtel, Poling, Swartzmiller, Richard Thompson, Wells, Williams, Anderson, Canterbury, Evans, Hamilton, Leggett, Overington, Romine and Schoen.

**BANKING AND INSURANCE**

Ron Thompson (*Banking Chair*), Perry (*Banking Vice Chair*), H. White (*Insurance Chair*), Hrutkay (*Insurance Vice Chair*), Barker, Beach, Butcher, Cann, Ennis, Hartman, Hatfield, Iaquinta, Marshall, Morgan, Perdue, Spencer, Webster, Azinger, Canterbury, Carmichael, Frich, Hamilton, Roberts, Stevens and G. White.

**CONSTITUTIONAL REVISION**

Talbott (*Chair*), Webster (*Vice Chair*), Argento, Caputo, Craig, Crosier, Eldridge, Fragale, Houston, Hunt, Kominar, Louisos, Pino, Spencer, Varner, H. White, Anderson, Armstead, Blair, Ellem, Lane, Overington, Schoen and Sobonya.

**EDUCATION**

Campbell (*Chair*), Williams (*Vice Chair*), Beach, Crosier, Eldridge, Fragale, Longstreth, Louisos, Marshall, Paxton, Perry, Poling, Spencer, Stephens, Tabb, Wells, Wysong, Canterbury, Duke, Lane, Leggett, Roberts, Stevens, Sumner and Tansill.

**FINANCE**

Michael (*Chair*), Doyle (*Vice Chair*), Boggs, Browning, Cann, Frederick, Houston, Kominar, Leach, Palumbo, Proudfoot, Stalnaker, Susman, Ron Thompson, Varner, H. White, Williams,

Anderson, Ashley, Border, Carmichael, Evans, Hall, Wakim and G. White.

### **GOVERNMENT ORGANIZATION**

Beane (*Chair*), Ennis (*Vice Chair*), Argento, Barker, Butcher, Ferrell, Hatfield, Hunt, Iaquinta, Manchin, Martin, Miley, Perdue, Swartzmiller, Talbott, Tucker, Yost, Blair, Frich, Porter, Romine, Rowan, Schoen, Trump and Walters.

### **HEALTH AND HUMAN RESOURCES**

Perdue (*Chair*), Hatfield (*Vice Chair*), Boggs, Brown, DeLong, Frederick, Hrutkay, Leach, Long, Longstreth, Marshall, Miley, Moore, Pino, Susman, Tucker, Webster, Ashley, Border, Hall, Lane, Rowan, Schadler, Sumner and Wakim.

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

Pethel (*Industry and Labor Chair*), Poling (*Industry and Labor Vice Chair*), Cann (*Economic Development and Small Business Chair*), Frederick (*Economic Development and Small Business Vice Chair*), Browning, Caputo, Craig, Fragale, Hartman, Martin, Miley, Moore, Palumbo, Perry, Talbott, Wysong, Yost, Blair, Carmichael, Frich, Howard, Sobonya, Stevens, Walters and G. White.

### **JUDICIARY**

Amores (*Chair*), Craig (*Vice Chair*), Brown, Caputo, DeLong, Hartman, Hrutkay, Long, Mahan, Moore, Morgan, Pethel, Pino, Stemple, Tabb, Rick Thompson, Webster, Armstead, Azinger, Ellem, Hamilton, Howard, Overington, Schadler and Sobonya.

### **PENSIONS AND RETIREMENT**

Stalnaker (*Cochair*), Manchin (*Vice Cochair*), Browning, Frederick, Williams, Duke and Hall.

### **POLITICAL SUBDIVISIONS**

Proudfoot (*Chair*), Susman (*Vice Chair*), Brown, Caputo, Ferrell, Houston, Hunt, Morgan, Palumbo, Perry, Stalnaker, Staton,

Swartzmiller, Tabb, Varner, Wyson, Yost, Anderson, Armstead, Duke, Howard, Schadler, Sumner, Tansill and Walters.

### **ROADS AND TRANSPORTATION**

Boggs (*Chair*), Butcher (*Vice Chair*), Barker, Craig, Ennis, Ferrell, Kominar, Manchin, Martin, Miley, Paxton, Poling, Stephens, Susman, Rick Thompson, Ron Thompson, Wells, Ellem, Evans, Leggett, Porter, Roberts, Romine, Rowan and Tansill.

### **RULES**

Kiss (*Chair*), Amores, Beane, Browning, Campbell, Carmichael, Kominar, Leach, Mahan, Michael, Pino, Staton, Varner, Anderson, Armstead, Border, Hall and Trump.

### **VETERANS AFFAIRS AND HOMELAND SECURITY**

DeLong (*Veterans Affairs Chair*), Martin (*Veterans Affairs Vice Chair*), Swartzmiller (*Homeland Security Chair*), Houston (*Homeland Security Vice Chair*), Butcher, Crosier, Hrutkay, Hunt, Iaquina, Longstreth, Paxton, Poling, Proudfoot, Stephens, Ron Thompson, Tucker, Yost, Ashley, Azinger, Border, Frich, Porter, Schoen, Wakim and Tansill.

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### **JOINT COMMITTEES**

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### **ENROLLED BILLS**

Browning (*Cochair*), Iaquina (*Vice Cochair*), Varner and Overington.

### **GOVERNMENT AND FINANCE**

Kiss (*Cochair*), Amores, Mahan, Michael, Staton, Hall and Trump.

### **GOVERNMENT OPERATIONS**

Beane (*Cochair*), Ennis (*Vice Cochair*), Talbott, Blair and Leggett.

**LEGISLATIVE RULE-MAKING REVIEW**

Mahan (*Cochair*), Palumbo (*Vice Cochair*), Cann, Pino, Armstead and Overington.

**RULES**

Kiss (*Cochair*), Staton and Trump.

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**STATUTORY LEGISLATIVE COMMISSIONS**

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**COMMISSION ON ECONOMIC DEVELOPMENT**

Cann (*Cochair*), Amores, Browning, Craig, Frederick, Kominar, Michael, Poling, Stalnaker, Azinger, Howard and L. White.

**COMMISSION ON INTERSTATE COOPERATION**

Caputo (*Cochair*), Tucker (*Vice Cochair*), Frederick, Varner, Blair and Walters.

**COMMISSION ON SPECIAL INVESTIGATIONS**

Kiss (*Cochair*), Michael, Staton, Howard and Trump.

**FOREST MANAGEMENT REVIEW COMMISSION**

Morgan (*Cochair*), Hartman (*Vice Cochair*), Proudfoot, Stemple, Williams and Canterbury.

**LEGISLATIVE OVERSIGHT COMMISSION****ON EDUCATION ACCOUNTABILITY**

Campbell (*Cochair*), Beach, Doyle, Perry, Williams and Anderson.

**LEGISLATIVE OVERSIGHT COMMISSION ON  
HEALTH AND HUMAN RESOURCES ACCOUNTABILITY**

Leach (*Cochair*), Hatfield, Michael, Perdue, Susman and Hall.

**LEGISLATIVE OVERSIGHT COMMISSION****ON WORKFORCE INVESTMENT FOR****ECONOMIC DEVELOPMENT**

Campbell (*Cochair*), Frederick, Stalnaker and Walters.

**LEGISLATIVE OVERSIGHT COMMITTEE ON  
THE REGIONAL JAIL AND CORRECTIONAL  
FACILITY AUTHORITY**

Perry (*Cochair*), Leach (*Vice Cochair*), Pino, Stemple and  
Roberts.

**STANDING COMMITTEES OF THE SENATE**  
**Regular Session, 2006**

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**STANDING**

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**AGRICULTURE**

Edgell (*Chair*), Love (*Vice Chair*), Dempsey, Helmick, Hunter, Sharpe, Unger, Barnes, Facemyer, Guills and Weeks.

**BANKING AND INSURANCE**

Minard (*Chair*), Jenkins (*Vice Chair*), Chafin, Fanning, Foster, Helmick, Kessler, Prezioso, Sharpe, Deem, Facemyer, Guills, Lanham and Minear.

**CONFIRMATIONS**

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

**ECONOMIC DEVELOPMENT**

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

**EDUCATION**

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

**ENERGY, INDUSTRY AND MINING**

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

**FINANCE**

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



**GOVERNMENT ORGANIZATION**

Bowman (*Chair*), Bailey (*Vice Chair*), Chafin, Jenkins, Kessler, McCabe, Minard, Plymale, White, Boley, Harrison, Lanham, Minear and Weeks.

**HEALTH AND HUMAN RESOURCES**

Prezioso (*Chair*), Unger (*Vice Chair*), Bailey, Edgell, Foster, Hunter, Jenkins, McCabe, Sharpe, Barnes, Boley, Caruth, Guills and Weeks.

**INTERSTATE COOPERATION**

Jenkins (*Chair*), Dempsey (*Vice Chair*), Minard, Unger, Caruth, Harrison and Yoder.

**JUDICIARY**

Kessler (*Chair*), Oliverio (*Vice Chair*), Chafin, Dempsey, Fanning, Foster, Hunter, Jenkins, Minard, White, Barnes, Caruth, Deem, Harrison, Lanham, McKenzie and Weeks.

**LABOR**

Oliverio (*Chair*), White (*Vice Chair*), Edgell, Foster, Hunter, Love, Prezioso, Boley, Harrison, Lanham and Yoder.

**MILITARY**

Hunter (*Chair*), Dempsey (*Vice Chair*), Bailey, Fanning, Minard, Oliverio, Boley, Weeks and Yoder.

**NATURAL RESOURCES**

Fanning (*Chair*), White (*Vice Chair*), Bowman, Dempsey, Helmick, Love, McCabe, Plymale, Prezioso, Barnes, Caruth, Deem, Facemyer and Minear.

**PENSIONS**

Foster (*Chair*), McCabe (*Vice Chair*), Edgell, Plymale, Barnes, Deem and Lanham.

**RULES**

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

**TRANSPORTATION AND INFRASTRUCTURE**

Unger (*Chair*), Jenkins (*Vice Chair*), Fanning, Love, Oliverio, White, Deem, Facemyer and McKenzie.

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**JOINT COMMITTEES**

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**ENROLLED BILLS**

White (*Cochair*), Bailey, Love, Sprouse and Yoder.

**GOVERNMENT AND FINANCE**

Tomblin (*Cochair*), Chafin, Helmick, Kessler, Sharpe, Deem and Sprouse.

**GOVERNMENT OPERATIONS**

Bowman (*Cochair*), Bailey (*Vice Cochair*), Helmick, Boley and Minear.

**LEGISLATIVE RULE-MAKING REVIEW**

Minard (*Cochair*), Fanning (*Vice Cochair*), Prezioso, Unger, Boley and Minear.

**PENSIONS AND RETIREMENT**

Foster (*Cochair*), McCabe (*Vice Cochair*), Edgell, Plymale, Barnes, Deem and Lanham.

**RULES**

Tomblin (*Cochair*), Chafin and Sprouse.

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**STATUTORY LEGISLATIVE COMMISSIONS**

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**COMMISSION ON ECONOMIC DEVELOPMENT**

McCabe (*Cochair*), Bowman, Chafin, Helmick, Kessler, Oliverio, Plymale, Prezioso, Unger, Facemyer, McKenzie and Minear.

**COMMISSION ON INTERSTATE COOPERATION**

Jenkins (*Cochair*), Dempsey (*Vice Cochair*), Minard, Unger, Caruth, Harrison and Yoder.

**COMMISSION ON SPECIAL INVESTIGATIONS**

Tomblin (*Cochair*), Chafin, Sharpe, Boley and Sprouse.

**FOREST MANAGEMENT REVIEW COMMISSION**

Helmick (*Cochair*), Love, Plymale, Facemyer and Minear.

**LEGISLATIVE OVERSIGHT COMMISSION ON  
EDUCATION ACCOUNTABILITY**

Plymale (*Cochair*), Bailey, Edgell, Unger, Boley and Harrison.

**LEGISLATIVE OVERSIGHT COMMISSION ON  
HEALTH AND HUMAN RESOURCES  
ACCOUNTABILITY**

Prezioso (*Cochair*), Hunter, Sharpe, Unger, Boley and Caruth.

**LEGISLATIVE OVERSIGHT COMMISSION ON  
WORKFORCE INVESTMENT FOR  
ECONOMIC DEVELOPMENT**

Unger (*Cochair*), Kessler, McCabe and Sprouse.

**LEGISLATIVE OVERSIGHT COMMITTEE ON  
THE REGIONAL JAIL AND CORRECTIONAL  
FACILITY AUTHORITY**

Love (*Cochair*), Dempsey, Hunter, White and McKenzie.



**LEGISLATURE OF WEST VIRGINIA**

**ACTS**

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**FIRST REGULAR SESSION, 2006**

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**CHAPTER 1**

**(Com. Sub. for H. B. 4296 — By Delegates Craig,  
Amores, Morgan and Leach)**

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[Passed March 11, 2006; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §55-7-18a, relating to providing employers with qualified immunity from liability for disclosing to a prospective employer job-related information reasonably believed to be adverse concerning a current or former employee; requiring written disclosure of the job-related information; and providing for the correction of false or misleading information.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §55-7-18a, to read as follows:

**ARTICLE 7. ACTIONS FOR INJURIES.**

**§55-7-18a. Employer immunity from liability; disclosure of information regarding former employees.**

1 (a) Any employer or his or her designated agent who  
2 discloses job-related information that may be reasonably  
3 considered adverse about a former or current employee to a  
4 prospective employer of the former or current employee is  
5 presumed to be acting in good faith and is immune from civil  
6 liability for the disclosure or its consequences: *Provided*, That  
7 the disclosure of such information pursuant to this subsection  
8 shall be in writing and a copy of any such disclosure shall be  
9 provided to the former or current employee at the time of  
10 disclosure.

11 (b) For the purposes of this section, the presumption of  
12 good faith is rebutted upon a showing, by a preponderance of  
13 the evidence, that the information disclosed was:

14 (1) Knowingly false;

15 (2) Disclosed with reckless disregard for the truth;

16 (3) Deliberately misleading;

17 (4) Rendered with malicious purpose toward the former or  
18 current employee; or

19 (5) Disclosed in violation of a nondisclosure agreement or  
20 applicable law.

21 (c) For purposes of this section, “job-related information”  
22 means information concerning a person’s education, training,

23 experience, qualifications, conduct and job performance which  
24 is offered for the purpose of providing criteria to evaluate the  
25 person's suitability for employment.

26 (d) If an employer disclosed job-related information to a  
27 prospective employer of a former or current employee that was  
28 false or misleading, and if the current or former employee  
29 requests, then the employer shall give corrected information to  
30 every person or entity that is in the employer's records as  
31 having received the original information, with a copy thereof to  
32 the former or current employee.

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## CHAPTER 2

**(Com. Sub. for H. B. 4031 — By Mr. Speaker,  
Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**

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[Passed March 10, 2006; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2006.]

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AN ACT to repeal §5A-3-33a of the Code of West Virginia, 1931, as amended; to amend and reenact §5A-1-1 of said code; to amend and reenact §5A-3-4, §5A-3-5, §5A-3-10, §5A-3-10a, §5A-3-11, §5A-3-19, §5A-3-33d and §5A-3-45 of said code; to amend said code by adding thereto six new sections, designated §5A-3-9a, §5A-3-10b, §5A-3-10c, §5A-3-11a, §5A-3-11b and §5A-3-11c; and to amend and reenact §5A-3C-11 of said code, all relating to the Purchasing Division of the Department of Administration; providing for the powers and duties of the director; defining certain terms; providing for the director to promulgate legislative rules on contract management procedures, division procedures for oversight of contract management, cancellation of contracts and

selling surplus commodities by means of an internet auction site; increasing the annual vendor fee; establishing a fund for fees; providing for specification standards to include cost of maintenance and expected life of commodities; increasing the minimum contract amount requiring competitive bids; providing for competitive bids to be opened publicly; providing requirements for competitive bids; requiring spending units to report multiple contract awards to a single vendor; authorizing the director to conduct compliance reviews of spending units; providing for bids by electronic transmission; providing for bid solicitation requirements; modifying prohibition against awarding contracts to debtors of state; providing for best value procurement; providing for sole source procurement; providing requirements for open market purchases; increasing the maximum amount of purchases which may be made in the open market; providing requirements for contract awards; providing requirements for the delivery of bids to the Purchasing Division; deleting the requirements for duplicate bids; authorizing the director to engage in negotiations and discussions with responsible bidders and to obtain best and final offers; providing for contract awards to multiple vendors; authorizing the director to participate in, sponsor, conduct or administer cooperative purchasing agreements or consortia; providing grounds for debarment of vendors; providing for the disposition of surplus state property by means of an internet auction site; and providing that contracts executed pursuant to the Pharmaceutical Availability and Affordability Act of 2004 are not subject to state purchasing requirements.

*Be it enacted by the Legislature of West Virginia:*

That §5A-3-33a of the Code of West Virginia, 1931, as amended, be repealed; that §5A-1-1 of said code be amended and reenacted; that §5A-3-4, §5A-3-5, §5A-3-10, §5A-3-10a, §5A-3-11, §5A-3-19, §5A-3-33d and §5A-3-45 of said code be amended and reenacted; that said code be amended by adding thereto six new sections, designated §5A-3-9a, §5A-3-10b, §5A-3-10c, §5A-3-11a, §5A-3-11b and §5A-3-11c;



and that §5A-3C-11 of said code be amended and reenacted, all to read as follows:

**Article**

**1. Department of Administration.**

**3. Purchasing Division.**

**3C. Pharmaceutical Availability and Affordability Act of 2004.**

**ARTICLE 1. DEPARTMENT OF ADMINISTRATION.**

**§5A-1-1. Definitions.**

1 For the purpose of this chapter:

2 (1) “Commodities” means supplies, material, equipment,  
3 contractual services, and any other articles or things used by or  
4 furnished to a department, agency or institution of State  
5 Government.

6 (2) “Contractual services” means telephone, telegraph,  
7 electric light and power, water and similar services.

8 (3) “Debarment” means the exclusion of a vendor from the  
9 right to bid on contracts to sell goods or supply services to the  
10 state or its subdivisions for a specified period of time.

11 (4) “Director” means the director of the division referred to  
12 in the heading of the article in which the word appears.

13 (5) “Electronic” means electrical, digital, magnetic, optical,  
14 electromagnetic, or any other similar technology.

15 (6) “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 (7) “Expendable commodities” means those commodities  
21 which, when used in the ordinary course of business, will

22 become consumed or of no market value within the period of  
23 one year or less.

24 (8) “Nonprofit workshops” means an establishment: (a)  
25 Where any manufacture or handiwork is carried on; (b) which  
26 is operated either by a public agency or by a cooperative or by  
27 a nonprofit private corporation or nonprofit association, in  
28 which no part of the net earnings thereof inures, or may  
29 lawfully inure, to the benefit of any private shareholder or  
30 individual; (c) which is operated for the primary purpose of  
31 providing remunerative employment to blind or severely  
32 disabled persons who cannot be absorbed into the competitive  
33 labor market; and (d) which shall be approved, as evidenced by  
34 a certificate of approval, by the State Board of Vocational  
35 Education, Division of Vocational Rehabilitation.

36 (9) “Printing” means printing, binding, ruling, lithograph-  
37 ing, engraving and other similar services.

38 (10) “Record” means information that is inscribed on a  
39 read-only tangible medium or that is stored in an electronic or  
40 other medium and is retrievable in perceivable form.

41 (11) “Removable property” means any personal property  
42 not permanently affixed to or forming a part of real estate.

43 (12) “Request for quotations” means a solicitation for a bid  
44 where cost is the primary factor in determining the award.

45 (13) “Responsible bidder” means a vendor who has the  
46 capability to fully perform the contract requirements, and the  
47 integrity and reliability which will assure good faith perfor-  
48 mance.

49 (14) “Responsive bidder” means a vendor who has submit-  
50 ted a bid which conforms in all material respects to the bid  
51 solicitation.

52 (15) “Secretary” means the Secretary of Administration.

53 (16) “Spending officer” means the executive head of a  
54 spending unit, or a person designated by him or her.

55 (17) “Spending unit” means a department, agency or  
56 institution of the State Government for which an appropriation  
57 is requested, or to which an appropriation is made by the  
58 Legislature.

59 (18) “The state and its subdivisions” means the state of  
60 West Virginia, every political subdivision thereof, every  
61 administrative entity that includes such a subdivision, all  
62 municipalities and all county boards of education.

63 (19) “Vendor” means any person or entity that is registered  
64 with the Purchasing Division to supply the state or its subdivi-  
65 sions with commodities or services and lessors of real property.

### **ARTICLE 3. PURCHASING DIVISION.**

§5A-3-4. Rules of director.

§5A-3-5. Purchasing section standard specifications – Promulgation and adoption  
by director; applicable to all purchases.

§5A-3-9a. Creation of a Fund.

§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.

§5A-3-10a. Prohibition for awarding contracts to vendors which owe a debt to the  
state or its political subdivisions.

§5A-3-10b. Best value procurement.

§5A-3-10c. Sole source procurement.

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

§5A-3-11a. Negotiation when all bids exceed available funds.

§5A-3-11b. Discussion and final offers.

§5A-3-11c. Multiple awards.

§5A-3-19. Purchases from federal government and other sources.

§5A-3-33d. Grounds for debarment.

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

**§5A-3-4. Rules of director.**

1 (a) The director shall propose rules for legislative approval  
2 in accordance with the provisions of article three, chapter  
3 twenty-nine-a of this code to:

4 (1) Authorize a spending unit to purchase specified com-  
5 modities directly and prescribe the manner in which such  
6 purchases shall be made;

7 (2) Authorize, in writing, a spending unit to purchase  
8 commodities in the open market for immediate delivery in  
9 emergencies, define such emergencies and prescribe the manner  
10 in which such purchases shall be made and reported to the  
11 director; and for the purposes mentioned in subdivision (1) and  
12 this subdivision (2), the head of any spending unit, or the  
13 financial governing board of any institution, may, with the  
14 approval of the director, make requisitions upon the Auditor for  
15 a sum to be known as an advance allowance account, in no case  
16 to exceed five percent of the total of the appropriations for any  
17 such spending unit, and the Auditor shall draw his or her  
18 warrant upon the Treasurer for such accounts; and all such  
19 advance allowance accounts shall be accounted for by the head  
20 of the spending unit or institution once every thirty days or  
21 more frequently if required by the State Auditor or director;

22 (3) Prescribe the manner in which commodities shall be  
23 purchased, delivered, stored and distributed;

24 (4) Prescribe the time for making requisitions and estimates  
25 of commodities, the future period which they are to cover, the  
26 form in which they shall be submitted and the manner of their  
27 authentication;

28 (5) Prescribe the manner of inspecting all deliveries of  
29 commodities, and making chemical and physical tests of  
30 samples submitted with bids and samples of deliveries to  
31 determine compliance with specifications;

32 (6) Prescribe the amount of deposit or bond to be submitted  
33 with a bid or contract and the amount of deposit or bond to be  
34 given for the faithful performance of a contract;

35 (7) Prescribe a system whereby the director shall be  
36 required, upon the payment by a vendor of an annual fee  
37 established by the director, to give notice to such vendor of all  
38 bid solicitations for commodities of the type with respect to  
39 which such vendor specified notice was to be given, but no such  
40 fee shall exceed the cost of giving the notice to such vendor,  
41 nor shall such fee exceed the sum of one hundred twenty-five  
42 dollars per fiscal year nor shall such fee be charged to persons  
43 seeking only reimbursement from a spending unit;

44 (8) Prescribe that each state contract entered into by the  
45 Purchasing Division shall contain provisions for liquidated  
46 damages, remedies, or provisions for the determination of the  
47 amount or amounts which the vendor shall owe as damages, in  
48 the event of default under such contract by such vendor;

49 (9) Prescribe contract management procedures for all state  
50 contracts except government construction contracts including,  
51 but not limited to, those set forth in article twenty-two, chapter  
52 five of this code;

53 (10) Prescribe procedures by which oversight is provided  
54 to actively monitor spending unit purchases, including, but not  
55 limited to, all technology and software commodities and  
56 contractual services exceeding one million dollars, approval of  
57 change orders and final acceptance by the spending units;

58 (11) Prescribe that each state contract entered into by the  
59 purchasing division contain provisions for cancellation of the  
60 contract upon thirty days' notice to the vendor;

61 (12) Prescribe procedures for selling surplus commodities  
62 to the highest bidder by means of an internet auction site; and

63 (13) Provide for such other matters as may be necessary to  
64 give effect to the foregoing rules and the provisions of this  
65 article.

66 (b) The director shall propose rules for legislative approval  
67 in accordance with the provisions of article three, chapter  
68 twenty-nine-a of this code to prescribe qualifications to be met  
69 by any person who on and after the effective date of this section  
70 is to be employed in the Purchasing Division as a state buyer.  
71 The rules must provide that a person may not be employed as  
72 a state buyer unless he or she at the time of employment either  
73 is: (1) A graduate of an accredited college or university; or (2)  
74 has at least four years' experience in purchasing for any unit of  
75 government or for any business, commercial or industrial  
76 enterprise. Persons serving as state buyers are subject to the  
77 provisions of article six, chapter twenty-nine of this code.

**§5A-3-5. Purchasing section standard specifications – Promulga-  
tion and adoption by director; applicable to all  
purchases.**

1 The director shall promulgate and adopt standard specifica-  
2 tions based on scientific and technical data for appropriate  
3 commodities, which shall establish the quality to which  
4 commodities to be purchased and services to be contracted for  
5 by the state must conform. Standard specifications shall apply  
6 to every future purchase of or contract for the commodities  
7 described in the specifications and shall include information  
8 relating to the cost of maintenance and expected life of the  
9 commodity if the director determines there are nationally

10 accepted industry standards for the commodity. No purchases  
11 by any spending unit may be exempt from compliance with the  
12 standard specifications so established, but the director may  
13 exempt the purchase of particular items from the standard  
14 specifications if it is considered necessary and advisable. The  
15 director shall update the standard specifications, as necessary.

**§5A-3-9a. Creation of a Fund.**

1 The “Vendor Registration Payment Fund” is hereby  
2 redesignated and continued as the “Vendor Fee Fund,” and the  
3 balance remaining upon the effective date of this section shall  
4 remain upon redesignation. Moneys deposited in this fund shall  
5 be administered by the purchasing division and used for the  
6 purposes established in this article. Expenditures are to be made  
7 only in accordance with appropriation by the Legislature and in  
8 accordance with the provisions of article three, chapter twelve  
9 of this code and upon the fulfillment of the provisions of article  
10 two, chapter eleven-b of this code: *Provided*, That for the fiscal  
11 year beginning the first day of July, two thousand six, expendi-  
12 tures are authorized from deposits rather than pursuant to  
13 appropriations by the Legislature.

14 Amounts collected which are found from time to time to  
15 exceed the funds needed for purposes set forth in this article  
16 may be transferred to other accounts or funds and used for other  
17 purposes by appropriation of the Legislature.

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

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

4       (b) The director shall solicit sealed bids for the purchase of  
5 commodities and printing which is estimated to exceed twenty-  
6 five thousand dollars. No spending unit shall issue a series of  
7 requisitions or divide or plan procurements to circumvent this  
8 twenty-five thousand dollar threshold or otherwise avoid the  
9 use of sealed bids. Any spending unit which awards multiple  
10 contracts for the same or similar commodity or service to an  
11 individual vendor over any twelve-month period, the total value  
12 of which exceedstwenty-five thousand dollars, shall file copies  
13 of all contracts awarded to the vendor within the twelve  
14 preceding months with the director immediately upon exceed-  
15 ing the twenty-five thousand dollar limit, along with a state-  
16 ment explaining how the multiple contract awards do not  
17 circumvent the twenty-five thousand dollar threshold. If the  
18 spending unit does not immediately report to the director, the  
19 director may suspend the purchasing authority of the spending  
20 unit until the spending unit complies with the reporting require-  
21 ment of this subsection. The director may conduct a review of  
22 any spending unit to ensure compliance with this subsection.  
23 Following a review, the director shall complete a report  
24 summarizing his or her findings and forward the report to the  
25 spending unit. In addition, the director shall report to the Joint  
26 Committee on Government and Finance on the first day of  
27 January and July of each year the spending units which have  
28 reported under this subsection and the findings of the director.

29       (c) The director may permit bids by electronic transmission  
30 to be accepted in lieu of sealed bids.

31       (d) Bids shall be solicited by public notice. The notice may  
32 be published by any advertising medium the director deems  
33 advisable. The director may also solicit sealed bids by sending  
34 requests by mail or electronic transmission to prospective  
35 vendors.

36       (e) The director shall, without competitive bidding,  
37 purchase commodities and services produced and offered for



38 sale by nonprofit workshops, as defined in section one, article  
39 one of this chapter, which are located in this state: *Provided*,  
40 That such commodities and services shall be of a fair market  
41 price and of like quality comparable to other commodities and  
42 services otherwise available as determined by the director with  
43 the advice of the committee on the purchase of commodities  
44 and services from the handicapped.

45 To encourage contracts for commodities and services with  
46 nonprofit workshops, the director shall employ a person whose  
47 responsibilities in addition to other duties shall be to identify all  
48 commodities and services available for purchase from nonprofit  
49 workshops, to evaluate the need of the state for commodities  
50 and services to coordinate the various nonprofit workshops in  
51 their production efforts and to make available to such work-  
52 shops information about available opportunities within state  
53 government for purchase of commodities or services which  
54 might be produced and sold by such workshops. Funds to  
55 employ such a person shall be included annually in the budget.

**§5A-3-10a. Prohibition for awarding contracts to vendors which  
owe a debt to the state or its political subdivisions.**

1 (a) Unless the context clearly requires a different meaning,  
2 for the purposes of this section, the terms:

3 (1) "Debt" means any assessment, premium, penalty, fine,  
4 tax or other amount of money owed to the state or any of its  
5 political subdivisions because of a judgment, fine, permit  
6 violation, license assessment, amounts owed to the workers'  
7 compensation funds as defined in article two-c of chapter  
8 twenty-three of this code, penalty or other assessment or  
9 surcharge presently delinquent or due and required to be paid to  
10 the state or any of its political subdivisions, including any  
11 interest or additional penalties accrued thereon.

12       (2) “Debtor” means any individual, corporation, partner-  
13 ship, association, limited liability company or any other form  
14 or business association owing a debt to the state or any of its  
15 political subdivisions.

16       (3) “Political subdivision” means any county commission;  
17 municipality; county board of education; any instrumentality  
18 established by a county or municipality; any separate corpora-  
19 tion or instrumentality established by one or more counties or  
20 municipalities, as permitted by law; or any public body charged  
21 by law with the performance of a government function and  
22 whose jurisdiction is coextensive with one or more counties or  
23 municipalities.

24       (4) “Related party” means a party, whether an individual,  
25 corporation, partnership, association, limited liability company  
26 or any other form or business association or other entity  
27 whatsoever, related to any vendor by blood, marriage, owner-  
28 ship or contract through which the party has a relationship of  
29 ownership or other interest with the vendor so that the party  
30 will actually or by effect receive or control a portion of the  
31 benefit, profit or other consideration from performance of a  
32 vendor contract with the party receiving an amount that meets  
33 or exceeds five percent of the total contract amount.

34       (b) No contract or renewal of any contract may be awarded  
35 by the state or any of its political subdivisions to any vendor or  
36 prospective vendor when the vendor or prospective vendor or  
37 a related party to the vendor or prospective vendor is a debtor  
38 and the debt owed is an amount greater than one thousand  
39 dollars in the aggregate.

40       (c) The prohibition of this section does not apply where a  
41 vendor has contested any tax administered pursuant to chapter  
42 eleven of this code, amount owed to the workers’ compensation  
43 funds as defined in article two-c of chapter twenty-three of this

44 code, permit fee or environmental fee or assessment and the  
45 matter has not become final or where the vendor has entered  
46 into a payment plan or agreement and the vendor is not in  
47 default of any of the provisions of such plan or agreement.

48 (d) All bids, contract proposals or contracts with the state  
49 or any of its political subdivisions submitted or approved under  
50 the provisions of this code shall include an affidavit that the  
51 vendor, prospective vendor or a related party to the vendor or  
52 prospective vendor does not owe any debt in an amount in  
53 excess of one thousand dollars or, if a debt is owed, that the  
54 provisions of subsection (c) of this section apply.

**§5A-3-10b. Best value procurement.**

1 (a) The director may utilize best value procurement to enter  
2 into a contract when he or she determines in writing that it is  
3 advantageous to the state.

4 (b) A solicitation for bids under best value procurement  
5 shall be made in the same manner as provided in section ten of  
6 this article.

7 (c) Best value procurement awards shall be based on  
8 criteria set forth in the solicitation including, but not limited to,  
9 price, the total cost of acquiring, operating, maintaining and  
10 supporting a commodity or service over its projected lifetime,  
11 the evaluated technical merit of the bidder's bid or proposal, the  
12 bidder's past performance, and the evaluated probability of  
13 performing the requirements stated in the solicitation on time,  
14 with high quality, and in a manner that accomplishes the  
15 business objectives set forth in the solicitation.

16 (d) The award must be made to the highest scoring respon-  
17 sive and responsible bidder whose bid is determined, in writing,  
18 to be most advantageous to the state, taking into consideration  
19 all evaluation factors set forth in the best value solicitation.

20 (e) The director may not use best value procurement to  
21 enter into government construction contracts, including, but not  
22 limited to, those set forth in article twenty-two, chapter five of  
23 this code.

**§5A-3-10c. Sole source procurement.**

1 The director may award a contract without advertisement  
2 or competition if he or she determines in writing that there is  
3 only one source for the required commodity or service. The  
4 director may require the submission of cost or pricing data in  
5 connection with an award under this section. Prior to an award  
6 under this section, the spending unit requesting the procurement  
7 shall provide written documentation to the director setting forth  
8 the basis for the sole source procurement and the specific  
9 efforts made to determine the availability of other sources. Prior  
10 to a final determination by the director, the registered vendors  
11 will be notified of the commodity or service being sought and  
12 the vendors will be provided an opportunity to indicate an  
13 interest in bidding on such a commodity or service, to establish  
14 whether the commodity or service is, in fact, available only  
15 from a sole source. On an annual basis, the director shall report  
16 the spending units who have determined a sole source for their  
17 commodities or services, the type of commodity or service and  
18 the determination made by the director.

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

1 (a) The director may make a purchase of commodities,  
2 printing, and services of twenty-five thousand dollars or less in  
3 amount in the open market, but the purchase shall, wherever

4 possible, be based on at least three competitive bids, and shall  
5 include the cost of maintenance and expected life of the  
6 commodities if the director determines there are nationally  
7 accepted industry standards for the commodities being pur-  
8 chased.

9 (b) The director may authorize spending units to purchase  
10 commodities, printing and services in the amount of two  
11 thousand five hundred dollars or less in the open market  
12 without competitive bids: *Provided*, That the cost of mainte-  
13 nance and expected life of the commodities must be taken into  
14 consideration if the director determines there are nationally  
15 accepted industry standards for the commodities being.

16 (c) Bids shall be based on the standard specifications  
17 promulgated and adopted in accordance with the provisions of  
18 section five of this article and may not be altered or withdrawn  
19 after the appointed hour for the opening of the bids.

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

24 (e) All open market orders, purchases based on advertised  
25 bid requests or contracts made by the director or by a state  
26 department shall be awarded to the lowest responsible bidder or  
27 bidders, taking into consideration the qualities of the commo-  
28 dities or services to be supplied, their conformity with specifica-  
29 tions, their suitability to the requirements of the government,  
30 the delivery terms and, if the director determines there are  
31 nationally accepted industry standards, cost of maintenance and  
32 the expected life of the commodities : *Provided*, That state bids  
33 on school buses shall be accepted from all bidders who shall  
34 then be awarded contracts if they meet the state board's  
35 "Minimum Standards for Design and Equipment of School  
36 Buses." County boards of education may select from those

37 bidders who have been awarded contracts and shall pay the  
38 difference between the state aid formula amount and the actual  
39 cost of bus replacement. Any or all bids may be rejected.

40 (f) If all bids received on a pending contract are for the  
41 same unit price or total amount, the director has the authority to  
42 reject all bids, and to purchase the required commodities,  
43 printing and services in the open market, if the price paid in the  
44 open market does not exceed the bid prices.

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

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

### **§5A-3-11a. Negotiation when all bids exceed available funds.**

1 (a) Spending units shall include the maximum budgeted  
2 amount available for each purchase in a requisition submitted  
3 to the Purchasing Division, No person may disclose this  
4 maximum budgeted amount to any vendor prior to the award of  
5 a contract. If all bids submitted pursuant to a solicitation exceed

6 the funds available for the purchase, and the director determines  
7 in writing that there are no additional funds available from any  
8 source to permit an award to the responsive and responsible  
9 bidder and the best interest of the state will not permit the delay  
10 attendant to a resolicitation under revised specifications or for  
11 revised quantities, then a negotiated award may be made as set  
12 forth in this section.

13 (1) If the director determines in writing that there is only  
14 one responsive and responsible bidder, he or she may negotiate  
15 the price for a noncompetitive award or the specifications for a  
16 noncompetitive award based solely on the original purpose of  
17 the solicitation.

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

30 (3) If the Purchasing Division solicits bids utilizing a best  
31 value procurement, as set forth in section ten-b of this section,  
32 and there is more than one bidder, the director may negotiate  
33 with bidders determined in writing to be responsive and  
34 responsible, based on criteria contained in the bid invitation:  
35 *Provided*, That the director must negotiate first with the highest  
36 scoring bidder. If the director does not award the bid to the  
37 highest scoring bidder, he or she may close negotiations with  
38 that bidder and enter into negotiations with the next highest  
39 scoring bidder, and may continue to do so in like manner with

40 the remaining responsive and responsible bidders. The director  
41 may not extend an offer to any bidder that is not first extended  
42 to the prior bidders in order of rank.

43 (b) After negotiations occur pursuant to subsection(a) of  
44 this section, if the director determines that more than fifteen  
45 percent of the value of the bid must be renegotiated by revising  
46 the specifications of the original solicitation, only a  
47 resolicitation may be initiated or the solicitation may be  
48 withdrawn.

49 (c) The director may not renegotiate with any bidder after  
50 closing negotiations with that bidder and entering into negotia-  
51 tions with the next bidder.

**§5A-3-11b. Discussion and final offers.**

1 (a) As provided in the bid solicitation, the director may  
2 conduct discussions with, and obtain best and final offers from,  
3 responsive and responsible bidders who submit proposals  
4 determined to be reasonably susceptible of being selected for  
5 award for the purpose of clarification to assure full understand-  
6 ing of, and responsiveness to, the solicitation requirements.  
7 Bidders must be accorded fair and equal treatment with respect  
8 to any opportunity for discussion and revision of proposals, and  
9 revisions may be permitted after submissions and prior to award  
10 for the purpose of obtaining best and final offers. In conducting  
11 discussions, there may be no disclosure of any information  
12 derived from proposals submitted by competing bidders.

13 (b) The following contracts are exempt from this section:

14 (1) Government construction contracts, including, but not  
15 limited to, those set forth in article twenty-two, chapter five of  
16 this code; and

17 (2) The purchase of supplies and material.



**§5A-3-11c. Multiple awards.**

1           The director may elect to award a contract to one or more  
2 responsive and responsible bidders if the director determines in  
3 writing that a single award to an individual bidder would be  
4 insufficient: *Provided*, That the basis for the selection among  
5 multiple contracts at the time of purchase shall be the most  
6 practical and economical alternative and shall be in the best  
7 interests of the state.

**§5A-3-19. Purchases from federal government and other sources.**

1           (a) Notwithstanding any other provision of this article, the  
2 director may, upon the recommendation of a state spending  
3 unit, participate in, sponsor, conduct, or administer a coopera-  
4 tive purchasing agreement or consortium for the purchase of  
5 commodities or services with agencies of the federal govern-  
6 ment, agencies of other states, other public bodies or other state  
7 agencies, if available and financially advantageous. At the  
8 discretion of the director, bids may be solicited to determine  
9 whether participation in such a cooperative purchasing agree-  
10 ment or consortium is financially advantageous.

11          (b) The Department of Administration may approve  
12 administrative fees, not to exceed the amount of fifty thousand  
13 dollars, necessary to participate in a cooperative purchasing  
14 agreement. Fees which exceed fifty thousand dollars are subject  
15 to the competitive bid requirements of this article.

**§5A-3-33d. Grounds for debarment.**

1           Grounds for debarment are:

2           (1) Conviction of an offense involving fraud or a felony  
3 offense in connection with obtaining or attempting to obtain a  
4 public contract or subcontract;

5 (2) Conviction of any federal or state antitrust statute  
6 relating to the submission of offers;

7 (3) Conviction of an offense involving embezzlement, theft,  
8 forgery, bribery, falsification or destruction of records, making  
9 false statements or receiving stolen property in connection with  
10 the performance of a contract;

11 (4) Conviction of a felony offense demonstrating a lack of  
12 business integrity or business honesty that affects the present  
13 responsibility of the vendor or subcontractor;

14 (5) Default on obligations owed to the state, including, but  
15 not limited to, obligations owed to the workers' compensation  
16 funds, as defined in article two-c of chapter twenty-three of this  
17 code, and obligations under the West Virginia Unemployment  
18 Compensation Act and West Virginia state tax and revenue  
19 laws. For purposes of this subsection, a vendor is in default  
20 when, after due notice, the vendor fails to submit a required  
21 payment, interest thereon or penalty, and has not entered into a  
22 repayment agreement with the appropriate agency of the state  
23 or has entered into a repayment agreement but does not remain  
24 in compliance with its obligations under the repayment agree-  
25 ment. In the case of a vendor granted protection by order of a  
26 federal bankruptcy court or a vendor granted an exemption  
27 under any rule of the bureau of employment programs or the  
28 Insurance Commission, the director may waive debarment  
29 under section thirty-three-f of this article: *Provided*, That in no  
30 event may debarment be waived with respect to any vendor  
31 who has not paid all current state obligations for at least the  
32 four most recent calendar quarters, excluding the current  
33 calendar quarter, or with respect to any vendor who is in default  
34 on a repayment agreement with an agency of the state;

35 (6) The vendor is not in good standing with a licensing  
36 board, in that the vendor is not licensed when licensure is  
37 required by the law of this state, or the vendor has been found

38 to be in violation of an applicable licensing law after notice,  
39 opportunity to be heard and other due process required by law;

40 (7) The vendor is an active and knowing participant in  
41 dividing or planning procurements to circumvent the twenty-  
42 five thousand dollar threshold requiring a sealed bid or other-  
43 wise avoid the use of a sealed bid; or

44 (8) Violation of the terms of a public contract or subcon-  
45 tract for:

46 (A) Willful failure to substantially perform in accordance  
47 with the terms of one or more public contracts;

48 (B) Performance in violation of standards established by  
49 law or generally accepted standards of the trade or profession  
50 amounting to intentionally deficient or grossly negligent  
51 performance on one or more public contracts;

52 (C) Use of substandard materials on one or more public  
53 contracts or defects in construction in one or more public  
54 construction projects amounting to intentionally deficient or  
55 grossly negligent performance, even if discovery of the defect  
56 is subsequent to acceptance of a construction project and  
57 expiration of any warranty thereunder;

58 (D) A repeated pattern or practice of failure to perform so  
59 serious and compelling as to justify debarment; or

60 (E) Any other cause of a serious and compelling nature  
61 amounting to knowing and willful misconduct of the vendor  
62 that demonstrates a wanton indifference to the interests of the  
63 public and that caused, or that had a substantial likelihood of  
64 causing, serious harm to the public.

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

1 (a) The state agency for surplus property has the exclusive  
2 power and authority to make disposition of commodities or  
3 expendable commodities now owned or in the future acquired  
4 by the state when the commodities are or become obsolete or  
5 unusable or are not being used or should be replaced.

6 (b) The agency shall determine what commodities or  
7 expendable commodities should be disposed of and make  
8 disposition in the manner which will be most advantageous to  
9 the state. The disposition may include:

10 (1) Transferring the particular commodities or expendable  
11 commodities between departments;

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

21 (3) Trading in the commodities as a part payment on the  
22 purchase of new commodities;

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

25 (5) Properly disposing of the commodities as waste;

26 (6) Selling the commodities to the highest bidder by means  
27 of public auctions or sealed bids, after having first advertised  
28 the time, terms and place of the sale as a Class II legal adver-  
29 tisement in compliance with the provisions of article three,  
30 chapter fifty-nine of this code. The publication area for the

31 publication is the county in which the sale is to be conducted.  
32 The sale may also be advertised in other advertising media that  
33 the agency considers advisable. The agency may sell to the  
34 highest bidder or to any one or more of the highest bidders, if  
35 there is more than one, or, if the best interest of the state will be  
36 served, reject all bids.

37 (7) Selling the commodities to the highest bidder by means  
38 of an internet auction site approved by the director, as set forth  
39 in an emergency rule pursuant to the provisions of chapter  
40 twenty-nine-a of this code.

41 (c) Upon the transfer of commodities or expendable  
42 commodities between departments, or upon the sale of com-  
43 modities or expendable commodities to an eligible organiza-  
44 tion, the agency shall set the price to be paid by the receiving  
45 eligible organization, with due consideration given to current  
46 market prices.

47 (d) The agency may sell expendable, obsolete or unused  
48 motor vehicles owned by the state to an eligible organization,  
49 other than volunteer fire departments. In addition, the agency  
50 may sell expendable, obsolete or unused motor vehicles owned  
51 by the state with a gross weight in excess of four thousand  
52 pounds to an eligible volunteer fire department. The agency,  
53 with due consideration given to current market prices, shall set  
54 the price to be paid by the receiving eligible organization for  
55 motor vehicles sold pursuant to this provision: *Provided*, That  
56 the sale price of any motor vehicle sold to an eligible organiza-  
57 tion may not be less than the “average loan” value, as published  
58 in the most recent available eastern edition of the National  
59 Automobile Dealer’s Association (N. A. D. A.) Official Used  
60 Car Guide, if the value is available, unless the fair market value  
61 of the vehicle is less than the N. A. D. A. “average loan” value,  
62 in which case the vehicle may be sold for less than the “average  
63 loan” value. The fair market value shall be based on a thorough

64 inspection of the vehicle by an employee of the agency who  
65 shall consider the mileage of the vehicle and the condition of  
66 the body, engine and tires as indicators of its fair market value.  
67 If no fair market value is available, the agency shall set the  
68 price to be paid by the receiving eligible organization with due  
69 consideration given to current market prices. The duly autho-  
70 rized representative of the eligible organization, for whom the  
71 motor vehicle or other similar surplus equipment is purchased  
72 or otherwise obtained, shall cause ownership and proper title to  
73 the motor vehicle to be vested only in the official name of the  
74 authorized governing body for whom the purchase or transfer  
75 was made. The ownership or title, or both, shall remain in the  
76 possession of that governing body and be nontransferable for a  
77 period of not less than one year from the date of the purchase or  
78 transfer. Resale or transfer of ownership of the motor vehicle or  
79 equipment prior to an elapsed period of one year may be made  
80 only by reason of certified unserviceability.

81 (e) The agency shall report to the Legislative Auditor,  
82 semiannually, all sales of commodities or expendable commod-  
83 ities made during the preceding six months to eligible organiza-  
84 tions. The report shall include a description of the commodities  
85 sold, the price paid by the eligible organization which received  
86 the commodities and to whom each commodity was sold.

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

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

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

104          (3) (A) Under circumstances prescribed by the procedures,  
105          state agencies shall be required to submit a form, in writing or  
106          electronically, that, at a minimum, elicits the following infor-  
107          mation for the commodity the agency is requesting to cannibal-  
108          ize:

109           (i) The commodity identification number;

110           (ii) The commodity's acquisition date;

111           (iii) The commodity's acquisition cost;

112           (iv) A description of the commodity;

113           (v) Whether the commodity is operable and, if so, how well  
114          it operates;

115           (vi) How the agency will dispose of the remaining parts of  
116          the commodity; and

117           (vii) Who will cannibalize the commodity and how the  
118          person is qualified to remove and reinstall the parts.

119          (B) If the agency has immediate plans to use the cannibal-  
120          ized parts, the form shall elicit the following information for the  
121          commodity or commodities that will receive the cannibalized  
122          part or parts:

123           (i) The commodity identification number;

124           (ii) The commodity's acquisition date;

- 125 (iii) The commodity's acquisition cost;
- 126 (iv) A description of the commodity;
- 127 (v) Whether the commodity is operable;
- 128 (vi) Whether the part restores the commodity to an operable  
129 condition; and
- 130 (vii) The cost of the parts and labor to restore the commod-  
131 ity to an operable condition without cannibalization.
- 132 (C) If the agency intends to retain the cannibalized parts for  
133 future use, it shall provide information justifying its request.
- 134 (D) The procedures shall provide for the disposal of the  
135 residual components of cannibalized property.
- 136 (h) (1) The Director of the Purchasing Division shall  
137 propose for promulgation legislative rules to establish proce-  
138 dures that allow state agencies to dispose of commodities in a  
139 landfill, or by other lawful means of waste disposal, if the value  
140 of the commodity is less than the benefit that may be realized  
141 by the state by disposing of the commodity using another  
142 method authorized in this section. The procedures shall specify  
143 circumstances where the state agency for surplus property shall  
144 inspect the condition of the commodity prior to authorizing the  
145 disposal and those circumstances when the inspection is not  
146 necessary prior to the authorization.
- 147 (2) Whenever a state agency requests permission to dispose  
148 of a commodity in a landfill, or by other lawful means of waste  
149 disposal, the state agency for surplus property has the right to  
150 take possession of the commodity and to dispose of the com-  
151 modity using any other method authorized in this section.
- 152 (3) If the state agency for surplus property determines,  
153 within fifteen days of receiving a commodity, that disposing of



154 the commodity in a landfill or by other lawful means of waste  
155 disposal would be more beneficial to the state than disposing of  
156 the commodity using any other method authorized in this  
157 section, the cost of the disposal is the responsibility of the  
158 agency from which it received the commodity.

**ARTICLE 3C. PHARMACEUTICAL AVAILABILITY AND AFFORD-  
ABILITY ACT OF 2004.**

**§5A-3C-11. Agency's management ability continued.**

1 (a) Nothing contained in this article may be construed to  
2 limit the ability of the various state agencies to enter into  
3 contracts or arrangement or to otherwise to manage their  
4 pharmacy programs until such time as the programs created or  
5 authorized pursuant to this article are implemented.

6 (b) The provisions of article three, chapter five-a of this  
7 code do not apply to the agreements and contracts executed  
8 under the provisions of this article.

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## CHAPTER 3

**(Com. Sub. for H. B. 4444 — By Mr. Speaker, Mr. Kiss, and Delegates  
Cann, Stemple, Pethel, Swartzmiller and H. White)**

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[Passed March 10, 2006; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §19-1A-3a of the Code of West Virginia, 1931, as amended, relating to permitting land grant university researchers performing research to plant ginseng seed and to dig, collect or gather ginseng on state public lands; prohibiting cultivation on state parks or wildlife management

areas; providing exceptions to the permit requirements for growing and digging ginseng; allowing for certification of existing ginseng plantings; and establishing an annual expiration date for ginseng dealer permits.

*Be it enacted by the Legislature of West Virginia:*

That §19-1A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1A. DIVISION OF FORESTRY.**

**§19-1A-3a. Providing criminal penalties for the illegal possession of uncertified ginseng.**

1           (a) (1) The Legislature finds that ginseng trade must be  
2 controlled in order to protect the survival of wild ginseng as  
3 evidenced by its listing in Appendix II of the Convention on  
4 International Trade in Endangered Species of Wild Fauna and  
5 Flora. It is the policy of this state to regulate the commerce in  
6 ginseng in a manner that protects the survival of wild ginseng.

7           (2) For purposes of this section:

8           (A) “Certified” means the ginseng carries a certificate of  
9 origin issued by the director which allows the export from West  
10 Virginia of ginseng legally harvested in this state;

11          (B) “Commercial use” means to sell or to use ginseng for  
12 financial gain;

13          (C) “Cultivated ginseng” means ginseng that is purpose-  
14 fully planted in beds under artificial shade using standard  
15 horticultural practices such as mechanical tillage, fertilization,  
16 weed control, irrigation and pesticides;

17          (D) “Dealer” means a person who purchases ginseng for  
18 purposes of commercial use;

19 (E) “Digger” means a person who digs, collects or gathers  
20 wild ginseng by searching woodlands to find the plants;

21 (F) “Director” means the Director of the Division of  
22 Forestry;

23 (G) “Division” means the Division of Forestry;

24 (H) “Export” means the movement of ginseng from state to  
25 state as well as sending it abroad;

26 (I) “Ginseng” means cultivated ginseng, woods grown  
27 ginseng, wild simulated ginseng and wild ginseng;

28 (J) “Green ginseng” means a fresh wild ginseng root that  
29 has not been intentionally subjected to a drying process and  
30 from which most natural moisture has not been removed by  
31 drying.

32 (K) “Grower” means a person who purposefully plants and  
33 grows cultivated ginseng, woods grown ginseng or wild  
34 simulated ginseng for purposes of commercial use: *Provided*,  
35 That a grower does not include a digger who plants wild  
36 ginseng seed from the wild ginseng plants he or she digs,  
37 collects or gathers;

38 (L) “Harvest” means to dig, collect or gather ginseng;

39 (M) “Person” means an individual, corporation, partnership,  
40 firm or association;

41 (N) “Rootlets” means woods grown or wild simulated one  
42 to two-year old ginseng roots commonly sold as transplants to  
43 growers;

44 (O) “Wild ginseng” means *Panax quinquefolius* L. that is  
45 not grown or nurtured by a person regardless of the putative  
46 origin of the plants: *Provided*, That wild ginseng may originate

47 from seeds planted by a digger at the same site from which the  
48 digger harvests the wild ginseng;

49 (P) “Wild simulated ginseng” means ginseng that is  
50 purposefully planted in the woods without a bed being prepared  
51 and without the use of any chemical weed, disease or pest  
52 control agents;

53 (Q) “Woods grown ginseng” means ginseng that is purpose-  
54 fully planted in beds prepared in the woods in a manner that  
55 uses trees to provide necessary shade and which may be grown  
56 with the use of chemical or mechanical weed, disease or pest  
57 control agents.

58 (3) (A) The Division of Forestry shall regulate the growing,  
59 digging, collecting, gathering, possessing and selling of  
60 ginseng.

61 (B) The division may propose rules for legislative approval  
62 in accordance with article three, chapter twenty-nine-a of this  
63 code to implement the provisions of this section including the  
64 amount of any permit fee.

65 (C) For purposes of regulating the growing, harvesting and  
66 commercial use of ginseng, a division employee may enter  
67 upon any public or private property, other than a dwelling  
68 house, at reasonable times, in order to inspect the ginseng  
69 operation or records. A person may not obstruct or hinder the  
70 employee in the discharge of his or her enforcement duties.

71 (D) All moneys received from permit fees and civil  
72 penalties assessed pursuant to this section shall be credited to  
73 the special account within the Division of Forestry to be used  
74 for the purposes set forth in section three of this article.

75 (E) The site plats required to be submitted to the division  
76 and other information identifying the specific location of

77 ginseng plants are not open to public inspection pursuant to  
78 article one, chapter twenty-nine-b of this code since they  
79 disclose information having a significant commercial value.

80 (b) (1) The digging season for wild ginseng begins on the  
81 first day of September and ends on the thirtieth day of Novem-  
82 ber of each year. It is unlawful for a person to dig, collect, or  
83 gather wild ginseng between the first day of December and the  
84 thirty-first day of August of the following year.

85 (2) A person digging, collecting, or gathering wild ginseng  
86 upon the enclosed or posted lands of another person shall first  
87 obtain written permission from the landowner, tenant or agent,  
88 and shall carry the written permission on his or her person  
89 while digging, collecting or gathering wild ginseng upon the  
90 enclosed or posted lands. It is unlawful to dig, collect, or gather  
91 wild ginseng from the property of another without the written  
92 permission of the landowner.

93 (3) A person digging, collecting or gathering wild ginseng  
94 shall plant the seeds from the wild ginseng plants at the time  
95 and at the site from which the wild ginseng is harvested. It is  
96 unlawful to remove wild ginseng seeds from the site of collec-  
97 tion.

98 (4) It is unlawful to dig, collect or gather wild ginseng less  
99 than five years old.

100 (5) A person may not rescue wild ginseng plants endan-  
101 gered by ground-disturbing activities unless he or she has first  
102 obtained a moving permit from the division. The person shall  
103 provide the reason for moving the plants, the current location of  
104 the plants, the proposed new planting site and other information  
105 required by the division.

106 (6) It is unlawful to plant ginseng or ginseng seed and to  
107 dig, collect or gather ginseng on West Virginia public lands,

108 except by land grant university researchers performing research  
109 or demonstration projects regarding the growing, cultivating or  
110 harvesting of ginseng: *Provided*, That it is unlawful for anyone  
111 to plant ginseng or ginseng seed and to dig, collect, or gather  
112 ginseng on state wildlife management areas or on state parks.

113 (c) (1) A person may not act as a grower unless he or she  
114 has obtained a grower's permit from the division.

115 (2) Prior to planting cultivated, woods grown or wild  
116 simulated ginseng, a grower shall:

117 (A) Submit to the director a plat of the exact planting  
118 location prepared by a licensed surveyor or a registered forester  
119 as defined in article nineteen, chapter thirty of this code, along  
120 with information verifying the name of the landowner: *Pro-*  
121 *vided*, That if the grower is not the landowner, the grower shall  
122 also submit written permission from the landowner to grow and  
123 harvest cultivated, woods grown or wild simulated ginseng on  
124 that property.

125 (B) Obtain a written determination from the director  
126 certifying that the planting area is free from wild ginseng; and

127 (C) Submit other information required by the division.

128 (3) A grower shall keep accurate and complete records on  
129 each ginseng planting on forms provided by the division. The  
130 records shall be available for inspection by a division employee  
131 and shall be submitted to the division at intervals established by  
132 rule by the division. A grower shall maintain records for a  
133 period of not less than ten years. The information required to be  
134 kept shall include:

135 (A) The origin of ginseng seed, rootlets or plants;

136 (B) The location of purposefully planted cultivated, wild  
137 simulated and woods grown ginseng and a site plat of the  
138 planting;

139 (C) The original of the director's determination that the site  
140 was free from wild ginseng at the time of planting;

141 (D) The date each site was planted;

142 (E) The number of pounds of seeds planted, or the number  
143 and age of rootlets, or both; and

144 (F) Other information required by the division.

145 (4) A grower may harvest cultivated ginseng on or after the  
146 effective date of this section throughout the year.

147 (5) A grower may harvest wild simulated and woods grown  
148 ginseng from the first day of September through the thirtieth  
149 day of November of each year.

150 (6) It is unlawful for a person to dig, collect or gather wild  
151 simulated and woods grown ginseng between the first day of  
152 December and the thirty-first day of August.

153 (7) It is unlawful to dig, collect and gather wild simulated  
154 and woods grown ginseng less than five years old.

155 (8) A grower shall comply with the certification procedures  
156 set forth in subdivision (f) of this section.

157 (9) For planting locations in existence prior to the first day  
158 of July, two thousand five, provide proof of having purchased  
159 ginseng seed, rootlets, or plants for planting for a minimum of  
160 one or more of the five years immediately prior to the first day  
161 of July, two thousand five, and sign a certification that to the  
162 best of his or her knowledge, no wild ginseng existed on the site  
163 at the time the ginseng was planted: *Provided*, That no grower

164 may certify a planting location in existence prior to the first day  
165 of July, two thousand five under this provision after the thirty-  
166 first day of December, two thousand nine.

167 (d) (1) A person may not act as a dealer unless he or she has  
168 obtained a dealer's permit from the division.

169 (2) A dealer shall keep accurate and complete records on  
170 his or her ginseng transactions on forms provided by the  
171 division. A dealer is required to maintain a record of all  
172 persons, including a digger, grower and dealer, involved in each  
173 purchase or sale transaction and shall include the name,  
174 address, permit number, and a copy of each ginseng certifica-  
175 tion issued by the division. All records shall be available for  
176 inspection by a division employee. A dealer shall maintain  
177 records for a period of not less than ten years. In addition, a  
178 dealer is required to report the following information to the  
179 division monthly:

180 (A) The date of the transaction;

181 (B) The type of ginseng, whether wild, cultivated, woods  
182 grown or wild simulated ginseng;

183 (C) Whether the ginseng is dried or green at the time of the  
184 transaction;

185 (D) The weight of the ginseng;

186 (E) The county from which the ginseng was harvested;

187 (F) The identification number from the state ginseng  
188 certification; and

189 (G) Other information required by the division.

190 (3) A dealer shall include a West Virginia export certificate,  
191 numbered by the division, with each shipment of ginseng  
192 transported out-of-state.



193       (4) A dealer may not import out-of-state ginseng into this  
194 state unless the ginseng is accompanied by a valid export  
195 certificate issued by the state of origin. A dealer must return  
196 uncertified ginseng to the state of origin within fifteen calendar  
197 days.

198       (5) It is unlawful to include false information on any  
199 certificate or record required to be completed or maintained by  
200 this section. All ginseng harvested in West Virginia must be  
201 certified by the director before being transported or shipped  
202 out-of-state.

203       (e) (1) A person may not act as a grower or act as a dealer  
204 unless he or she has been issued the appropriate permit by the  
205 division. A person must obtain a separate permit for each  
206 activity. Permit applications shall be made on forms provided  
207 by the division. The application for a permit shall be accompa-  
208 nied by the applicable permit fee. The division shall assign a  
209 permit number to each person granted a permit and it shall keep  
210 records of the permits issued.

211       (2) Permits expire on the thirty-first day of December of  
212 each year for growers and the thirty-first day of August of each  
213 year for dealers. All permits must be renewed annually.  
214 Renewal forms will be mailed to current permit holders. The  
215 failure to receive a renewal form does not relieve the permit  
216 holder of the obligation to renew. The division may require a  
217 late fee when renewal is received more than sixty days after the  
218 expiration of the current permit.

219       (3) The permit holder shall notify the division of any  
220 changes in the information on the permit.

221       (f) All ginseng harvested in this state shall be certified as to  
222 type, whether wild, cultivated, woods grown or wild simulated,  
223 and to its origin, weight and lawful harvest. Other information  
224 may be required for ginseng to be certified by the division to

225 comply with the Convention on International Trade in Endan-  
226 gered Species of Wild Fauna and Flora to allow for its export:  
227 *Provided*, That live one and two-year old cultivated, woods  
228 grown or wild simulated rootlets sold by growers for propaga-  
229 tion purposes within the United States are not regarded as  
230 harvested and are exempt from the certification requirement.  
231 All ginseng, except cultivated ginseng, must be certified or  
232 weight receipted by the first day of April of the year following  
233 harvest: *Provided, however*, That no ginseng may be certified  
234 between the first day of January through the thirty-first day of  
235 March unless the person requesting certification displays a  
236 valid permit. It is unlawful for a person to have in his or her  
237 possession uncertified wild ginseng from the first day of April  
238 through the thirty-first day of August.

239 (g) The director shall propose rules for legislative approval  
240 in accordance with article three, chapter twenty-nine-a of this  
241 code designed to implement the ginseng certification process.

242 (h) The division may, by order entered in accordance with  
243 the provisions of article five, chapter twenty-nine-a, deny,  
244 suspend or revoke the permit of a grower or dealer and may  
245 invalidate an export certificate completed by a dealer when the  
246 division finds that a grower or dealer has violated any provision  
247 of this section or a legislatively approved rule.

248 (i) The division may assess a civil penalty against a person  
249 who violates any provision of this section or a provision of a  
250 legislatively approved rule. The division may assess a monetary  
251 penalty of not less than one hundred dollars nor more than five  
252 hundred dollars.

253 (j) Any person violating a provision of this section is guilty  
254 of a misdemeanor and, upon conviction thereof, shall be fined  
255 not less than one hundred dollars nor more than five hundred  
256 dollars for the first offense, and for each subsequent offense,  
257 shall be fined not less than five hundred dollars nor more than

258 one thousand dollars, or confined in jail not more than six  
259 months, or both. The court, in imposing the sentence of a  
260 person convicted of an offense under this section, shall order  
261 the person to forfeit all ginseng involved in the offense.

262 (k) It is the duty of the prosecuting attorney of the county  
263 in which the violation occurred to represent the division, to  
264 institute proceedings, and to prosecute the person charged with  
265 the violation.

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## CHAPTER 4

**(H. B. 4368 — By Delegates Amores, Palumbo, Brown and Schadler)**

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[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §60-8-18 of the Code of West Virginia, 1931, as amended, relating to the alleged violations of Alcohol Beverage Control Administration (ABCA) rules, orders and related code provisions by persons and entities holding licenses to sell or serve wine; clarifying the code provisions to clearly provide for the investigation of licensee's alleged violation of rules or orders issued by the ABCA Commissioner; and providing expanded alternative sanction options to the ABCA Commissioner for certain violations.

*Be it enacted by the Legislature of West Virginia:*

That §60-8-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. SALE OF WINES.**

**§60-8-18. Revocation, suspension and other sanctions which may be imposed by the commissioner upon the licensee; procedure upon refusal, revocation, suspension or other sanction.**

1 (a) The commissioner may on his or her own motion, or  
2 shall on the sworn complaint of any person, conduct an investi-  
3 gation to determine if any provisions of this article or any rule  
4 promulgated or any order issued by the commissioner has been  
5 violated by any licensee. After investigation, the commissioner  
6 may impose penalties and sanctions as set forth below.

7 (1) If the commissioner finds that the licensee has violated  
8 any provision of this article or any rule promulgated or order  
9 issued by the commissioner, or if the commissioner finds the  
10 existence of any ground on which a license could have been  
11 refused, if the licensee were then applying for a license, the  
12 commissioner may:

13 (A) Revoke the licensee's license;

14 (B) Suspend the licensee's license for a period determined  
15 by the commissioner not to exceed twelve months; or

16 (C) Place the licensee on probation for a period not to  
17 exceed twelve months; and,

18 (D) Impose a monetary penalty not to exceed one thousand  
19 dollars for each violation where revocation is not imposed.

20 (2) If the commissioner finds that a licensee has willfully  
21 violated any provision of this article or any rule promulgated or  
22 any order issued by the commissioner, the commissioner shall  
23 revoke the licensee's license.

24 (b) If a distributor fails or refuses to keep in effect the bond  
25 required by section twenty-nine of this article, the commis-  
26 sioner shall automatically suspend the distributor's license until

27 the bond required by section twenty is furnished to the commis-  
28 sioner, at which time the commissioner shall vacate the  
29 suspension.

30 (c) Whenever the commissioner refuses to issue a license,  
31 or suspends or revokes a license, places a licensee on probation  
32 or imposes a monetary penalty, he or she shall enter an order to  
33 that effect, and cause a copy of the order to be served in person  
34 or by certified mail, return receipt requested, on the licensee or  
35 applicant.

36 (d) Any applicant or licensee, as the case may be, adversely  
37 affected by the order has a right to a hearing before the commis-  
38 sioner, a written demand for hearing is served upon the com-  
39 missioner within ten days following the receipt of the commis-  
40 sioner's order by the applicant or licensee. Timely service of a  
41 demand for a hearing upon the commissioner operates to  
42 suspend the execution of the order with respect to which a  
43 hearing has been demanded, except an order suspending a  
44 license under the provisions of subsection (b) of this section.  
45 The person demanding a hearing shall give security for the cost  
46 of the hearing in a form and amount as the commissioner may  
47 reasonably require. If the person demanding the hearing does  
48 not substantially prevail in such hearing or upon judicial review  
49 thereof as provided in subsections (g) and (h) of this section,  
50 then the costs of the hearing shall be assessed against him or her  
51 by the commissioner and may be collected by an action at law  
52 or other proper remedy.

53 (e) Upon receipt of a timely served written demand for a  
54 hearing, the commissioner shall immediately set a date for the  
55 hearing and notify the person demanding the hearing of the  
56 date, time and place of the hearing, which shall be held within  
57 thirty days after receipt of the demand. At the hearing the  
58 commissioner shall hear evidence and thereafter enter an order  
59 supporting by findings of facts, affirming, modifying or  
60 vacating the order. Any such order is final unless vacated or  
61 modified upon judicial review thereof.

62 (f) The hearing and the administrative procedure prior to,  
63 during and following the hearing shall be governed by and in  
64 accordance with the provisions of article five, chapter  
65 twenty-nine-a of this code.

66 (g) Any applicant or licensee adversely affected by an order  
67 entered following a hearing has the right of judicial review of  
68 the order in accordance with the provisions of section four,  
69 article five, chapter twenty-nine-a of this code.

70 (h) The judgment of a circuit court reviewing the order of  
71 the commissioner is final unless reversed, vacated or modified  
72 on appeal to the Supreme Court of Appeals in accordance with  
73 the provisions of section one, article six, chapter twenty-nine-a  
74 of this code.

75 (i) Legal counsel and services for the commissioner in all  
76 proceedings in any circuit court and the Supreme Court of  
77 Appeals shall be provided by the Attorney General or his or her  
78 assistants and in any proceedings in any circuit court by the  
79 prosecuting attorney of that county as well, all without addi-  
80 tional compensation.

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## CHAPTER 5

**(S. B. 112 — By Senators Prezioso, Sharpe, Hunter, Foster, Unger,  
Jenkins, Plymale, Helmick, Dempsey, White, Fanning, Sprouse,  
Deem, Yoder, Facemyer, Love, Bowman and Minard)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new section, designated §16-5R-7, relating to

establishing an Alzheimer's Disease Registry within West Virginia University to act as a central information database for policy and planning relative to Alzheimer's disease.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-5R-7, to read as follows:

**ARTICLE 5R. THE ALZHEIMER'S SPECIAL CARE STANDARDS ACT.**

**§16-5R-7. Establishment of a central registry.**

1           (a) To the extent funds are available, the Governing Board  
2 of the West Virginia University shall establish an Alzheimer's  
3 Disease Registry to collect information concerning alzheimer's  
4 disease and related disorders. The purpose of the registry shall  
5 be to provide a central database of information to assist in the  
6 development of public policy and planning. The information  
7 collected by the registry shall be analyzed to prepare reports  
8 and perform studies as necessary when such data identifies  
9 information useful in developing policy.

10          (b) All reporting sources, including hospitals, physicians,  
11 facilities, clinics or other similar units diagnosing or providing  
12 treatment or care for alzheimer's disease and related disorders,  
13 shall provide a report of each case to the Alzheimer's Disease  
14 Registry in the format specified.

15          (c) All information reported pursuant to this section is  
16 confidential and shall be used only for the purposes set forth  
17 herein. A report provided to the Alzheimer's Disease Registry  
18 that discloses the identity of the individual being treated shall  
19 only be released in accordance with the provisions of the Health  
20 Insurance Portability and Accountability Act of 1996. No  
21 liability of any kind or character for damages or other relief  
22 shall arise or be enforced against any reporting source by reason

23 of having provided the information or material to the Alzhei-  
24 mer's Disease Registry.

25 (d) The governing board shall propose rules pursuant to the  
26 provisions of article three, chapter twenty-nine-a of this code to  
27 implement this section. The rules shall include, but not be  
28 limited to: (1) The content and design of all forms and reports  
29 required by this section; (2) the type of information to be  
30 collected and maintained; (3) the procedures for disclosure of  
31 nonidentifying data to other appropriate research entities; (4) the  
32 manner in which reporting entities or individuals, including  
33 families, may be contacted by the registry for additional  
34 relevant information; and (5) any other matter necessary to the  
35 administration of this section.



## CHAPTER 6

**(Com. Sub. for S. B. 125 — By Senators Tomblin,  
Mr. President, and Sprouse)  
[By Request of the Executive]**

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[Passed March 19, 2006; in effect from passage.]  
[Approved by the Governor on March 24, 2006.]

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

*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 expenditure.

§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 seven.

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 seven” shall mean the period  
10 from the first day of July, two thousand six, through the  
11 thirtieth day of June, two thousand seven.

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 eleven-b 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 eleven-b 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 ser-  
41 vices” line item, its “employee benefit” line item, its “unclassi-  
42 fied” line item or any other appropriate line item to “BRIM  
43 Premiums” for payment to the Board of Risk and Insurance  
44 Management. Each spending unit is hereby authorized and  
45 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 ~~\* Investing the power of the purse with the Legislature, the~~  
74 ~~founding fathers recognized the inherent political nature of~~  
75 ~~budgeting and established the Legislature to function as a~~  
76 ~~crucible for the venting and vetting of political tensions and~~  
77 ~~ideas, the improvement of good ideas and the imperilment of~~  
78 ~~bad ones. By design, each of the 134 legislators functions as a~~  
79 ~~check and balance, if not contributor to, the policies and~~  
80 ~~appropriations under his or her consideration. Also unique to~~  
81 ~~the Legislative Branch is its division into committees, parties~~

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\* CLERK’S NOTE: The Governor struck language on line 73 through line 169.

82 ~~and caucuses and designation of individuals as minority and~~  
83 ~~majority leaders and whips, each facilitating consideration of~~  
84 ~~important and political ideas; its two houses, extensive rules,~~  
85 ~~procedural requirements, committee structure and the executive~~  
86 ~~veto, reduction and deletion powers, all designed to ensure~~  
87 ~~prudence and ensnare imprudent proposals; the two-year~~  
88 ~~election cycle of the House, staggered terms of the Senate and~~  
89 ~~the size and geographical nature of Legislative districts, each~~  
90 ~~contributing to the superior representative nature of this branch~~  
91 ~~of government, and its function as a check and balance on the~~  
92 ~~Executive, each of which contributes to the Legislature's~~  
93 ~~unique ability to process these inherently political decisions.~~  
94 ~~Unchecked and unlimited executive authority to modify the~~  
95 ~~State budget through transfers to undesignated budget activities~~  
96 ~~would not lend to minimizing waste, reducing spending and~~  
97 ~~balancing the maintenance of taxes against the derived benefit~~  
98 ~~and would circumvent the fundamental Constitutional design~~  
99 ~~embodied in the doctrine of the separation of powers, the~~  
100 ~~budget process itself and the protections provided within the~~  
101 ~~Legislature's architecture. Even more fundamentally, such~~  
102 ~~approach would serve to erode the very delegation of democ-~~  
103 ~~racy.~~

104 ~~While bureaucrats possess extensive knowledge of their~~  
105 ~~programs and populations, they are not qualified to determine~~  
106 ~~the highest uses of the people's resources. Their views of the~~  
107 ~~State are appropriately centric to their specific programs and~~  
108 ~~roles, and their universes are appropriately small and contained.~~  
109 ~~Bureaucrats tend to approach these decisions with a bias toward~~  
110 ~~spending and enhancing their own programs and comforts.~~  
111 ~~Bureaucrats are not accountable to the voters and do not make~~  
112 ~~decisions within a forum designed for challenge, debate,~~  
113 ~~consensus and regional representation. For these and other~~  
114 ~~reasons the Governor's proposed *method* for rededicating~~  
115 ~~monies saved due to efficiencies is hereby declined.~~

116 However, it continues to be the expectation of the Legisla-  
117 ture that West Virginia's Governor and public managers will do  
118 everything in their power to improve the efficiency and  
119 effectiveness of State government. While providing the best  
120 possible value back to the citizens of the State should be the  
121 primary motive of every public official and employee, the  
122 Legislature hereby declares that in its formulation of the Fiscal  
123 Year 2008 budget and supplemental amendments to this 2007  
124 budget, it will duly consider spending unit recommendations for  
125 alternate usage of efficiency savings when a spending unit can  
126 document an efficiency savings to one or more General  
127 Revenue line-items and justify its recommendation for an  
128 alternative use. The Legislative Auditor shall prescribe forms  
129 and procedures for spending units to recommend alternate uses;  
130 receive and disseminate these requests and otherwise administer  
131 these provisions. The purpose of making government more  
132 efficient is not merely to provide more resources to be spent on  
133 other initiatives. In making these recommendations for alternate  
134 usage of efficiency savings, public officials and employees  
135 shall be sensitive to the tax burden shouldered by West Virginia  
136 citizens and businesses and the many unmet needs affecting  
137 their health, safety and welfare. While the Legislature may be  
138 predisposed to granting a spending unit's recommendation, its  
139 consideration of the need for tax relief and the merit of other  
140 possible uses of these resources is absolutely indispensable and  
141 nondelegable.

142 In further exercise of its responsibilities, the Legislature  
143 includes in this budget certain appropriations in line-items  
144 which more specifically describe the purposes for which the  
145 appropriations are made than are described in the more general  
146 line-items proposed by the executive. In the event these more  
147 specific items or parts thereof are disapproved, the funds  
148 appropriated for those purposes may not be expended for any  
149 other purposes than those which were disapproved, except for  
150 such purposes as may be provided by enactment of a supple-

151 ~~mentary appropriation bill. The Constitution vests the power of~~  
152 ~~the purse, the power to appropriate public funds, solely in the~~  
153 ~~legislative branch of this State's government. The inclusion of~~  
154 ~~more specific line-items in an appropriations bill is a means by~~  
155 ~~which the Legislature effectively decreases items of appropria-~~  
156 ~~tion proposed by the executive for other purposes. The exercise~~  
157 ~~of the power of the executive to disapprove specific items or~~  
158 ~~parts thereof of appropriations bills can not operate to increase~~  
159 ~~appropriations of the money contained in those items for other~~  
160 ~~purposes, a result which the executive may not achieve by~~  
161 ~~either direct or indirect means under the Constitution of this~~  
162 ~~State. The expenditure of funds for purposes other than those~~  
163 ~~contained in a line-item disapproved by the Governor would be~~  
164 ~~an unconstitutional appropriation of public funds and a usurpa-~~  
165 ~~tion of the power of appropriation reserved exclusively to the~~  
166 ~~legislative branch. It is the intent of the Legislature to resist any~~  
167 ~~encroachment of the power to appropriate devolved upon and~~  
168 ~~entrusted to the legislative branch by the citizens of this State~~  
169 ~~through their Constitution.~~

170 From appropriations made to the spending units of state  
171 government, upon approval of the governor there may be  
172 transferred to a special account an amount sufficient to match  
173 federal funds under any federal act.

174 Appropriations classified in any of the above categories  
175 shall be expended only for the purposes as defined above and  
176 only for the spending units herein designated: *Provided*, That  
177 the secretary of each department shall have the authority to  
178 transfer within the department those general revenue funds  
179 appropriated to the various agencies of the department: *Pro-*  
180 *vided, however*, That no more than five percent of the general  
181 revenue funds appropriated to any one agency or board may be  
182 transferred to other agencies or boards within the department:  
183 *Provided further*, That the secretary of each department and the  
184 director, commissioner, executive secretary, superintendent,  
185 chairman or any other agency head not governed by a depart-

186 mental secretary as established by chapter five-f of the code  
187 shall have the authority to transfer funds appropriated to  
188 “personal services” and “employee benefits” to other lines  
189 within the same account and no funds from other lines shall be  
190 transferred to the “personal services” line: *And provided*  
191 *further*, That the secretary of each department and the director,  
192 commissioner, executive secretary, superintendent, chairman or  
193 any other agency head not governed by a departmental secretary  
194 as established by chapter five-f of the code shall have the  
195 authority to transfer general revenue funds appropriated to  
196 “annual increment” to other general revenue accounts within  
197 the same department, bureau or commission for the purpose of  
198 providing an annual increment in accordance with article five,  
199 chapter five of the code: *And provided further*, That no author-  
200 ity exists hereunder to transfer funds into line-items to which no  
201 funds are legislatively appropriated: *And provided further*, That  
202 if the Legislature by subsequent enactment consolidates  
203 agencies, boards or functions, the secretary or other appropriate  
204 agency head may transfer the funds formerly appropriated to  
205 such agency, board or function in order to implement such  
206 consolidation. No funds may be transferred from a special  
207 revenue account, dedicated account, capital expenditure account  
208 or any other account or fund specifically exempted by the  
209 Legislature from transfer, except that the use of the appropria-  
210 tions from the state road fund for the office of the secretary of  
211 the department of transportation is not a use other than the  
212 purpose for which such funds were dedicated and is permitted.

213 Appropriations otherwise classified shall be expended only  
214 where the distribution of expenditures for different purposes  
215 cannot well be determined in advance or it is necessary or  
216 desirable to permit the spending unit the freedom to spend an  
217 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.

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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 eleven-b of the code the following amounts,  
 5 as itemized, for expenditure during the fiscal year two thousand  
 6 seven.

**LEGISLATIVE**

*1—Senate*

Fund 0165 FY 2007 Org 2100

|   | <b>Activity</b> | <b>General<br/>Revenue<br/>Fund</b> |
|---|-----------------|-------------------------------------|
| 1 Compensation of Members (R) . . . . . | 003             | \$ 1,010,000                        |



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

14       The appropriations for the senate for the fiscal year 2006  
15 are to remain in full force and effect and are hereby  
16 reappropriated to June 30, 2007. Any balances so  
17 reappropriated may be transferred and credited to the fiscal year  
18 2007 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 or middle  
 59 school and one copy for each elementary school within the  
 60 state.

*2—House of Delegates*

Fund 0170 FY 2007 Org 2200

|   |                                       |     |              |
|---|---------------------------------------|-----|--------------|
| 1 | Compensation of Members (R) . . . . . | 003 | \$ 2,270,000 |
| 2 | Compensation and Per Diem of Officers |     |              |
| 3 | and Employees (R) . . . . .           | 005 | 680,000      |

|   |                                   |     |               |
|---|-----------------------------------|-----|---------------|
| 4 | Current Expenses and              |     |               |
| 5 | Contingent Fund (R) . . . . .     | 021 | 4,221,162     |
| 6 | Expenses of Members (R) . . . . . | 399 | 1,190,000     |
| 7 | BRIM Premium (R) . . . . .        | 913 | <u>28,120</u> |
| 8 | Total . . . . .                   |     | \$ 8,389,282  |

9       The appropriations for the house of delegates for the fiscal  
10 year 2006 are to remain in full force and effect and are hereby  
11 reappropriated to June 30, 2007. Any balances so  
12 reappropriated may be transferred and credited to the fiscal year  
13 2007 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 2007 Org 2300

|    |   |     |               |
|----|---|-----|---------------|
| 1  | Joint Committee on                        |     |               |
| 2  | Government and Finance (R) . . . . .      | 104 | \$ 6,845,189  |
| 3  | Legislative Printing (R) . . . . .        | 105 | 800,000       |
| 4  | Legislative Rule-Making                   |     |               |
| 5  | Review Committee (R) . . . . .            | 106 | 155,000       |
| 6  | Legislative Computer System (R) . . . . . | 107 | 900,000       |
| 7  | Joint Standing Committee                  |     |               |
| 8  | on Education (R) . . . . .                | 108 | 88,000        |
| 9  | Tax Reduction and Federal Funding         |     |               |
| 10 | Increased Compliance                      |     |               |
| 11 | (TRAFFIC)(R) . . . . .                    | 642 | 10,000,000    |
| 12 | BRIM Premium (R) . . . . .                | 913 | <u>22,000</u> |
| 13 | Total . . . . .                           |     | \$18,810,189  |

14 The appropriations for the joint expenses for the fiscal year  
 15 2006 are to remain in full force and effect and are hereby

16 reappropriated to June 30, 2007. Any balances so  
17 reappropriated may be transferred and credited to the fiscal year  
18 2007 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.

31       Of the unexpended balance of the appropriation for  
32 Supplement for PERS and TRS 2006 - Surplus (fund 0175,  
33 activity 679) reappropriated for expenditure in FY2007,  
34 \$7,987,000 shall be transferred to the Teachers Employers  
35 Contribution Collection Account (fund 2607), and \$2,013,000  
36 shall be transferred to the Income Fund (fund 2501). This  
37 appropriation, in addition to the \$30 million of statutory  
38 transfers, is intended to fully fund the one-time supplements to  
39 retirement benefits of the annuitants described in West Virginia  
40 Code §5-10-22i and §18-7A-26t as enacted by House Bill No.  
41 4846 (2006 Regular Session). According to the Actuarial Note  
42 to HB 4846, this combined funding of \$40 million will be  
43 sufficient to provide no more than a three percent one-time  
44 supplement.

## JUDICIAL

4—*Supreme Court*—

*General Judicial*Fund 0180 FY 2007 Org 2400

|   |   |     |                |
|---|---|-----|----------------|
| 1 | Personal Services (R) . . . . .         | 001 | \$ 56,183,746  |
| 2 | Annual Increment (R) . . . . .          | 004 | 550,000        |
| 3 | Employee Benefits (R) . . . . .         | 010 | 17,280,123     |
| 4 | Unclassified (R) . . . . .              | 099 | 17,413,444     |
| 5 | Judges' Retirement System (R) . . . . . | 110 | 2,333,000      |
| 6 | Retirement Systems-                     |     |                |
| 7 | Unfunded Liability . . . . .            | 775 | 3,701,000      |
| 8 | BRIM Premium (R) . . . . .              | 913 | <u>374,015</u> |
| 9 | Total . . . . .                         |     | \$ 97,835,328  |

10       The appropriations to the supreme court of appeals for the  
11 fiscal years 2004, 2005 and 2006 are to remain in full force and  
12 effect and are hereby reappropriated to June 30, 2007. Any  
13 balances so reappropriated may be transferred and credited to  
14 the fiscal year 2007 accounts.

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

20       The appropriations for the Judges' Retirement System and  
21 Retirement Systems-Unfunded Liability are to be transferred to  
22 the consolidated public retirement board, in accordance with the  
23 law relating thereto, upon requisition of the administrative  
24 director of the supreme court of appeals.

**EXECUTIVE**

*5—Governor's Office*

(WV Code Chapter 5)

Fund 0101 FY 2007 Org 0100

|    |   |     |                |
|----|---|-----|----------------|
| 1  | Personal Services . . . . .               | 001 | \$ 2,423,506   |
| 2  | Salary of Governor . . . . .              | 002 | 95,000         |
| 3  | Annual Increment . . . . .                | 004 | 16,000         |
| 4  | Employee Benefits . . . . .               | 010 | 714,000        |
| 5  | Unclassified (R) . . . . .                | 099 | 1,464,425      |
| 6  | National Governors' Association . . . . . | 123 | 170,200        |
| 7  | Southern States Energy Board . . . . .    | 124 | 28,732         |
| 8  | Southern Governors' Association . . . . . | 314 | 25,000         |
| 9  | Pharmaceutical Cost                       |     |                |
| 10 | Management Council (R) . . . . .          | 796 | 501,800        |
| 11 | BRIM Premium . . . . .                    | 913 | <u>245,870</u> |
| 12 | Total . . . . .                           |     | \$ 5,684,533   |

13 Any unexpended balances remaining in the appropriations  
14 for Unclassified (fund 0101, activity 099), Publication of Papers  
15 and Transition Expenses—Surplus (fund 0101, activity 359),  
16 Publication of Papers and Transition Expenses (fund 0101,  
17 activity 465), Capital Outlay, Repairs and Equipment (fund  
18 0101, activity 589), JOBS Fund (fund 0101, activity 665), and  
19 Pharmaceutical Cost Management Council (fund 0101, activity  
20 796) at the close of the fiscal year 2006 are hereby  
21 reappropriated for expenditure during the fiscal year 2007.

6—*Governor's Office*—

*Custodial Fund*

(WV Code Chapter 5)

Fund 0102 FY 2007 Org 0100

|   |                                  |     |            |
|---|----------------------------------|-----|------------|
| 1 | Unclassified—Total (R) . . . . . | 096 | \$ 581,779 |
|---|----------------------------------|-----|------------|

2 Any unexpended balance remaining in the appropriation for  
3 Unclassified-Total (fund 0102, activity 096) at the close of the  
4 fiscal year 2006 is hereby reappropriated for expenditure during  
5 the fiscal year 2007.

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

7—*Governor's Office*—

*Civil Contingent Fund*

(WV Code Chapter 5)

Fund 0105 FY 2007 Org 0100

|   |                                 |     |    |          |
|---|---------------------------------|-----|----|----------|
| 1 | Business & Economic Development |     |    |          |
| 2 | Stimulus (R) . . . . .          | 586 | \$ | 0        |
| 3 | Civil Contingent Fund . . . . . | 614 |    | <u>0</u> |
| 4 | Total . . . . .                 |     | \$ | 0        |

5 Any unexpended balances remaining in the appropriation  
 6 for Stream Restoration—Surplus (fund 0105, activity 078),  
 7 Business and Economic Development Stimulus—Surplus (fund  
 8 0105, activity 084), Civil Contingent Fund—Total (fund 0105,  
 9 activity 114), Civil Contingent Fund—Total—Surplus (fund  
 10 0105, activity 238), Civil Contingent Fund— Surplus (fund  
 11 0105, activity 263), Business and Economic Development  
 12 Stimulus (fund 0105, activity 586), and Civil Contingent Fund  
 13 (fund 0105, activity 614) at the close of the fiscal year 2006 are  
 14 hereby reappropriated for expenditure during the fiscal year  
 15 2007.

16 From this appropriation there may be expended, at the  
 17 discretion of the governor, an amount not to exceed one  
 18 thousand dollars as West Virginia's contribution to the inter-  
 19 state oil compact commission.

20 The above appropriation is intended to provide contingency  
 21 funding for accidental, unanticipated, emergency or unplanned



22 events which may occur during the fiscal year and is not to be  
 23 expended for the normal day-to-day operations of the gover-  
 24 nor's office.

*8—Auditor's Office—*

*General Administration*

(WV Code Chapter 12)

Fund 0116 FY 2007 Org 1200

|   |                         |     |               |
|---|-------------------------|-----|---------------|
| 1 | Personal Services ..... | 001 | \$ 2,139,732  |
| 2 | Salary of Auditor ..... | 002 | 75,000        |
| 3 | Annual Increment .....  | 004 | 37,265        |
| 4 | Employee Benefits ..... | 010 | 769,039       |
| 5 | Unclassified .....      | 099 | 623,326       |
| 6 | BRIM Premium .....      | 913 | <u>15,428</u> |
| 7 | Total .....             |     | \$ 3,659,790  |

*9—Treasurer's Office*

(WV Code Chapter 12)

Fund 0126 FY 2007 Org 1300

|    |                                  |     |               |
|----|----------------------------------|-----|---------------|
| 1  | Personal Services .....          | 001 | \$ 1,859,078  |
| 2  | Salary of Treasurer .....        | 002 | 75,000        |
| 3  | Annual Increment .....           | 004 | 25,000        |
| 4  | Employee Benefits .....          | 010 | 614,996       |
| 5  | Unclassified (R) .....           | 099 | 849,756       |
| 6  | Abandoned Property Program ..... | 118 | 290,184       |
| 7  | Tuition Trust Fund (R) .....     | 692 | 150,880       |
| 8  | Tuition Trust Fund-              |     |               |
| 9  | Unfunded Liability .....         | 698 | 0             |
| 10 | BRIM Premium .....               | 913 | <u>33,419</u> |
| 11 | Total .....                      |     | \$ 3,898,313  |

12 Any unexpended balances remaining in the appropriations  
 13 for Unclassified (fund 0126, activity 099) and Tuition Trust  
 14 Fund (fund 0126, activity 692) at the close of the fiscal year  
 15 2006 are hereby reappropriated for expenditure during the fiscal  
 16 year 2007.

*10—Department of Agriculture*

(WV Code Chapter 19)

Fund 0131 FY 2007 Org 1400

|    |   |     |    |                   |
|----|---|-----|----|-------------------|
| 1  | Personal Services . . . . .               | 001 | \$ | 3,789,370         |
| 2  | Salary of Commissioner . . . . .          | 002 |    | 75,000            |
| 3  | Annual Increment . . . . .                | 004 |    | 82,632            |
| 4  | Employee Benefits . . . . .               | 010 |    | 1,518,466         |
| 5  | Animal Identification Program . . . . .   | 039 |    | 201,755           |
| 6  | State Farm Museum . . . . .               | 055 |    | 110,000           |
| 7  | Unclassified (R) . . . . .                | 099 |    | 888,701           |
| 8  | Gypsy Moth Program (R) . . . . .          | 119 |    | 982,571           |
| 9  | Huntington Farmers Market . . . . .       | 128 |    | 50,000            |
| 10 | Black Fly Control (R) . . . . .           | 137 |    | 804,882           |
| 11 | Donated Foods Program . . . . .           | 363 |    | 50,000            |
| 12 | Predator Control . . . . .                | 470 |    | 195,000           |
| 13 | Logan Farmers Market . . . . .            | 501 |    | 40,900            |
| 14 | Bee Research . . . . .                    | 691 |    | 32,421            |
| 15 | Farmers Markets . . . . .                 | 743 |    | 0                 |
| 16 | Microbiology Program (R) . . . . .        | 785 |    | 155,931           |
| 17 | Moorefield Agriculture Center (R) . . . . | 786 |    | 1,112,762         |
| 18 | BRIM Premium . . . . .                    | 913 |    | 130,804           |
| 19 | WV Food Banks . . . . .                   | 969 |    | 100,000           |
| 20 | Seniors's Farmers' Market Nutrition       |     |    |                   |
| 21 | Coupon Program . . . . .                  | 970 |    | <u>65,000</u>     |
| 22 | Total . . . . .                           |     | \$ | <u>10,386,195</u> |

23 Any unexpended balances remaining in the appropriations  
 24 for Unclassified-Surplus (fund 0131, activity 097), Unclassified

25 (fund 0131, activity 099), Gypsy Moth Program (fund 0131,  
 26 activity 119), Black Fly Control (fund 0131, activity 137),  
 27 Microbiology Program (fund 0131, activity 785), and  
 28 Moorefield Agriculture Center (fund 0131, activity 786) at the  
 29 close of the fiscal year 2006 are hereby reappropriated for  
 30 expenditure during the fiscal year 2007.

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

34 From the above appropriation for WV Food Banks (activity  
 35 969), the full appropriation shall be allocated to the Huntington  
 36 Food Bank and the Mountaineer Food Bank in Braxton County.

*11—West Virginia Conservation Agency*

(WV Code Chapter 19)

Fund 0132 FY 2007 Org 1400

|   |  |     |               |
|---|--|-----|---------------|
| 1 | Personal Services . . . . .              | 001 | \$ 476,713    |
| 2 | Annual Increment . . . . .               | 004 | 9,300         |
| 3 | Employee Benefits . . . . .              | 010 | 183,779       |
| 4 | Unclassified (R) . . . . .               | 099 | 455,101       |
| 5 | Soil Conservation Projects (R) . . . . . | 120 | 5,880,741     |
| 6 | BRIM Premium . . . . .                   | 913 | <u>12,969</u> |
| 7 | Total . . . . .                          |     | \$ 7,018,603  |

8 Any unexpended balances remaining in the appropriations  
 9 for Unclassified (fund 0132, activity 099), Soil Conservation  
 10 Projects (fund 0132, activity 120), Soil Conservation Pro-  
 11 jects—Surplus (fund 0132, activity 269), and Maintenance of  
 12 Flood Control Projects (fund 0132, activity 522) at the close of  
 13 the fiscal year 2006 are hereby reappropriated for expenditure  
 14 during the fiscal year 2007.

12—Department of Agriculture—

*Meat Inspection*

(WV Code Chapter 19)

Fund 0135 FY 2007 Org 1400

1 Unclassified-Total ..... 096 \$ 646,614

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

13—Department of Agriculture—

*Agricultural Awards*

(WV Code Chapter 19)

Fund 0136 FY 2007 Org 1400

|   |                             |     |               |
|---|-----------------------------|-----|---------------|
| 1 | Programs & Awards for       |     |               |
| 2 | 4-H Clubs and FFA/FHA ..... | 577 | \$ 15,000     |
| 3 | Commissioner’s Awards       |     |               |
| 4 | and Programs .....          | 737 | <u>43,650</u> |
| 5 | Total .....                 |     | \$ 58,650     |

14—Department of Agriculture—

*West Virginia Agricultural Land Protection Authority*

(WV Code Chapter 8A)

Fund 0607 FY 2007 Org 1400

1 Unclassified-Total ..... 096 \$ 110,000

*15—Attorney General*

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

Fund 0150 FY 2007 Org 1500

|   |                                      |     |                |
|---|--------------------------------------|-----|----------------|
| 1 | Personal Services (R) . . . . .      | 001 | \$ 2,042,780   |
| 2 | Salary of Attorney General . . . . . | 002 | 80,000         |
| 3 | Annual Increment . . . . .           | 004 | 46,284         |
| 4 | Employee Benefits (R) . . . . .      | 010 | 773,098        |
| 5 | Unclassified (R) . . . . .           | 099 | 356,716        |
| 6 | Better Government Bureau . . . . .   | 740 | 300,310        |
| 7 | BRIM Premium . . . . .               | 913 | <u>118,590</u> |
| 8 | Total . . . . .                      |     | \$ 3,717,778   |

9 Any unexpended balances remaining in the above appropri-  
 10 ations for Personal Services (fund 0150, activity 001), Em-  
 11 ployee Benefits (fund 0150, activity 010), and Unclassified  
 12 (fund 0150, activity 099) at the close of the fiscal year 2006 are  
 13 hereby reappropriated for expenditure during the fiscal year  
 14 2007.

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

*16—Secretary of State*

(WV Code Chapters 3, 5 and 59)

Fund 0155 FY 2007 Org 1600

|   |  |     |    |               |
|---|--|-----|----|---------------|
| 1 | Personal Services . . . . .            | 001 | \$ | 627,495       |
| 2 | Salary of Secretary of State . . . . . | 002 |    | 70,000        |
| 3 | Annual Increment . . . . .             | 004 |    | 11,950        |
| 4 | Employee Benefits . . . . .            | 010 |    | 236,436       |
| 5 | Unclassified (R) . . . . .             | 099 |    | 123,325       |
| 6 | BRIM Premium . . . . .                 | 913 |    | <u>41,356</u> |
| 7 | Total . . . . .                        |     |    | \$1,110,562   |

8 Any unexpended balances remaining in the appropriations  
 9 for Unclassified (fund 0155, activity 099) and Administrative  
 10 Law Division Improvements (fund 0155, activity 880) at the  
 11 close of the fiscal year 2006 are hereby reappropriated for  
 12 expenditure during the fiscal year 2007.

*17—State Election Commission*

(WV Code Chapter 3)

Fund 0160 FY 2007 Org 1601

|   |                              |     |    |        |
|---|------------------------------|-----|----|--------|
| 1 | Unclassified—Total . . . . . | 096 | \$ | 10,275 |
|---|------------------------------|-----|----|--------|

**DEPARTMENT OF ADMINISTRATION***18—Department of Administration—**Office of the Secretary*

(WV Code Chapter 5F)

Fund 0186 FY 2007 Org 0201

|   |                        |     |    |         |
|---|------------------------|-----|----|---------|
| 1 | Unclassified . . . . . | 099 | \$ | 288,772 |
|---|------------------------|-----|----|---------|

|   |                                 |     |               |
|---|---------------------------------|-----|---------------|
| 2 | Lease Rental Payments . . . . . | 516 | 16,000,000    |
| 3 | Design-Build Board . . . . .    | 540 | 19,068        |
| 4 | Efficiency Savings . . . . .    | 799 | 0             |
| 5 | BRIM Premium . . . . .          | 913 | <u>13,171</u> |
| 6 | Total . . . . .                 |     | \$ 16,321,011 |

7 Any unexpended balances remaining in the appropriations  
8 for Program Review (fund 0201, activity 086) and Financial  
9 Advisor (fund 0201, activity 304) at the close of the fiscal year  
10 2006 are hereby reappropriated for expenditure during the fiscal  
11 year 2007.

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

*19—Consolidated Public Retirement Board*

(WV Code Chapter 5)

Fund 0195 FY 2007 Org 0205

|   |                                       |     |                |
|---|---------------------------------------|-----|----------------|
| 1 | Unclassified-Total-Transfer . . . . . | 402 | \$ 150,517,000 |
|---|---------------------------------------|-----|----------------|

2 Any unexpended balance remaining in the appropriation for  
3 Pension Merger Administrative Costs (fund 0195, activity 429)  
4 at the close of the fiscal year 2006 is hereby reappropriated for  
5 expenditure during the fiscal year 2007.

6 The above appropriation for Unclassified-Total-Transfer  
7 (fund 0195, activity 402) shall be transferred to the Consoli-  
8 dated Public Retirement Board - West Virginia Teachers'  
9 Retirement System Employers Accumulation Fund (fund 2601)  
10 only after all other funding required by Title II-Appropriations,  
11 Section One, Appropriations from General Revenue have been  
12 satisfied as determined by the Director of the Budget. Further,  
13 the above appropriation shall not be considered in the aggregate

14 eligible for consideration of the five percent secretary transfer  
 15 authority granted in "Title I - General Provisions, Sec. 3.  
 16 Classifications and appropriations."

17 Should the actual revenues accruing to the General Revenue  
 18 Fund be insufficient to fully fund all appropriations of "Title II-  
 19 Appropriations, Section One, Appropriations from General  
 20 Revenue," the appropriation to the Unclassified-Total-Transfer  
 21 (fund 0195, activity 402) shall be reduced to the extent funds  
 22 are available and the appropriation made in the reduced amount  
 23 and thereafter transferred to the Unclassified-Total-Transfer  
 24 (fund 0195, activity 402).

25 The division of highways, division of motor vehicles,  
 26 bureau of employment programs, public service commission  
 27 and other departments, bureaus, divisions, or commissions  
 28 operating from special revenue funds and/or federal funds shall  
 29 pay their proportionate share of the retirement costs for their  
 30 respective divisions. When specific appropriations are not  
 31 made, such payments may be made from the balances in the  
 32 various special revenue funds in excess of specific appropria-  
 33 tions.

*20—Division of Finance*

(WV Code Chapter 5A)

Fund 0203 FY 2007 Org 0209

|   |                         |     |    |               |
|---|-------------------------|-----|----|---------------|
| 1 | Personal Services ..... | 001 | \$ | 106,278       |
| 2 | Annual Increment .....  | 004 |    | 838           |
| 3 | Employee Benefits ..... | 010 |    | 28,829        |
| 4 | Unclassified .....      | 099 |    | 140,713       |
| 5 | GAAP Project (R) .....  | 125 |    | 893,971       |
| 6 | BRIM Premium .....      | 913 |    | <u>20,696</u> |
| 7 | Total .....             |     | \$ | 1,191,325     |



8 Any unexpended balance remaining in the appropriation for  
 9 GAAP Project (fund 0203, activity 125) at the close of the  
 10 fiscal year 2006 is hereby reappropriated for expenditure during  
 11 the fiscal year 2007.

*21—Division of General Services*

(WV Code Chapter 5A)

Fund 0230 FY 2007 Org 0211

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 542,419     |
| 2 | Annual Increment .....  | 004 | 21,162         |
| 3 | Employee Benefits ..... | 010 | 231,448        |
| 4 | Unclassified .....      | 099 | 487,767        |
| 5 | Fire Service Fee .....  | 126 | 14,000         |
| 6 | BRIM Premium .....      | 913 | <u>112,481</u> |
| 7 | Total .....             |     | \$ 1,409,277   |

*22-Division of Purchasing*

(WV Code Chapter 5A)

Fund 0210 FY 2007 Org 0213

|   |                         |     |              |
|---|-------------------------|-----|--------------|
| 1 | Personal Services ..... | 001 | \$ 910,219   |
| 2 | Annual Increment .....  | 004 | 12,228       |
| 3 | Employee Benefits ..... | 010 | 292,255      |
| 4 | Unclassified .....      | 099 | 279,712      |
| 5 | BRIM Premium .....      | 913 | <u>6,167</u> |
| 6 | Total .....             |     | \$ 1,500,581 |

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 2007 Org 0217

|   |  |     |    |        |
|---|--|-----|----|--------|
| 1 | Unclassified-Total .....                         | 096 | \$ | 31,000 |
| 2 | To pay expenses for members of the commission on |     |    |        |
| 3 | uniform state laws.                              |     |    |        |

*24-Education and State Employees' Grievance Board*

(WV Code Chapter 18)

Fund 0220 FY 2007 Org 0219

|   |                         |     |    |              |
|---|-------------------------|-----|----|--------------|
| 1 | Personal Services ..... | 001 | \$ | 625,335      |
| 2 | Annual Increment .....  | 004 |    | 8,100        |
| 3 | Employee Benefits ..... | 010 |    | 173,167      |
| 4 | Unclassified .....      | 099 |    | 154,567      |
| 5 | BRIM Premium .....      | 913 |    | <u>4,133</u> |
| 6 | Total .....             |     | \$ | 965,302      |

*25-Ethics Commission*

(WV Code Chapter 6B)

Fund 0223 FY 2007 Org 0220

|   |                    |     |    |              |
|---|--------------------|-----|----|--------------|
| 1 | Unclassified ..... | 099 | \$ | 696,596      |
| 2 | BRIM Premium ..... | 913 |    | <u>3,404</u> |
| 3 | Total .....        |     | \$ | 700,000      |

*26-Public Defender Services*

(WV Code Chapter 29)

Fund 0226 FY 2007 Org 0221

|    |                                       |     |    |               |
|----|---------------------------------------|-----|----|---------------|
| 1  | Personal Services .....               | 001 | \$ | 533,108       |
| 2  | Annual Increment .....                | 004 |    | 6,350         |
| 3  | Employee Benefits .....               | 010 |    | 189,335       |
| 4  | Unclassified .....                    | 099 |    | 308,712       |
| 5  | Appointed Counsel Fees and            |     |    |               |
| 6  | Public Defender Corporations .....    | 127 |    | 0             |
| 7  | Public Defender Corporation (R) ..... | 352 |    | 14,727,936    |
| 8  | Appointed Counsel-Public Defender     |     |    |               |
| 9  | Conflicts .....                       | 568 |    | 2,100,000     |
| 10 | Appointed Counsel Fees (R) .....      | 788 |    | 11,185,417    |
| 11 | BRIM Premium .....                    | 913 |    | <u>23,262</u> |
| 12 | Total .....                           |     | \$ | 29,074,120    |

13 Any unexpended balances remaining in the above appropri-  
14 ations for Public Defender Corporations (fund 0226, activity  
15 352) and Appointed Counsel Fees (fund 0226, activity 788) at  
16 the close of the fiscal year 2006 are hereby reappropriated for  
17 expenditure during the fiscal year 2007.

*27-Committee for the Purchase of*

*Commodities and Services from the Handicapped*

(WV Code Chapter 5A)

Fund 0233 FY 2007 Org 0224

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

*28-Public Employees Insurance Agency*

(WV Code Chapter 5)

Fund 0200 FY 2007 Org 0225

|   |                         |     |    |           |
|---|-------------------------|-----|----|-----------|
| 1 | Employees Subsidy ..... | 922 | \$ | 2,800,000 |
|---|-------------------------|-----|----|-----------|

2 The division of highways, division of motor vehicles,  
3 bureau of employment programs, public service commission

4 and other departments, bureaus, divisions, or commissions  
 5 operating from special revenue funds and/or federal funds shall  
 6 pay their proportionate share of the public employees health  
 7 insurance cost for their respective divisions.

*29-West Virginia Prosecuting Attorneys Institute*

(WV Code Chapter 7)

Fund 0557 FY 2007 Org 0228

|   |   |     |    |               |
|---|---|-----|----|---------------|
| 1 | Forensic Medical Examinations (R) . . . | 683 | \$ | 141,593       |
| 2 | Federal Funds/Grant Match (R) . . . . . | 749 |    | <u>84,672</u> |
| 3 | Total . . . . .                         |     | \$ | 226,265       |

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 2006 are hereby reappropriated for  
 8 expenditure during the fiscal year 2007.

*30-Children’s Health Insurance Agency*

(WV Code Chapter 5)

Fund 0588 FY 2007 Org 0230

|   |                                  |     |    |            |
|---|----------------------------------|-----|----|------------|
| 1 | Unclassified-Total (R) . . . . . | 096 | \$ | 10,966,703 |
|---|----------------------------------|-----|----|------------|

2 Any unexpended balance remaining in the appropriation for  
 3 Unclassified-Total (fund 0588, activity 096) at the close of the  
 4 fiscal year 2006 is hereby reappropriated for expenditure during  
 5 the fiscal year 2007.

**DEPARTMENT OF COMMERCE**

*31-Division of Tourism*

(WV Code Chapter 5B)

Fund 0246 FY 2007 Org 0304

1 Any unexpended balances remaining in the appropriations  
 2 for Tourism Special Projects-Surplus (fund 0246, activity 293)  
 3 and Tourism-Special Projects (fund 0246, activity 859) at the  
 4 close of the fiscal year 2006 are hereby reappropriated for  
 5 expenditure during the fiscal year 2007.

*32-Division of Forestry*

(WV Code Chapter 19)

Fund 0250 FY 2007 Org 0305

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 2,063,159   |
| 2 | Annual Increment .....  | 004 | 53,333         |
| 3 | Employee Benefits ..... | 010 | 949,194        |
| 4 | Unclassified .....      | 099 | 473,338        |
| 5 | BRIM Premium .....      | 913 | <u>155,511</u> |
| 6 | Total .....             |     | \$ 3,694,535   |

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

*33-Geological and Economic Survey*

(WV Code Chapter 29)

Fund 0253 FY 2007 Org 0306

|   |                                  |     |              |
|---|----------------------------------|-----|--------------|
| 1 | Personal Services .....          | 001 | \$ 1,242,723 |
| 2 | Annual Increment .....           | 004 | 38,283       |
| 3 | Employee Benefits .....          | 010 | 436,226      |
| 4 | Unclassified .....               | 099 | 203,313      |
| 5 | Mineral Mapping System (R) ..... | 207 | 1,565,861    |

|   |  |     |               |
|---|--|-----|---------------|
| 6 | Geoscience Education Program . . . . . | 541 | 25,000        |
| 7 | BRIM Premium . . . . .                 | 913 | <u>33,752</u> |
| 8 | Total . . . . .                        |     | \$ 3,545,158  |

9 Any unexpended balance remaining in the appropriation for  
 10 Mineral Mapping System (fund 0253, activity 207) at the close  
 11 of the fiscal year 2006 is hereby reappropriated for expenditure  
 12 during the fiscal year 2007.

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

*34-West Virginia Development Office*

(WV Code Chapter 5B)

Fund 0256 FY 2007 Org 0307

|    |   |     |              |
|----|---|-----|--------------|
| 1  | Personal Services . . . . .               | 001 | \$ 3,967,506 |
| 2  | Annual Increment . . . . .                | 004 | 63,218       |
| 3  | Employee Benefits . . . . .               | 010 | 1,191,418    |
| 4  | ARC-WV Home of Your                       |     |              |
| 5  | Own Alliance . . . . .                    | 048 | 40,000       |
| 6  | Southern WV Career Center . . . . .       | 071 | 191,750      |
| 7  | Unclassified . . . . .                    | 099 | 1,431,181    |
| 8  | Partnership Grants (R) . . . . .          | 131 | 1,950,000    |
| 9  | National Youth Science Camp . . . . .     | 132 | 200,000      |
| 10 | Local Economic Development                |     |              |
| 11 | Partnerships (R) . . . . .                | 133 | 1,870,000    |
| 12 | ARC Assessment . . . . .                  | 136 | 167,308      |
| 13 | Institute for Software Research . . . . . | 217 | 76,213       |
| 14 | Mid-Atlantic Aerospace                    |     |              |
| 15 | Complex (R) . . . . .                     | 231 | 176,783      |
| 16 | Guaranteed Work Force Grant (R) . . . .   | 242 | 2,247,000    |
| 17 | Mingo County Surface Mine Project . . .   | 296 | 125,000      |

|    |  |     |               |
|----|--|-----|---------------|
| 18 | Robert C. Byrd Institute for Advanced/<br>19 Flexible Manufacturing-Technology<br>20 Outreach and Programs for<br>21 Environmental and<br>22 Advanced Technologies . . . . . | 367 | 519,800       |
| 23 | Advantage Valley . . . . .   | 389 | 74,300        |
| 24 | Chemical Alliance Zone . . . . .   | 390 | 38,300        |
| 25 | WV High Tech Consortium . . . . .  | 391 | 159,570       |
| 26 | Charleston Farmers Market . . . . .  | 476 | 100,000       |
| 27 | Industrial Park Assistance (R) . . . . .   | 480 | 650,000       |
| 28 | International Offices (R) . . . . .  | 593 | 690,644       |
| 29 | Grant Programs . . . . .   | 694 | 0             |
| 30 | Small Business Development . . . . .   | 703 | 273,187       |
| 31 | WV Manufacturing<br>32 Extension Partnership . . . . .   | 731 | 144,000       |
| 33 | Polymer Alliance . . . . .   | 754 | 115,000       |
| 34 | National Institute of<br>35 Chemical Studies . . . . .   | 805 | 70,500        |
| 36 | Local Economic Development<br>37 Assistance (R) . . . . .  | 819 | 6,050,000     |
| 38 | Community College Workforce<br>39 Development (R) . . . . .  | 878 | 1,000,000     |
| 40 | BRIM Premium . . . . .   | 913 | 26,096        |
| 41 | Hardwood Alliance Zone . . . . .   | 992 | 42,600        |
| 42 | Regional Councils . . . . .  | 784 | 440,000       |
| 43 | Mainstreet Program . . . . .   | 794 | 50,000        |
| 44 | I-79 Development Council . . . . .   | 824 | <u>50,000</u> |
| 45 | Total . . . . .  |     | \$ 24,191,374 |

46 Any unexpended balances remaining in the appropriations  
47 for Tourism—Unclassified—Surplus (fund 0256, activity 075),  
48 Partnership Grants (fund 0256, activity 131), Local Economic  
49 Development Partnerships (fund 0256, activity 133), Mid-  
50 Atlantic Aerospace Complex (fund 0256, activity 231), Guarant-  
51 teed Work Force Grant (fund 0256, activity 242), Local  
52 Economic Development Assistance—Surplus (fund 0256,

53 activity 266), Small Business Financial Assistance (fund 0256,  
 54 activity 360), Industrial Park Assistance (fund 0256, activity  
 55 480), Leverage Technology and Small Business Development  
 56 Program (fund 0256, activity 525), International Offices (fund  
 57 0256, activity 593), Small Business Work Force (fund 0256,  
 58 activity 735), Local Economic Development Assistance (fund  
 59 0256, activity 819), Community College Workforce Develop-  
 60 ment (fund 0256, activity 878) and Economic Development  
 61 Assistance (fund 0256, activity 900) at the close of the fiscal  
 62 year 2006 are hereby reappropriated for expenditure during the  
 63 fiscal year 2007.

64 The above appropriation to Local Economic Development  
 65 Partnerships shall be used by the West Virginia development  
 66 office for the award of funding assistance to county and  
 67 regional economic development corporations or authorities  
 68 participating in the certified development community program  
 69 developed under the provisions of section fourteen, article two,  
 70 chapter five-b of the code. The West Virginia development  
 71 office shall award the funding assistance through a matching  
 72 grant program, based upon a formula whereby funding assis-  
 73 tance may not exceed thirty-four thousand dollars per county  
 74 served by an economic development corporation or authority.

75 From the above appropriation for the Community College  
 76 Workforce Development (activity 878), \$200,000 shall be  
 77 expended on the Mine Training Program in Southern West  
 78 Virginia.

*35-Division of Labor*

(WV Code Chapters 21 and 47)

Fund 0260 FY 2007 Org 0308

|   |                         |     |              |
|---|-------------------------|-----|--------------|
| 1 | Personal Services ..... | 001 | \$ 1,670,441 |
| 2 | Annual Increment .....  | 004 | 26,747       |



|   |                         |     |               |
|---|-------------------------|-----|---------------|
| 3 | Employee Benefits ..... | 010 | 727,959       |
| 4 | Unclassified .....      | 099 | 659,008       |
| 5 | BRIM Premium .....      | 913 | <u>47,521</u> |
| 6 | Total .....             |     | \$ 3,131,676  |

*36-Division of Natural Resources*

(WV Code Chapter 20)

Fund 0265 FY 2007 Org 0310

|    |  |     |                |
|----|--|-----|----------------|
| 1  | Personal Services .....                  | 001 | \$ 6,696,746   |
| 2  | Annual Increment .....                   | 004 | 217,186        |
| 3  | Employee Benefits .....                  | 010 | 3,128,299      |
| 4  | Gypsy Moth Suppression Program –         |     |                |
| 5  | Wildlife Management Areas .....          | 014 | 42,997         |
| 6  | Unclassified .....                       | 099 | 9,173          |
| 7  | Litter Control Conservation Officers ... | 564 | 154,171        |
| 8  | Upper Mud River Flood Control .....      | 654 |                |
| 9  | 180,890                                  |     |                |
| 10 | Law Enforcement .....                    | 806 | 1,732,325      |
| 11 | BRIM Premium .....                       | 913 | 308,815        |
| 12 | Fish Hatchery Improvements .....         | 825 | <u>300,000</u> |
| 13 | Total .....                              |     | \$ 12,770,602  |

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

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

(WV Code Chapter 22)

Fund 0277 FY 2007 Org 0314

|   |                         |     |              |
|---|-------------------------|-----|--------------|
| 1 | Personal Services ..... | 001 | \$ 4,130,156 |
|---|-------------------------|-----|--------------|

## APPROPRIATIONS

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|   |                                    |     |               |
|---|------------------------------------|-----|---------------|
| 2 | Annual Increment .....             | 004 | 72,400        |
| 3 | Employee Benefits .....            | 010 | 1,545,333     |
| 4 | Unclassified .....                 | 099 | 152,003       |
| 5 | WV Diesel Equipment Commission ... | 712 | 38,034        |
| 6 | BRIM Premium .....                 | 913 | <u>74,610</u> |
| 7 | Total .....                        |     | \$ 6,012,536  |

*38-Board of Coal Mine Health and Safety*

(WV Code Chapter 22)

Fund 0280 FY 2007 Org 0319

|   |                         |     |               |
|---|-------------------------|-----|---------------|
| 1 | Personal Services ..... | 001 | \$ 112,750    |
| 2 | Annual Increment .....  | 004 | 750           |
| 3 | Employee Benefits ..... | 010 | 29,660        |
| 4 | Unclassified .....      | 099 | <u>28,621</u> |
| 5 | Total .....             |     | \$ 171,781    |

*39-Coal Mine Safety and Technical Review Committee*

(WV Code Chapter 22)

Fund 0285 FY 2007 Org 0320

|   |                    |     |               |
|---|--------------------|-----|---------------|
| 1 | Unclassified ..... | 099 | \$ 63,352     |
| 2 | Coal Forum .....   | 664 | <u>25,000</u> |
| 3 | Total .....        |     | \$ 88,352     |

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

(WV Code Chapter 19)

Fund 0606 FY 2007 Org 0327

|   |                    |     |            |
|---|--------------------|-----|------------|
| 1 | Unclassified ..... | 099 | \$ 401,800 |
|---|--------------------|-----|------------|

|   |                          |     |            |
|---|--------------------------|-----|------------|
| 2 | Efficiency Savings ..... | 799 | 0          |
| 3 | Total .....              |     | \$ 401,800 |

*41-Governor's Workforce Investment Office*

(Executive Order 5-05)

Fund 0608 FY 2007 Org 0331

|   |                                      |     |    |   |
|---|--------------------------------------|-----|----|---|
| 1 | Southern WV Career Center .....      | 071 | \$ | 0 |
| 2 | Guaranteed Work Force Grant (R) .... | 242 |    | 0 |
| 3 | Community College Workforce          |     |    |   |
| 4 | Development (R) .....                | 878 |    | 0 |
| 5 | Total .....                          |     | \$ | 0 |

**DEPARTMENT OF EDUCATION**

*42-State Department of Education-*

*School Lunch Program*

(WV Code Chapters 18 and 18A)

Fund 0303 FY 2007 Org 0402

|   |                         |     |    |                  |
|---|-------------------------|-----|----|------------------|
| 1 | Personal Services ..... | 001 | \$ | 223,679          |
| 2 | Annual Increment .....  | 004 |    | 3,700            |
| 3 | Employee Benefits ..... | 010 |    | 86,700           |
| 4 | Unclassified .....      | 099 |    | <u>1,982,376</u> |
| 5 | Total .....             |     | \$ | 2,296,455        |

*43-State FFA-FHA Camp and Conference Center*

(WV Code Chapters 18 and 18A)

Fund 0306 FY 2007 Org 0402

|   |                         |     |    |         |
|---|-------------------------|-----|----|---------|
| 1 | Personal Services ..... | 001 | \$ | 579,168 |
|---|-------------------------|-----|----|---------|

## APPROPRIATIONS

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|   |                             |     |               |
|---|-----------------------------|-----|---------------|
| 2 | Annual Increment . . . . .  | 004 | 15,750        |
| 3 | Employee Benefits . . . . . | 010 | 243,000       |
| 4 | Unclassified . . . . .      | 099 | 142,000       |
| 5 | BRIM Premium . . . . .      | 913 | <u>38,987</u> |
| 6 | Total . . . . .             |     | \$ 1,018,905  |

*44-State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 0313 FY 2007 Org 0402

|    |  |     |              |
|----|--|-----|--------------|
| 1  | Personal Services . . . . .                | 001 | \$ 3,149,009 |
| 2  | Annual Increment . . . . .                 | 004 | 35,468       |
| 3  | Employee Benefits . . . . .                | 010 | 993,000      |
| 4  | Unclassified (R) . . . . .                 | 099 | 3,400,000    |
| 5  | 34/1000 Waiver . . . . .                   | 139 | 400,000      |
| 6  | Increased Enrollment . . . . .             | 140 | 6,400,000    |
| 7  | Safe Schools . . . . .                     | 143 | 2,000,000    |
| 8  | Teacher Mentor (R) . . . . .               | 158 | 500,000      |
| 9  | National Teacher Certification (R) . . . . | 161 | 223,800      |
| 10 | Allowance for County Transfers . . . . .   | 264 | 967,986      |
| 11 | Technology Repair                          |     |              |
| 12 | and Modernization . . . . .                | 298 | 1,000,000    |
| 13 | HVAC Technicians . . . . .                 | 355 | 460,803      |
| 14 | Early Retirement                           |     |              |
| 15 | Notification Incentive . . . . .           | 366 | 150,000      |
| 16 | Teacher Reimbursement . . . . .            | 573 | 200,000      |
| 17 | Hospitality Training . . . . .             | 600 | 400,000      |
| 18 | Low Student Enrollment Allowance . . .     | 615 | 450,000      |
| 19 | HI-Y Youth in Government . . . . .         | 616 | 100,000      |
| 20 | Foreign Student Education (R) . . . . .    | 636 | 85,381       |
| 21 | State Teacher of the Year . . . . .        | 640 | 41,008       |
| 22 | Principals Mentorship . . . . .            | 649 | 75,000       |
| 23 | Allowance for Work                         |     |              |
| 24 | Based Learning . . . . .                   | 744 | 60,000       |

|    |   |     |                |
|----|---|-----|----------------|
| 25 | Teachers-Unclassified . . . . .             | 753 | 0              |
| 26 | 21 <sup>st</sup> Century Learners . . . . . | 886 | 2,700,000      |
| 27 | BRIM Premium . . . . .                      | 913 | 357,557        |
| 28 | Regional Education                          |     |                |
| 29 | Service Agencies . . . . .                  | 972 | 4,200,000      |
| 30 | Sparse Population Allocation . . . . .      | 973 | 525,000        |
| 31 | Educational Program Allowance . . . . .     | 996 | 250,000        |
| 32 | High Acuity Health Care                     |     |                |
| 33 | Needs Program . . . . .                     | 920 | 1,000,000      |
| 34 | School Nurse Funding . . . . .              | 921 | 1,404,530      |
| 35 | Pilot Program of Structured in-school       |     |                |
| 36 | Alternatives . . . . .                      | 826 | <u>100,000</u> |
| 37 | Total . . . . .                             |     | \$31,628,542   |

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

40 Any unexpended balances remaining in the appropriations  
41 for Collaborative Resource Allocation (fund 0313, activity  
42 041), Educational Achievement Incentive (fund 0313, activity  
43 042), Unclassified-Surplus (fund 0313, activity 097), Unclassi-  
44 fied (fund 0313, activity 099), Teacher Mentor (fund 0313,  
45 activity 158), National Teacher Certification (fund 0313,  
46 activity 161), and Foreign Student Education (fund 0313,  
47 activity 636) at the close of the fiscal year 2006 are hereby  
48 reappropriated for expenditure during the fiscal year 2007.

49 From the above appropriation for Sparse Population  
50 Allocation (activity 973), funding shall be provided in the same  
51 manner as in Fiscal Year 2006. It shall be available to those  
52 counties whose population falls at or below 2.5 students per  
53 square mile and which have more than 650 square miles for  
54 transportation purposes.

55 From the above appropriation for Educational Program  
56 Allowance (activity 996), \$100,000 shall be expended for

57 Webster County Board of Education for Hacker Valley and  
 58 \$150,000 for the Randolph County Board of Education for  
 59 Pickens School.

60 From the above appropriation for Low Student Enrollment  
 61 Allowance, funds shall be allocated to county boards of  
 62 education in accordance with the provisions of §18-9A-22 of  
 63 the Code of West Virginia.

64 The above appropriation for Hospitality Training (activity  
 65 600), shall be allocated only to entities that have a plan ap-  
 66 proved for funding by the Department of Education, at the  
 67 funding level determined by the State Superintendent of  
 68 Schools. Plans shall be submitted to the State Superintendent of  
 69 Schools to be considered for funding.

*45-State Department of Education-*

*Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 0314 FY 2007 Org 0402

|   |  |     |                   |
|---|--|-----|-------------------|
| 1 | Special Education-Counties . . . . .     | 159 | \$ 7,271,757      |
| 2 | Special Education-Institutions . . . . . | 160 | 3,411,278         |
| 3 | Education of Juveniles Held in           |     |                   |
| 4 | Predispositional Juvenile                |     |                   |
| 5 | Detention Centers . . . . .              | 302 | 549,243           |
| 6 | Education of Institutionalized           |     |                   |
| 7 | Juveniles and Adults (R) . . . . .       | 472 | <u>12,846,002</u> |
| 8 | Total . . . . .                          |     | \$ 24,078,280     |

9 Any unexpended balance remaining in the appropriation for  
 10 Education of Institutionalized Juveniles and Adults (fund 0314,  
 11 activity 472) at the close of the fiscal year 2006 is hereby  
 12 reappropriated for expenditure during the fiscal year 2007.

13 From the above appropriation for Education of Institution-  
 14 alized Juveniles and Adults (activity 472), funding shall be  
 15 provided to Beckley and Burlington Centers at an amount no  
 16 less than the allocations disbursed during Fiscal Year 2004.

17 From the above appropriation for Education of Institution-  
 18 alized Juveniles and Adults (activity 472), an additional  
 19 \$200,000 has been provided for the Burlington Center.

20 From the above appropriations, the superintendent shall  
 21 have authority to expend funds for the costs of special educa-  
 22 tion for those children residing in out-of-state placements.

*46-State Department of Education-*

*State Aid to Schools*

(WV Code Chapters 18 and 18A)

Fund 0317 FY 2007 Org 0402

|    |  |     |                      |
|----|--|-----|----------------------|
| 1  | Other Current Expenses . . . . .       | 022 | \$ 135,681,426       |
| 2  | Professional Educators . . . . .       | 151 | 794,196,310          |
| 3  | Service Personnel . . . . .            | 152 | 259,242,494          |
| 4  | Fixed Charges . . . . .                | 153 | 98,391,184           |
| 5  | Transportation . . . . .               | 154 | 51,792,029           |
| 6  | Administration . . . . .               | 155 | 3,088,910            |
| 7  | Improve Instructional Programs . . . . | 156 | <u>33,000,000</u>    |
| 8  | Basic Foundation Allowances . . . . .  |     | \$ 1,375,392,353     |
| 9  | Less Local Share . . . . .             |     | <u>(345,548,621)</u> |
| 10 | Total Basic State Aid . . . . .        |     | \$1,029,843,732      |
| 11 | Public Employees'                      |     |                      |
| 12 | Insurance Matching . . . . .           | 012 | 198,740,538          |
| 13 | Teachers' Retirement System . . . . .  | 019 | 29,420,500           |
| 14 | Retirement Systems-                    |     |                      |
| 15 | Unfunded Liability . . . . .           | 775 | 333,941,000          |
| 16 | School Building Authority . . . . .    | 453 | <u>23,345,983</u>    |
| 17 | Total . . . . .                        |     | \$ 1,615,291,753     |

*47-State Board of Education-**Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 0390 FY 2007 Org 0402

|    |                                       |     |    |                |
|----|---------------------------------------|-----|----|----------------|
| 1  | Personal Services .....               | 001 | \$ | 944,568        |
| 2  | Annual Increment .....                | 004 |    | 17,086         |
| 3  | Employee Benefits .....               | 010 |    | 356,000        |
| 4  | Unclassified .....                    | 099 |    | 1,210,000      |
| 5  | Wood Products-Forestry Vocational     |     |    |                |
| 6  | Program .....                         | 146 |    | 56,220         |
| 7  | Albert Yanni Vocational Program ..... | 147 |    | 124,263        |
| 8  | Vocational Aid .....                  | 148 |    | 15,796,223     |
| 9  | Adult Basic Education .....           | 149 |    | 3,523,665      |
| 10 | Program Modernization .....           | 305 |    | 725,000        |
| 11 | Technical and Secondary Program       |     |    |                |
| 12 | Improvement Staff .....               | 330 |    | 270,148        |
| 13 | GED Testing .....                     | 339 |    | 302,991        |
| 14 | Vocational Programs .....             | 761 |    | 0              |
| 15 | Aquaculture Support .....             | 769 |    | 82,284         |
| 16 | FFA Grant Awards .....                | 839 |    | 13,000         |
| 17 | Pre-Engineering Academy Program ...   | 840 |    | <u>300,000</u> |
| 18 | Total .....                           |     |    | \$23,721,448   |

*48-State Board of Education-**Division of Educational Performance Audits*

(WV Code Chapters 18 and 18A)

Fund 0573 FY 2007 Org 0402

|   |                         |     |    |         |
|---|-------------------------|-----|----|---------|
| 1 | Personal Services ..... | 001 | \$ | 369,911 |
| 2 | Annual Increment .....  | 004 |    | 3,200   |



|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 3 | Employee Benefits ..... | 010 | 102,017        |
| 4 | Unclassified .....      | 099 | <u>141,000</u> |
| 5 | Total .....             |     | \$ 616,128     |

*49-West Virginia Schools for the Deaf and the Blind*

(WV Code Chapters 18 and 18A)

Fund 0320 FY 2007 Org 0403

|   |                         |     |               |
|---|-------------------------|-----|---------------|
| 1 | Personal Services ..... | 001 | \$ 7,485,046  |
| 2 | Annual Increment .....  | 004 | 5,950         |
| 3 | Employee Benefits ..... | 010 | 2,950,293     |
| 4 | Unclassified .....      | 099 | 1,609,332     |
| 5 | BRIM Premium .....      | 913 | <u>81,347</u> |
| 6 | Total .....             |     | \$12,131,968  |

**DEPARTMENT OF EDUCATION AND THE ARTS**

*50-Department of Education and the Arts-*

*Office of the Secretary*

(WV Code Chapter 5F)

Fund 0294 FY 2007 Org 0431

|    |                                    |     |              |
|----|------------------------------------|-----|--------------|
| 1  | Unclassified (R) .....             | 099 | \$ 790,725   |
| 2  | Center for Professional            |     |              |
| 3  | Development (R) .....              | 115 | 2,003,718    |
| 4  | Governor's Honor Academy (R) ..... | 478 | 500,450      |
| 5  | Professional Development           |     |              |
| 6  | Collaborative .....                | 629 | 950,000      |
| 7  | Efficiency Savings .....           | 799 | 0            |
| 8  | Energy Express .....               | 861 | 450,000      |
| 9  | BRIM Premium .....                 | 913 | <u>4,509</u> |
| 10 | Total .....                        |     | \$ 4,699,402 |

11 Any unexpended balances remaining in the appropriations  
 12 for Unclassified (fund 0294, activity 099), Center for Profes-  
 13 sional Development (fund 0294 activity 115), Center for  
 14 Professional Development-Principals' Academy (fund 0294,  
 15 activity 415), Governor's Honor Academy (fund 0294, activity  
 16 478), and CPD-Math Initiative (fund 0294, activity 517) at the  
 17 close of the fiscal year 2006 are hereby reappropriated for  
 18 expenditure during the fiscal year 2007.

*51-Division of Culture and History*

(WV Code Chapter 29)

Fund 0293 FY 2007 Org 0432

|   |                                       |     |               |
|---|---------------------------------------|-----|---------------|
| 1 | Personal Services .....               | 001 | \$ 2,401,487  |
| 2 | Annual Increment .....                | 004 | 49,030        |
| 3 | Employee Benefits .....               | 010 | 1,011,154     |
| 4 | Unclassified .....                    | 099 | 492,664       |
| 5 | Culture and History Programming ..... | 732 | 292,945       |
| 6 | Capital Outlay and Maintenance .....  | 755 | 200,000       |
| 7 | BRIM Premium .....                    | 913 | 56,542        |
| 8 | Historical Highway Marker Program ..  | 844 | <u>75,000</u> |
| 9 | Total .....                           |     | \$ 4,578,822  |

10 Any unexpended balance remaining in the appropriation for  
 11 Capital Outlay, Repairs and Equipment—Surplus (fund 0293,  
 12 activity 677) at the close of the fiscal year 2006 is hereby  
 13 reappropriated for expenditure during the fiscal year 2007.

14 The Unclassified appropriation includes funding for the arts  
 15 funds, department programming funds, grants, fairs and  
 16 festivals and Camp Washington Carver and shall be expended  
 17 only upon authorization of the division of culture and history  
 18 and in accordance with the provisions of chapter five-a, article  
 19 three, and chapter twelve of the code.

20 All federal moneys received as reimbursement to the  
 21 division of culture and history for moneys expended from the  
 22 general revenue fund for the arts fund and historical preserva-  
 23 tion are hereby reappropriated for the purposes as originally  
 24 made, including personal services, current expenses and  
 25 equipment.

*52-Library Commission*

(WV Code Chapter 10)

Fund 0296 FY 2007 Org 0433

|   |   |     |               |
|---|---|-----|---------------|
| 1 | Personal Services . . . . .               | 001 | \$ 943,093    |
| 2 | Annual Increment . . . . .                | 004 | 29,700        |
| 3 | Employee Benefits . . . . .               | 010 | 367,411       |
| 4 | Unclassified . . . . .                    | 099 | 228,087       |
| 5 | Services to Blind and Handicapped . . . . | 181 | 161,576       |
| 6 | BRIM Premium . . . . .                    | 913 | <u>29,772</u> |
| 7 | Total . . . . .                           |     | \$ 1,759,639  |

*53-Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 0300 FY 2007 Org 0439

|   |  |     |               |
|---|--|-----|---------------|
| 1 | Personal Services . . . . .              | 001 | \$ 3,008,039  |
| 2 | Annual Increment . . . . .               | 004 | 56,000        |
| 3 | Employee Benefits . . . . .              | 010 | 1,072,090     |
| 4 | Unclassified (R) . . . . .               | 099 | 1,042,966     |
| 5 | Mountain Stage . . . . .                 | 249 | 300,000       |
| 6 | Capital Outlay and Maintenance . . . . . | 755 | 100,000       |
| 7 | BRIM Premium . . . . .                   | 913 | <u>71,856</u> |
| 8 | Total . . . . .                          |     | \$ 5,650,951  |

9 Any unexpended balance remaining in the appropriation for  
 10 Unclassified (fund 0300, activity 099) at the close of the fiscal

11 year 2006 is hereby reappropriated for expenditure during the  
12 fiscal year 2007.

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

*54-State Board of Rehabilitation-*

*Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 0310 FY 2007 Org 0932

|    |  |     |               |
|----|--|-----|---------------|
| 1  | Personal Services . . . . .              | 001 | \$ 7,020,702  |
| 2  | Annual Increment . . . . .               | 004 | 134,049       |
| 3  | Independent Living Services . . . . .    | 009 | 24,000        |
| 4  | Employee Benefits . . . . .              | 010 | 2,776,615     |
| 5  | Workshop Development . . . . .           | 163 | 1,816,149     |
| 6  | Supported Employment                     |     |               |
| 7  | Extended Services . . . . .              | 206 | 119,032       |
| 8  | Ron Yost Personal                        |     |               |
| 9  | Assistance Fund (R) . . . . .            | 407 | 340,000       |
| 10 | Employment Attendant                     |     |               |
| 11 | Care Program . . . . .                   | 598 | 179,000       |
| 12 | Capital Outlay and Maintenance (R) . . . | 755 | 200,000       |
| 13 | BRIM Premium . . . . .                   | 913 | <u>67,033</u> |
| 14 | Total . . . . .                          |     | \$ 12,676,580 |

15 Any unexpended balances remaining in the appropriations  
16 for the Unclassified-Surplus (fund 0310, activity 097), Ron  
17 Yost Personal Assistance Fund (fund 0310, activity 407), and  
18 Capital Outlay and Maintenance (fund 0310, activity 755) at the  
19 close of the fiscal year 2006 are hereby reappropriated for  
20 expenditure during the fiscal year 2007.

21 Any unexpended balance remaining in the appropriation for  
22 Technology-Related Assistance Revolving Loan Fund for

23 Individuals with Disabilities (fund 0310, activity 766) is hereby  
 24 reappropriated for expenditure during the fiscal year 2007 and  
 25 may be transferred to a special account for the purpose of  
 26 disbursement or loan.

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

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*55-Environmental Quality Board*

(WV Code Chapter 20)

Fund 0270 FY 2007 Org 0311

|   |                         |     |    |               |
|---|-------------------------|-----|----|---------------|
| 1 | Personal Services ..... | 001 | \$ | 71,930        |
| 2 | Annual Increment .....  | 004 |    | 400           |
| 3 | Employee Benefits ..... | 010 |    | 20,925        |
| 4 | Unclassified .....      | 099 |    | <u>45,916</u> |
| 5 | Total .....             |     | \$ | 139,171       |

*56-Division of Environmental Protection*

(WV Code Chapter 22)

Fund 0273 FY 2007 Org 0313

|   |                         |     |    |           |
|---|-------------------------|-----|----|-----------|
| 1 | Personal Services ..... | 001 | \$ | 3,444,562 |
| 2 | Annual Increment .....  | 004 |    | 50,703    |
| 3 | Employee Benefits ..... | 010 |    | 1,191,146 |
| 4 | Unclassified .....      | 099 |    | 905,444   |
| 5 | Dam Safety .....        | 607 |    | 204,225   |

|     |                                      |     |               |
|-----|--------------------------------------|-----|---------------|
| 106 | APPROPRIATIONS                       |     | [Ch. 6        |
| 6   | WV Contribution to River Commissions | 776 | 148,485       |
| 7   | Efficiency Savings .....             | 799 | 0             |
| 8   | Office of Water Resources            |     |               |
| 9   | Non-Enforcement Activity .....       | 855 | 1,118,255     |
| 10  | BRIM Premium .....                   | 913 | 56,802        |
| 11  | Welch DEP Office                     |     |               |
| 12  | Continuing Operation .....           | 993 | <u>79,115</u> |
| 13  | Total .....                          |     | \$ 7,198,737  |

*57-Air Quality Board*

(WV Code Chapter 16)

Fund 0550 FY 2007 Org 0325

|   |                    |     |              |
|---|--------------------|-----|--------------|
| 1 | Unclassified ..... | 099 | \$ 94,210    |
| 2 | BRIM Premium ..... | 913 | <u>2,916</u> |
| 3 | Total .....        |     | \$ 97,126    |

**DEPARTMENT OF HEALTH AND  
HUMAN RESOURCES**

*58-Department of Health and Human Resources-*

*Office of the Secretary*

(WV Code Chapter 5F)

Fund 0400 FY 2007 Org 0501

|   |                           |     |            |
|---|---------------------------|-----|------------|
| 1 | Unclassified .....        | 099 | \$ 139,883 |
| 2 | Women's Commission .....  | 191 | 133,942    |
| 3 | Commission for the Deaf   |     |            |
| 4 | and Hard of Hearing ..... | 704 | 269,034    |
| 5 | Efficiency Savings .....  | 799 | <u>0</u>   |
| 6 | Total .....               |     | \$ 542,859 |

7       Any unexpended balance remaining in the appropriation for  
8 the Rural Health Care Providers Revolving Loan Fund-Surplus

9 (fund 0400, activity 674) at the close of the fiscal year 2006 is  
 10 hereby reappropriated for expenditure during the fiscal year  
 11 2007.

*59-Division of Health-*

*Central Office*

(WV Code Chapter 16)

Fund 0407 FY 2007 Org 0506

|    |                                      |     |              |
|----|--------------------------------------|-----|--------------|
| 1  | Personal Services .....              | 001 | \$ 7,387,935 |
| 2  | Annual Increment .....               | 004 | 164,981      |
| 3  | Employee Benefits .....              | 010 | 3,054,354    |
| 4  | Level 1,2 and 3 Trauma Centers ..... | 013 | 681,444      |
| 5  | Chief Medical Examiner .....         | 045 | 3,425,307    |
| 6  | Unclassified .....                   | 099 | 4,737,899    |
| 7  | Safe Drinking Water Program .....    | 187 | 517,798      |
| 8  | Women, Infants and Children .....    | 210 | 45,000       |
| 9  | Basic Public Health                  |     |              |
| 10 | Services Support .....               | 212 | 3,337,407    |
| 11 | Early Intervention .....             | 223 | 3,307,043    |
| 12 | Cancer Registry .....                | 225 | 277,684      |
| 13 | CARDIAC Project .....                | 375 | 300,000      |
| 14 | State EMS Technical Assistance ..... | 379 | 1,414,983    |
| 15 | EMS Program for Children .....       | 381 | 50,686       |
| 16 | Statewide EMS Program Support .....  | 383 | 926,647      |
| 17 | Primary Care Centers-                |     |              |
| 18 | Mortgage Finance .....               | 413 | 796,718      |
| 19 | Black Lung Clinics .....             | 467 | 198,646      |
| 20 | Center for End of Life .....         | 545 | 195,000      |
| 21 | Women's Right to Know .....          | 546 | 40,000       |
| 22 | Pediatric Dental Services .....      | 550 | 150,000      |
| 23 | Vaccine for Children .....           | 551 | 435,925      |
| 24 | Adult Influenza Vaccine .....        | 552 | 65,000       |
| 25 | Tuberculosis Control .....           | 553 | 255,640      |

|    |   |     |                |
|----|---|-----|----------------|
| 26 | Maternal and Child Health Clinics,        |     |                |
| 27 | Clinicians and Medical Contracts          |     |                |
| 28 | and Fees (R) . . . . .                    | 575 | 4,625,371      |
| 29 | Epidemiology Support . . . . .            | 626 | 1,137,038      |
| 30 | Primary Care Support . . . . .            | 628 | 7,385,091      |
| 31 | Grant Programs . . . . .                  | 694 | 0              |
| 32 | State Aid to Local Health Departments .   | 702 | 10,700,718     |
| 33 | Health Right Free Clinics . . . . .       | 727 | 2,749,336      |
| 34 | Child and Family Services . . . . .       | 736 | 0              |
| 35 | Healthy Lifestyles . . . . .              | 778 | 68,000         |
| 36 | Emergency Response Entities               |     |                |
| 37 | Special Projects . . . . .                | 822 | 800,000        |
| 38 | Assistance to Primary Health Care         |     |                |
| 39 | Centers Community                         |     |                |
| 40 | Health Foundation . . . . .               | 845 | 1,400,000      |
| 41 | Osteoporosis and Arthritis Prevention . . | 849 | 280,000        |
| 42 | BRIM Premium . . . . .                    | 913 | <u>211,214</u> |
| 43 | Total . . . . .                           |     | \$ 61,122,865  |

44       Any unexpended balances remaining in the appropriations  
45 for Unclassified (fund 0407, fiscal year 1997, activity 099) and  
46 Maternal and Child Health Clinics, Clinicians and Medical  
47 Contracts and Fees (fund 0407, activity 575) at the close of the  
48 fiscal year 2006 are hereby reappropriated for expenditure  
49 during the fiscal year 2007.

50       From the Unclassified line item, \$50,000 shall be expended  
51 for the West Virginia Aids Coalition.

52       From the Maternal and Child Health Clinics, Clinicians,  
53 and Medical Contracts and Fees line item, \$400,000 shall be  
54 transferred to the Breast and Cervical Cancer Diagnostic  
55 Treatment Fund.

56       Included in the above appropriation for Primary Care  
57 Centers-Mortgage Finance is \$50,000 for the mortgage payment



58 for the Lincoln Primary Care Center, Inc.; \$53,140 for the  
59 mortgage payment for the Monroe Health Center; \$42,564 for  
60 the mortgage payment for Roane County Family Health Care,  
61 Inc.; \$25,000 for the mortgage payment for the Tug River  
62 Health Association, Inc.; \$48,000 for the mortgage payment for  
63 the Primary Care Systems (Clay); \$10,800 for the mortgage  
64 payment for the Belington Clinic; \$30,000 for the mortgage  
65 payment for the Tri-County Health Clinic; \$15,000 for the  
66 mortgage payment for Valley Health Care (Randolph); \$58,560  
67 for the mortgage payment for Valley Health Systems, Inc.  
68 (Woman's Place and Harts Health Clinic); \$46,958 for the  
69 mortgage payment for Ritchie County Primary Care Associa-  
70 tion, Inc.; \$8,000 for the mortgage payment for Northern  
71 Greenbrier Health Clinic; \$12,696 for the mortgage payment  
72 for the Women's Care, Inc. (Putnam); \$25,000 for the mortgage  
73 payment for the Preston-Taylor Community Health Centers,  
74 Inc.; \$20,000 for the mortgage payment for the North Fork  
75 Clinic (Pendleton); \$40,000 for the mortgage payment for the  
76 Pendleton Community Care; \$27,000 for the mortgage payment  
77 for South Branch Health Facility (Upper Tract); \$38,400 for the  
78 mortgage payment for Clay-Battelle Community Health Center;  
79 \$33,600 for the mortgage payment for Mountaineer Health  
80 Clinic in Paw Paw; \$13,000 for the mortgage payment for the  
81 St. George Medical Clinic; \$28,000 for the mortgage payment  
82 for the Bluestone Health Center; \$45,000 for the mortgage  
83 payment for Wheeling Health Right; \$48,000 for the mortgage  
84 payment for the Minnie Hamilton Health Care Center, Inc.; and  
85 \$54,000 for the mortgage payment for the Shenandoah Valley  
86 Medical Systems, Inc.

87 From the above appropriation for State Aid to Local Health  
88 Departments \$20,000 shall be used, along with any grants that  
89 may be obtained, for the purpose of contracting with an  
90 independent consultant to conduct a comprehensive study,  
91 administered by Local Health Inc., of the revenues of the state's  
92 local health departments to develop a method for the distribu-

93 tion of state funds to local health departments that will best  
94 serve the citizens of the state.

95 Also included in the above appropriation for State Aid to  
96 Local Health Departments is the additional money required to  
97 annualize the pay raise provided during the fourth extraordinary  
98 session of the Legislature, two thousand five for all health  
99 department employees.

*60-Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 0525 FY 2007 Org 0506

|    |  |     |    |                  |
|----|--|-----|----|------------------|
| 1  | Personal Services .....                  | 001 | \$ | 632,583          |
| 2  | Annual Increment .....                   | 004 |    | 11,991           |
| 3  | Employee Benefits .....                  | 010 |    | 262,075          |
| 4  | Special Olympics .....                   | 208 |    | 26,074           |
| 5  | Behavioral Health Program-               |     |    |                  |
| 6  | Unclassified (R) .....                   | 219 |    | 49,679,562       |
| 7  | Family Support Act .....                 | 221 |    | 1,092,753        |
| 8  | Institutional Facilities Operations .... | 335 |    | 63,677,174       |
| 9  | Capital Outlay (R) .....                 | 511 |    | 0                |
| 10 | Capital Outlay and Maintenance .....     | 755 |    | 2,000,000        |
| 11 | Colin Anderson                           |     |    |                  |
| 12 | Community Placement (R) .....            | 803 |    | 1,164,000        |
| 13 | Renaissance Program .....                | 804 |    | 194,000          |
| 14 | BRIM Premium .....                       | 913 |    | <u>1,088,070</u> |
| 15 | Total .....                              |     |    | \$119,828,282    |

16 Any unexpended balances remaining in the appropriations  
17 for Behavioral Health Program-Unclassified (fund 0525,  
18 activity 219), Capital Outlay (fund 0525, activity 511), Capital  
19 Outlay, Repairs and Equipment-Surplus (fund 0525, activity  
20 677), and Colin Anderson Community Placement (fund 0525,  
21 activity 803) at the close of the fiscal year 2006 are hereby  
22 reappropriated for expenditure during the fiscal year 2007.

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

27       From the above appropriation to Institutional Facilities  
28 Operations, together with available funds from the division of  
29 health-hospital services revenue account (fund 5156, activity  
30 335) and tobacco settlement expenditure fund (fund 5124,  
31 activity 335), on July 1, 2006, the sum of one hundred sixty  
32 thousand dollars shall be transferred to the department of  
33 agriculture-land division as advance payment for the purchase  
34 of food products; actual payments for such purchases shall not  
35 be required until such credits have been completely expended.

36       Additional funds have been appropriated in fund 5124,  
37 fiscal year 2007, organization 0506 and fund 5156, fiscal year  
38 2007, organization 0506, for the operation of the institutional  
39 facilities. The secretary of the department of health and human  
40 resources is authorized to utilize up to ten percent of the funds  
41 from the Institutional Facilities Operations line item to facilitate  
42 cost effective and cost saving services at the community level.

43       Included in the appropriation to Institutional Facilities  
44 Operations (fund 0525, activity 335), an amount of \$10,200,000  
45 has been added to offset any potential cash shortfall in the  
46 division of health, tobacco settlement expenditure fund (fund  
47 5124, org 0506, activity 335). The \$10,200,000 or any amount  
48 thereof may only be expended to the extent the cash balance  
49 and the cash receipts are less than the appropriation in the  
50 tobacco settlement expenditure fund (fund 5124, org 0506,  
51 activity 335).

*61-Division of Health-*

*West Virginia Drinking Water Treatment*

(WV Code Chapter 16)

Fund 0561 FY 2007 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.

*62-Human Rights Commission*

(WV Code Chapter 5)

Fund 0416 FY 2007 Org 0510

|   |                             |     |               |
|---|-----------------------------|-----|---------------|
| 1 | Personal Services . . . . . | 001 | \$ 689,517    |
| 2 | Annual Increment . . . . .  | 004 | 16,000        |
| 3 | Employee Benefits . . . . . | 010 | 224,705       |
| 4 | Unclassified . . . . .      | 099 | 261,293       |
| 5 | BRIM Premium . . . . .      | 913 | <u>19,326</u> |
| 6 | Total . . . . .             |     | \$ 1,210,841  |

*63-Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Fund 0403 FY 2007 Org 0511

|   |                                  |     |               |
|---|----------------------------------|-----|---------------|
| 1 | Personal Services . . . . .      | 001 | \$ 21,417,512 |
| 2 | Annual Increment . . . . .       | 004 | 620,313       |
| 3 | Employee Benefits . . . . .      | 010 | 8,526,308     |
| 4 | Unclassified . . . . .           | 099 | 13,469,104    |
| 5 | Child Care Development . . . . . | 144 | 1,254,213     |

|    |  |     |                  |
|----|--|-----|------------------|
| 6  | Medical Services Contracts and Office  |     |                  |
| 7  | of Managed Care . . . . .              | 183 | 2,334,455        |
| 8  | Medical Services (R) . . . . .         | 189 | 394,405,687      |
| 9  | Medical Services                       |     |                  |
| 10 | Administrative Costs . . . . .         | 789 | 18,431,455       |
| 11 | Social Services . . . . .              | 195 | 77,112,737       |
| 12 | Family Preservation Program . . . . .  | 196 | 1,565,000        |
| 13 | Family Resource Networks (R) . . . . . | 274 | 1,941,926        |
| 14 | Domestic Violence Legal                |     |                  |
| 15 | Services Fund . . . . .                | 384 | 150,000          |
| 16 | James "Tiger" Morton Catastrophic      |     |                  |
| 17 | Illness Fund . . . . .                 | 455 | 940,000          |
| 18 | Child Protective Services              |     |                  |
| 19 | Case Workers . . . . .                 | 468 | 15,710,431       |
| 20 | Medical Services Trust                 |     |                  |
| 21 | Fund Transfer . . . . .                | 512 | 5,000,000        |
| 22 | OSCAR and RAPIDS . . . . .             | 515 | 3,481,210        |
| 23 | WV Teaching Hospitals                  |     |                  |
| 24 | Tertiary/Safety Net . . . . .          | 547 | 3,106,000        |
| 25 | Child Welfare System . . . . .         | 603 | 2,604,448        |
| 26 | Child Support Enforcement . . . . .    | 705 | 2,758,468        |
| 27 | Medicaid Auditing . . . . .            | 706 | 600,066          |
| 28 | Temporary Assistance for Needy         |     |                  |
| 29 | Families/Maintenance                   |     |                  |
| 30 | of Effort . . . . .                    | 707 | 22,969,096       |
| 31 | Child Care Maintenance of              |     |                  |
| 32 | Effort Match . . . . .                 | 708 | 5,693,743        |
| 33 | Child and Family Services . . . . .    | 736 | 2,850,000        |
| 34 | Grants for Licensed Domestic           |     |                  |
| 35 | Violence Programs and                  |     |                  |
| 36 | Statewide Prevention . . . . .         | 750 | 1,500,000        |
| 37 | Indigent Burials (R) . . . . .         | 851 | 1,700,000        |
| 38 | BRIM Premium . . . . .                 | 913 | 834,187          |
| 39 | Rural Hospitals Under 150 Beds . . .   | 940 | <u>2,596,000</u> |
| 40 | Total . . . . .                        |     | \$ 613,572,359   |

41 Any unexpended balances remaining in the appropriations  
42 for Social Services-Surplus (fund 0403, activity 082), Medical  
43 Services (fund 0403, activity 189), Family Resource Networks  
44 (fund 0403, activity 274), and Indigent Burials (fund 0403,  
45 activity 851) at the close of the fiscal year 2006 are hereby  
46 reappropriated for expenditure during the fiscal year 2007.

47 The above appropriation for James “Tiger” Morton  
48 Catastrophic Illness Fund (activity 455) shall be transferred to  
49 the James “Tiger” Morton Catastrophic Illness Fund (fund  
50 5454) as provided by chapter sixteen, article five-q, of the code.

51 From the above appropriation for Medical Services (fund  
52 0403, activity 189) an amount not to exceed \$15,000,000 may  
53 be transferred to the Division of Health—Tobacco Settlement  
54 Expenditure Fund— Institutional Facilities Operations (fund  
55 5124, activity 335) in order to offset any cash flow shortfalls  
56 that may occur due to the timing of deposits into the Tobacco  
57 Settlement Expenditure Fund. Any funds so transferred from  
58 fund 0403 to fund 5124 shall be reimbursed to fund 0403 no  
59 later than June 1, 2007.

60 From the above appropriation for Medical Services (fund  
61 0403, activity 189) an amount not to exceed \$3,700,000 shall be  
62 designated for the Title XIX Waiver for Senior Citizens.

63 The above appropriation for Domestic Violence Legal  
64 Services Fund (activity 384) shall be transferred to the Domes-  
65 tic Violence Legal Services Fund (fund 5455).

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

73 From the above appropriation for the Grants for Licensed  
 74 Domestic Violence Programs and Statewide Prevention  
 75 (activity 750), \$500,000 shall be divided equally and distributed  
 76 among the thirteen (13) licensed programs and the West  
 77 Virginia Coalition Against Domestic Violence (WVCADV).

78 Any unexpended balance remaining in the appropriation for  
 79 Grants for Licensed Domestic Violence Programs and State-  
 80 wide Prevention (activity 750), shall be distributed according to  
 81 the formula established by the Family Protection Services  
 82 Board.

83 The secretary shall have authority to expend funds for the  
 84 educational costs of those children residing in out-of-state  
 85 placements, excluding the costs of special education programs.

86 The above appropriation for Family Resource Networks  
 87 (activity 274) is to be subject to the control and oversight of the  
 88 Governor’s Cabinet on Children and Families and may only be  
 89 administered and disbursed by the Division of Human Services  
 90 upon the delegation of this authority to the Division of Human  
 91 Services by the Governor’s Cabinet on Children and Families  
 92 as provided by West Virginia Code §5-26-4(4) for the benefit  
 93 of family resource networks, early parent education services  
 94 and starting points centers.

**DEPARTMENT OF MILITARY AFFAIRS  
 AND PUBLIC SAFETY**

*64-Department of Military Affairs and Public Safety-*

*Office of the Secretary*

(WV Code Chapter 5F)

Fund 0430 FY 2007 Org 0601

1 Unclassified (R) . . . . . 099 \$ 508,197

|   |                              |     |               |
|---|------------------------------|-----|---------------|
| 2 | Efficiency Savings . . . . . | 799 | 0             |
| 3 | BRIM Premium . . . . .       | 913 | <u>11,416</u> |
| 4 | Total . . . . .              |     | \$ 519,613    |

5 Any unexpended balance remaining in the appropriation for  
6 Unclassified (fund 0430, activity 099) at the close of the fiscal  
7 year 2006 is hereby reappropriated for expenditure during the  
8 fiscal year 2007.

*65-Adjutant General-*

*State Militia*

(WV Code Chapter 15)

Fund 0433 FY 2007 Org 0603

|   |                                      |     |               |
|---|--------------------------------------|-----|---------------|
| 1 | Personal Services . . . . .          | 001 | \$ 1,530,729  |
| 2 | Annual Increment . . . . .           | 004 | 24,973        |
| 3 | Employee Benefits . . . . .          | 010 | 514,575       |
| 4 | Unclassified (R) . . . . .           | 099 | 17,794,996    |
| 5 | College Education Fund (R) . . . . . | 232 | 0             |
| 6 | Mountaineer ChalleNGe Academy . . .  | 709 | 1,200,000     |
| 7 | BRIM Premium . . . . .               | 913 | <u>50,161</u> |
| 8 | Total . . . . .                      |     | \$21,115,434  |

9 Any unexpended balances remaining in the appropriations  
10 for Unclassified (fund 0433, activity 099), College Education  
11 Fund (fund 0433, activity 232), and Armory Capital Improve-  
12 ments—Surplus (fund 0433, activity 325) at the close of the  
13 fiscal year 2006 are hereby reappropriated for expenditure  
14 during the fiscal year 2007.

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



*66-Adjutant General-**Military Fund*

(WV Code Chapter 15)

Fund 0605 FY 2007 Org 0603

|   |                          |     |    |         |
|---|--------------------------|-----|----|---------|
| 1 | Unclassified—Total ..... | 096 | \$ | 200,000 |
|---|--------------------------|-----|----|---------|

*67-West Virginia Parole Board*

(WV Code Chapter 62)

Fund 0440 FY 2007 Org 0605

|   |                                      |     |    |               |
|---|--------------------------------------|-----|----|---------------|
| 1 | Personal Services .....              | 001 | \$ | 160,549       |
| 2 | Annual Increment .....               | 004 |    | 1,744         |
| 3 | Employee Benefits .....              | 010 |    | 214,202       |
| 4 | Unclassified .....                   | 099 |    | 188,806       |
| 5 | Salaries of Members of West Virginia |     |    |               |
| 6 | Parole Board .....                   | 227 |    | 455,000       |
| 7 | BRIM Premium .....                   | 913 |    | <u>16,310</u> |
| 8 | Total .....                          |     | \$ | 1,036,611     |

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

(WV Code Chapter 15)

Fund 0443 FY 2007 Org 0606

|   |                                       |     |    |         |
|---|---------------------------------------|-----|----|---------|
| 1 | Personal Services .....               | 001 | \$ | 299,696 |
| 2 | Annual Increment .....                | 004 |    | 3,450   |
| 3 | Employee Benefits .....               | 010 |    | 114,238 |
| 4 | Radiological Emergency Preparedness . | 554 |    | 30,000  |
| 5 | Federal Funds/Grant Match (R) .....   | 749 |    | 742,344 |

|    |  |     |               |
|----|--|-----|---------------|
| 6  | Mine and Industrial Accident Rapid       |     |               |
| 7  | Response Call Center . . . . .           | 781 | 297,480       |
| 8  | Early Warning Flood System (R) . . . . . | 877 | 510,584       |
| 9  | BRIM Premium . . . . .                   | 913 | <u>35,158</u> |
| 10 | Total . . . . .                          |     | \$ 2,032,950  |

11       Any unexpended balances remaining in the appropriations  
12 for Flood Reparations (fund 0443, activity 400), Federal  
13 Funds/Grant Match (fund 0443, activity 749), Federal  
14 Settlement-Surplus (fund 0443, activity 876), Early Warning  
15 FloodSystem(fund0443, activity 877), and Homeland Security  
16 Grant Match—Surplus (fund 0443, activity 957) at the close of  
17 the fiscal year 2006 are hereby reappropriated for expenditure  
18 during the fiscal year 2007.

*69-Division of Corrections-*

*Central Office*

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

Fund 0446 FY 2007 Org 0608

|   |                             |     |               |
|---|-----------------------------|-----|---------------|
| 1 | Personal Services . . . . . | 001 | \$ 366,701    |
| 2 | Annual Increment . . . . .  | 004 | 5,775         |
| 3 | Employee Benefits . . . . . | 010 | 121,535       |
| 4 | Unclassified . . . . .      | 099 | <u>97,594</u> |
| 5 | Total . . . . .             |     | \$ 591,605    |

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 2006 is hereby reappropriated for  
9 expenditure during the fiscal year 2007.

*70-Division of Corrections-*

*Correctional Units*

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

Fund 0450 FY 2007 Org 0608

|    |   |     |    |                |
|----|---|-----|----|----------------|
| 1  | Employee Benefits . . . . .               | 010 | \$ | 356,824        |
| 2  | Unclassified . . . . .                    | 099 |    | 1,896,204      |
| 3  | Charleston Work Release . . . . .         | 456 |    | 881,657        |
| 4  | Beckley Correctional Center . . . . .     | 490 |    | 878,772        |
| 5  | Huntington Work Release . . . . .         | 495 |    | 756,988        |
| 6  | Anthony Center . . . . .                  | 504 |    | 4,217,829      |
| 7  | Huttonsville Correctional Center . . .    | 514 |    | 17,996,343     |
| 8  | Northern Correctional Facility . . . . .  | 534 |    | 6,170,283      |
| 9  | Inmate Medical Expenses (R) . . . . .     | 535 |    | 20,264,267     |
| 10 | Pruntytown Correctional Center . . . .    | 543 |    | 6,017,217      |
| 11 | Payments to Federal, County and/or        |     |    |                |
| 12 | Regional Jails . . . . .                  | 555 |    | 17,168,500     |
| 13 | Corrections Academy . . . . .             | 569 |    | 1,053,425      |
| 14 | Martinsburg Correctional Center . . . .   | 663 |    | 2,950,868      |
| 15 | Parole services . . . . .                 | 686 |    | 2,046,086      |
| 16 | Special Services . . . . .                | 687 |    | 2,129,904      |
| 17 | Correctional Operations . . . . .         | 741 |    | 0              |
| 18 | Capital Outlay and                        |     |    |                |
| 19 | Maintenance (R) . . . . .                 | 755 |    | 2,000,000      |
| 20 | Contractual Correctional Services . . .   | 771 |    | 0              |
| 21 | Stephens Correctional Facility . . . . .  | 791 |    | 5,724,500      |
| 22 | St. Mary's Correctional Facility . . . .  | 881 |    | 11,091,099     |
| 23 | Denmar Correctional Facility . . . . .    | 882 |    | 3,762,146      |
| 24 | Ohio County Correctional Facility . .     | 883 |    | 1,238,171      |
| 25 | Mt. Olive Correctional Facility . . . . . | 888 |    | 17,177,259     |
| 26 | Lakin Correctional Facility . . . . .     | 896 |    | 7,804,385      |
| 27 | BRIM Premium . . . . .                    | 913 |    | <u>874,457</u> |
| 28 | Total . . . . .                           |     |    | \$134,457,184  |

29       Any unexpended balances remaining in the appropriations  
30 for Payments to Federal, County and/or Regional Jails-Surplus  
31 (fund 0450, activity 008), Capital Outlay (fund 0450, activity  
32 511), Inmate Medical Expenses (fund 0450, activity 535),

33 Capital Outlay and Maintenance (fund 0450, activity 755), and  
 34 Inmate Medical Expenses—Surplus(fund 0450, activity 846) at  
 35 the close of the fiscal year 2006 are hereby reappropriated for  
 36 expenditure during the fiscal year 2007.

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

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

51 From the above appropriation to Unclassified, on July 1,  
 52 2006, the sum of three hundred thousand dollars shall be  
 53 transferred to the department of agriculture-land division as  
 54 advance payment for the purchase of food products; actual  
 55 payments for such purchases shall not be required until such  
 56 credits have been completely expended.

*71-West Virginia State Police*

(WV Code Chapter 15)

Fund 0453 FY 2007 Org 0612

|   |                             |     |               |
|---|-----------------------------|-----|---------------|
| 1 | Personal Services . . . . . | 001 | \$ 34,840,740 |
| 2 | Annual Increment . . . . .  | 004 | 199,000       |
| 3 | Employee Benefits . . . . . | 010 | 7,412,504     |

|    |                                      |     |                  |
|----|--------------------------------------|-----|------------------|
| 4  | Unclassified .....                   | 099 | 7,285,826        |
| 5  | Vehicle Purchase .....               | 451 | 1,000,000        |
| 6  | Barracks Lease Payments .....        | 556 | 440,088          |
| 7  | Communications and                   |     |                  |
| 8  | Other Equipment (R) .....            | 558 | 1,013,285        |
| 9  | Trooper Retirement Fund .....        | 605 | 3,532,118        |
| 10 | Retirement Systems-                  |     |                  |
| 11 | Unfunded Liability .....             | 775 | 3,360,000        |
| 12 | Handgun Administration Expense ..... | 747 | 73,448           |
| 13 | Capital Outlay and Maintenance ..... | 755 | 500,000          |
| 14 | Automated Fingerprint                |     |                  |
| 15 | Identification System .....          | 898 | 629,984          |
| 16 | BRIM Premium .....                   | 913 | <u>6,043,110</u> |
| 17 | Total .....                          |     | \$66,330,103     |

18       Any unexpended balances remaining in the appropriations  
19 for Barracks Maintenance and Construction (fund 0453, activity  
20 494), Trooper Class (fund 0453, activity 521), Communications  
21 and Other Equipment (fund 0453, activity 558), Barracks  
22 Maintenance and Construction-Surplus (fund 0453, activity  
23 669), and Law Enforcement-Special Projects (fund 0453,  
24 activity 787) at the close of the fiscal year 2006 are hereby  
25 reappropriated for expenditure during the fiscal year 2007.

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

33       From the above appropriation for Unclassified, an amount  
34 not less than \$25,000 shall be expended to offset the costs  
35 associated with providing police services for the West Virginia  
36 State Fair.

*72-Division of Veterans' Affairs*

(WV Code Chapter 9A)

Fund 0456 FY 2007 Org 0613

|    |   |     |               |
|----|---|-----|---------------|
| 1  | Personal Services . . . . .                   | 001 | \$ 1,004,843  |
| 2  | Annual Increment . . . . .                    | 004 | 32,880        |
| 3  | Employee Benefits . . . . .                   | 010 | 415,876       |
| 4  | Unclassified . . . . .                        | 099 | 77,217        |
| 5  | Veterans' Field Offices . . . . .             | 228 | 175,985       |
| 6  | Veterans' Nursing Home . . . . .              | 286 | 5,437,815     |
| 7  | Veterans' Toll Free Assistance Line . . . . . | 328 | 5,000         |
| 8  | Veterans' Reeducation Assistance . . . . .    | 329 | 211,604       |
| 9  | Veterans' Grant Program (R) . . . . .         | 342 | 150,000       |
| 10 | Memorial Day Patriotic Exercise . . . . .     | 697 | 20,000        |
| 11 | Educational Opportunities for                 |     |               |
| 12 | Children of Deceased Veterans . . . . .       | 854 | 100,000       |
| 13 | BRIM Premium . . . . .                        | 913 | <u>23,860</u> |
| 14 | Total . . . . .                               |     | \$ 7,655,080  |

15 Any unexpended balances remaining in the appropriations  
16 for Veterans' Reeducation Assistance (fund 0456, activity 329),  
17 Veterans' Grant Program (fund 0456, activity 342), Women's  
18 Veterans' Monument (fund 0456, activity 385), and Veterans'  
19 Bonus (fund 0456, activity 483) at the close of the fiscal year  
20 2006 are hereby reappropriated for expenditure during the fiscal  
21 year 2007.

22 The above appropriation for Veterans' Nursing Home (fund  
23 0456, activity 286) may be transferred to the Veterans' Nursing  
24 Home Support Fund (fund 6703, org 0613) at the discretion of  
25 the director of the Division of Veterans' Affairs.

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

## (WV Code Chapter 9A)

Fund 0460 FY 2007 Org 0618

|   |                         |     |               |
|---|-------------------------|-----|---------------|
| 1 | Personal Services ..... | 001 | \$ 697,446    |
| 2 | Annual Increment .....  | 004 | 17,400        |
| 3 | Employee Benefits ..... | 010 | 329,607       |
| 4 | Unclassified .....      | 099 | <u>33,609</u> |
| 5 | Total .....             |     | \$ 1,078,062  |

*74-Fire Commission*

## (WV Code Chapter 29)

Fund 0436 FY 2007 Org 0619

|   |                                  |     |           |
|---|----------------------------------|-----|-----------|
| 1 | Safe Schools Hotline—Total ..... | 093 | \$ 84,500 |
|---|----------------------------------|-----|-----------|

*75-Division of Criminal Justice Services*

## (WV Code Chapter 15)

Fund 0546 FY 2007 Org 0620

|   |                                    |     |              |
|---|------------------------------------|-----|--------------|
| 1 | Personal Services .....            | 001 | \$ 242,415   |
| 2 | Annual Increment .....             | 004 | 3,645        |
| 3 | Employee Benefits .....            | 010 | 81,958       |
| 4 | Unclassified .....                 | 099 | 129,583      |
| 5 | Community Corrections (R) .....    | 561 | 800,000      |
| 6 | Statistical Analysis Program ..... | 597 | 49,228       |
| 7 | BRIM Premium .....                 | 913 | <u>1,660</u> |
| 8 | Total .....                        |     | \$ 1,308,489 |

9 Any unexpended balances remaining in the appropriations  
10 for Community Corrections—Surplus(fund 0546, activity 060)  
11 and Community Corrections (fund 0546, activity 561) at the  
12 close of the fiscal year 2006 are hereby reappropriated for  
13 expenditure during the fiscal year 2007.

*76-Division of Juvenile Services*

(WV Code Chapter 49)

Fund 0570 FY 2007 Org 0621

|    |  |     |    |                |
|----|--|-----|----|----------------|
| 1  | Robert L. Shell Juvenile Center (R) .. | 267 | \$ | 1,950,077      |
| 2  | Central Office (R) .....               | 701 |    | 2,198,945      |
| 3  | Juvenile Services Operations .....     | 742 |    | 0              |
| 4  | Capital Outlay and Maintenance .....   | 755 |    | 500,000        |
| 5  | Southern WV Youth                      |     |    |                |
| 6  | Diagnostic Center (R) .....            | 792 |    | 1,943,734      |
| 7  | Gene Spadaro Juvenile center (R) ...   | 793 |    | 1,953,473      |
| 8  | BRIM Premium .....                     | 913 |    | 113,016        |
| 9  | WV Industrial Home for Youth (R) ..    | 979 |    | 10,732,462     |
| 10 | Davis Center (R) .....                 | 980 |    | 2,731,677      |
| 11 | Eastern Juvenile Center (R) .....      | 981 |    | 2,039,960      |
| 12 | Northern Juvenile Center (R) .....     | 982 |    | 1,195,265      |
| 13 | North Central Juvenile Center (R) .... | 983 |    | 1,733,467      |
| 14 | Southern Juvenile Center (R) .....     | 984 |    | 1,797,896      |
| 15 | Tiger Morton Juvenile Center (R) ...   | 985 |    | 1,916,326      |
| 16 | Donald Kuhn Juvenile Center (R) ...    | 986 |    | 1,731,523      |
| 17 | J.M. "Chick" Buckbee                   |     |    |                |
| 18 | Juvenile Center (R) .....              | 987 |    | 1,872,217      |
| 19 | Salem Canine (R) .....                 | 988 |    | 91,191         |
| 20 | Davis Canine (R) .....                 | 989 |    | 86,701         |
| 21 | The Academy (R) .....                  | 990 |    | <u>130,622</u> |
| 22 | Total .....                            |     | \$ | 34,718,552     |

23 Any unexpended balances remaining in the appropriations  
 24 for Unclassified (fund 0570, activity 099), Robert L. Shell  
 25 Juvenile Center (fund 0570, activity 267), Donald R. Kuhn  
 26 Diagnostic Center (fund 0570, activity 283), Central Office  
 27 (fund 0570, activity 701), Southern WV Youth Diagnostic  
 28 Center (fund 0570, activity 792), Gene Spadaro Juvenile Center  
 29 (fund 0570, activity 793), WV Industrial Home for Youth (fund  
 30 0570, activity 979), Davis Center (fund 0570, activity 980),



31 Eastern Regional Juvenile Center (fund 0570, activity 981),  
 32 Northern Regional Juvenile Center (fund 0570, activity 982),  
 33 North Central Regional Juvenile Center (fund 0570, activity  
 34 983), Southern Regional Juvenile Center (fund 0570, activity  
 35 984), Tiger Morton Center (fund 0570, activity 985), Donald R.  
 36 Kuhn Juvenile Center (fund 0570, activity 986), J.M. "Chick"  
 37 Buckbee Juvenile Center (fund 0570, activity 987), Salem  
 38 Canine (fund 0570, activity 988), Davis Canine (fund 0570,  
 39 activity 989), The Academy (fund 0570, activity 990), and Mt.  
 40 Hope Juvenile Center (fund 0570, activity 991) at the close of  
 41 the fiscal year 2006 are hereby reappropriated for expenditure  
 42 during the fiscal year 2007.

43 The director shall, within fifteen days after the close of each  
 44 six-month period of said fiscal year, file with the legislative  
 45 auditor and the department of revenue an itemized report of  
 46 expenditures made during the preceding six-month period. Such  
 47 report shall include the total expenditures made for personal  
 48 services, annual increment, current expenses, repairs and  
 49 alterations, and equipment.

50 From the above appropriations, on July 1, 2006, the sum of  
 51 fifty thousand dollars shall be transferred to the department of  
 52 agriculture-land division as advance payment for the purchase  
 53 of food products; actual payments for such purchases shall not  
 54 be required until such credits have been completely expended.

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

*77-Division of Protective Services*

(WV Code Chapter 5F)

Fund 0585 FY 2007 Org 0622

1 Personal Services . . . . . 001 \$ 995,511

|   |                             |     |              |
|---|-----------------------------|-----|--------------|
| 2 | Annual Increment . . . . .  | 004 | 14,250       |
| 3 | Employee Benefits . . . . . | 010 | 377,766      |
| 4 | Unclassified (R) . . . . .  | 099 | 451,150      |
| 5 | BRIM Premium . . . . .      | 913 | <u>7,707</u> |
| 6 | Total . . . . .             |     | \$ 1,846,384 |

7 Any unexpended balances remaining in the appropriations  
 8 for Equipment (fund 0585, activity 070) and Unclassified (fund  
 9 0585, activity 099) at the close of the fiscal year 2006 are  
 10 hereby reappropriated for expenditure during the fiscal year  
 11 2007.

### DEPARTMENT OF REVENUE

#### *78-Office of the Secretary*

(WV Code Chapter 11)

#### Fund 0465 FY 2007 Org 0701

|   |                              |     |            |
|---|------------------------------|-----|------------|
| 1 | Unclassified . . . . .       | 099 | \$ 629,783 |
| 2 | Revenue Shortfall Reserve    |     |            |
| 3 | Fund-Transfer . . . . .      | 590 | 0          |
| 4 | Efficiency Savings . . . . . | 799 | <u>0</u>   |
| 5 | Total . . . . .              |     | \$ 629,783 |

6 Any unexpended balance remaining in the appropriation for  
 7 Unclassified—Total (fund 0465, activity 096) at the close of the  
 8 fiscal year 2006 is hereby reappropriated for expenditure during  
 9 the fiscal year 2007.

#### *79-Tax Division*

(WV Code Chapter 11)

#### Fund 0470 FY 2007 Org 0702

|   |                                 |     |               |
|---|---------------------------------|-----|---------------|
| 1 | Personal Services (R) . . . . . | 001 | \$ 12,786,592 |
|---|---------------------------------|-----|---------------|

|   |                                       |     |               |
|---|---------------------------------------|-----|---------------|
| 2 | Annual Increment . . . . .            | 004 | 259,060       |
| 3 | Employee Benefits (R) . . . . .       | 010 | 4,615,192     |
| 4 | Unclassified (R) . . . . .            | 099 | 6,360,469     |
| 5 | GIS Development Project (R) . . . . . | 562 | 150,000       |
| 6 | Remittance Processor (R) . . . . .    | 570 | 381,015       |
| 7 | Multi State Tax Commission . . . . .  | 653 | 77,958        |
| 8 | BRIM Premium . . . . .                | 913 | <u>14,420</u> |
| 9 | Total . . . . .                       |     | \$24,644,706  |

10 Any unexpended balances remaining in the appropriations  
 11 for Personal Services (fund 0470, activity 001), Employee  
 12 Benefits (fund 0470, activity 010), Tax Technology Upgrade  
 13 (fund 0470, activity 094), Unclassified-Surplus (fund 0470,  
 14 activity 097), Unclassified (fund 0470, activity 099), Integrated  
 15 Tax Accounting System (fund 0702, activity 292), Tax Tech-  
 16 nology Upgrade-Surplus (fund 0470, activity 450), GIS  
 17 Development Project (fund 0470, activity 562), and Remittance  
 18 Processor (fund 0470, activity 570) at the close of the fiscal  
 19 year 2006 are hereby reappropriated for expenditure during the  
 20 fiscal year 2007.

*80-State Budget Office*

(WV Code Chapter 11B)

Fund 0595 FY 2007 Org 0703

|   |                              |     |                |
|---|------------------------------|-----|----------------|
| 1 | Unclassified (R) . . . . .   | 099 | \$1,111,333    |
| 2 | Pay Equity Reserve . . . . . | 364 | <u>250,000</u> |
| 3 | Total . . . . .              |     | \$1,361,333    |

4 Any unexpended balances remaining in the appropriations  
 5 for Unclassified—Total (fund 0595, activity 096) and Unclasi-  
 6 fied (fund 0595, activity 099) at the close of the fiscal year  
 7 2006 are hereby reappropriated for expenditure during the fiscal  
 8 year 2007.

*81-West Virginia Office of Tax Appeals*

(WV Code Chapter 11)

Fund 0593 FY 2007 Org 0709

- 1 Unclassified-Total (R) ..... 096 \$ 659,564
- 2 Any unexpended balance remaining in the appropriation for
- 3 Unclassified—Total (fund 0593, activity 096) at the close of the
- 4 fiscal year 2006 is hereby reappropriated for expenditure during
- 5 the fiscal year 2007.

*82-Division of Professional and Occupational Licenses-**State Athletic Commission*

(WV Code Chapter 29)

Fund 0523 FY 2007 Org 0933

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

**DEPARTMENT OF TRANSPORTATION***83-State Rail Authority*

(WV Code Chapter 29)

Fund 0506 FY 2007 Org 0804

- |   |                    |     |                |
|---|--------------------|-----|----------------|
| 1 | Unclassified ..... | 099 | \$ 2,918,992   |
| 2 | BRIM Premium ..... | 913 | <u>253,309</u> |
| 3 | Total .....        |     | \$ 3,172,301   |

- 4 From the above appropriation for Unclassified (activity
- 5 099), \$30,000 shall be expended for improvements at the
- 6 Duffield Station.

*84-Division of Public Transit*

(WV Code Chapter 17)

Fund 0510 FY 2007 Org 0805

|   |   |     |                  |
|---|---|-----|------------------|
| 1 | Unclassified (R) . . . . .              | 099 | \$ 1,258,342     |
| 2 | Federal Funds/Grant Match (R) . . . . . | 749 | <u>1,265,000</u> |
| 3 | Total . . . . .                         |     | \$ 2,523,342     |

4       Any unexpended balances remaining in the appropriations  
 5 for Unclassified (fund 0510, activity 099), Grant Match (fund  
 6 0510, activity 388), and Federal Funds/Grant Match (fund 0510,  
 7 activity 749) at the close of the fiscal year 2006 are hereby  
 8 reappropriated for expenditure during the fiscal year 2007.

*85-Public Port Authority*

(WV Code Chapter 17)

Fund 0581 FY 2007 Org 0806

|   |                            |     |            |
|---|----------------------------|-----|------------|
| 1 | Unclassified (R) . . . . . | 099 | \$ 432,360 |
| 2 | BRIM Premium . . . . .     | 913 | <u>599</u> |
| 3 | Total . . . . .            |     | \$ 432,959 |

4       Any unexpended balances remaining in the appropriations  
 5 for Unclassified-Total (fund 0581, activity 096) and Unclassi-  
 6 fied (fund 0581, activity 099) at the close of the fiscal year  
 7 2006 are hereby reappropriated for expenditure during the fiscal  
 8 year 2007.

*86-Aeronautics Commission*

(WV Code Chapter 29)

Fund 0582 FY 2007 Org 0807

|   |                            |     |             |
|---|----------------------------|-----|-------------|
| 1 | Unclassified (R) . . . . . | 099 | \$1,366,394 |
|---|----------------------------|-----|-------------|

|   |                            |     |                |
|---|----------------------------|-----|----------------|
| 2 | Civil Air Patrol . . . . . | 234 | <u>105,258</u> |
| 3 | Total . . . . .            |     | \$1,471,652    |

4 Any unexpended balance remaining in the appropriation for  
 5 Unclassified (fund 0582, activity 099) at the close of the fiscal  
 6 year 2006 is hereby reappropriated for expenditure during the  
 7 fiscal year 2007.

8 From the above appropriation for Unclassified, the sum of  
 9 \$110,000 shall be distributed equally to each of the eleven local  
 10 Civil Air Patrol Squadrons.

**HIGHER EDUCATION**

*87-West Virginia Council for*

*Community and Technical College Education-*

*Control Account*

(WV Code Chapter 18B)

Fund 0596 FY 2007 Org 0420

|    |   |     |              |
|----|---|-----|--------------|
| 1  | New River Community and Technical College |     |              |
| 2  | of Bluefield State College . . . . .      | 358 | \$ 4,429,955 |
| 3  | West Virginia Council for Community       |     |              |
| 4  | and Technical Education (R) . . . . .     | 392 | 707,600      |
| 5  | Eastern West Virginia Community and       |     |              |
| 6  | Technical College . . . . .               | 412 | 1,990,948    |
| 7  | Fairmont State Community and              |     |              |
| 8  | Technical College . . . . .               | 421 | 7,892,952    |
| 9  | Shepherd Community and                    |     |              |
| 10 | Technical College . . . . .               | 434 | 0            |
| 11 | West Virginia State Community and         |     |              |
| 12 | Technical College . . . . .               | 445 | 3,074,167    |
| 13 | Southern West Virginia Community and      |     |              |
| 14 | Technical College . . . . .               | 446 | 8,053,214    |

|    |                                       |     |                  |
|----|---------------------------------------|-----|------------------|
| 15 | West Virginia Northern Community and  |     |                  |
| 16 | Technical College . . . . .           | 447 | 6,565,528        |
| 17 | West Virginia University -            |     |                  |
| 18 | Parkersburg . . . . .                 | 471 | 8,428,561        |
| 19 | West Virginia University Institute    |     |                  |
| 20 | for Technology Community and          |     |                  |
| 21 | Technical College . . . . .           | 486 | 3,263,224        |
| 22 | Marshall Community and                |     |                  |
| 23 | Technical College . . . . .           | 487 | 5,483,460        |
| 24 | Blue Ridge Community and              |     |                  |
| 25 | Technical College . . . . .           | 885 | 2,531,131        |
| 26 | College Transition Program . . . . .  | 887 | 333,500          |
| 27 | West Virginia Advance Workforce       |     |                  |
| 28 | Development . . . . .                 | 893 | 2,000,000        |
| 29 | Technical Program Development . . . . | 894 | <u>1,000,000</u> |
| 30 | Total . . . . .                       |     | \$ 55,754,240    |

31 Any unexpended balance remaining in the appropriation for  
 32 the West Virginia Council for Community and Technical  
 33 Education (fund 0596, activity 392) at the close of the fiscal  
 34 year 2006 is hereby reappropriated for expenditure during the  
 35 fiscal year 2007.

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

*88-Higher Education Policy Commission-*

*Administration-*

*Control Account*

(WV Code Chapter 18B)

Fund 0589 FY 2007 Org 0441

|   |                        |     |              |
|---|------------------------|-----|--------------|
| 1 | Unclassified . . . . . | 099 | \$ 2,015,779 |
|---|------------------------|-----|--------------|

|   |                                     |     |                  |
|---|-------------------------------------|-----|------------------|
| 2 | WVNET .....                         | 169 | 1,877,298        |
| 3 | VISTA E-Learning (R) .....          | 519 | 300,000          |
| 4 | PROMISE Scholarship—Transfer ....   | 800 | 13,000,000       |
| 5 | BRIM Premium .....                  | 913 | 57,419           |
| 6 | Higher Education Grant Program .... | 164 | <u>6,691,000</u> |
| 7 | Total .....                         |     | \$ 23,941,496    |

8 Any unexpended balances remaining in the appropriations  
 9 for Higher Education-Special Projects (fund 0589, activity  
 10 488), VISTA E-Learning (fund 0589, activity 519), and Vice  
 11 Chancellor for Health Sciences-Rural Health Initiative Program  
 12 and Site Support (fund 0589, activity 595) at the close of the  
 13 fiscal year 2006 are hereby reappropriated for expenditure  
 14 during the fiscal year 2007.

15 The above appropriation for PROMISE Scholarship-  
 16 Transfer (activity 800) shall be transferred to the PROMISE  
 17 Scholarship Fund (fund 4296, org 0441) established by chapter  
 18 eighteen-c, article seven, section seven.

*89-Higher Education Policy Commission-*

*System-*

*Control Account*

(WV Code Chapter 18B)

Fund 0586 FY 2007 Org 0442

|   |   |     |              |
|---|---|-----|--------------|
| 1 | WVU School of Health Science -          |     |              |
| 2 | Eastern Division .....                  | 056 | \$ 2,500,000 |
| 3 | Marshall Medical School .....           | 173 | 9,062,522    |
| 4 | WVU—School of Health Sciences ....      | 174 | 13,195,226   |
| 5 | WVU School of Health Sciences -         |     |              |
| 6 | Charleston Division .....               | 175 | 2,378,438    |
| 7 | Primary Health Education Medical School |     |              |
| 8 | Program Support (R) .....               | 177 | 2,129,507    |



|    |  |     |                  |
|----|--|-----|------------------|
| 9  | Bluefield State College . . . . .        | 408 | 5,133,813        |
| 10 | Concord University . . . . .             | 410 | 9,372,786        |
| 11 | Fairmont State University . . . . .      | 414 | 11,746,694       |
| 12 | Glenville State College . . . . .        | 428 | 5,475,753        |
| 13 | Shepherd University . . . . .            | 432 | 10,335,074       |
| 14 | West Liberty State College . . . . .     | 439 | 8,561,489        |
| 15 | West Virginia State University . . . . . | 441 | 11,222,413       |
| 16 | Marshall University . . . . .            | 448 | 45,391,341       |
| 17 | Marshall University Medical School       |     |                  |
| 18 | BRIM Subsidy . . . . .                   | 449 | 1,015,462        |
| 19 | West Virginia University . . . . .       | 459 | 105,336,051      |
| 20 | West Virginia University School of       |     |                  |
| 21 | Medicine BRIM Subsidy . . . . .          | 460 | 1,400,038        |
| 22 | West Virginia University Institute       |     |                  |
| 23 | for Technology . . . . .                 | 479 | 7,925,335        |
| 24 | State Priorities-Brownfield Professional |     |                  |
| 25 | Development (R) . . . . .                | 531 | 800,000          |
| 26 | West Virginia University—                |     |                  |
| 27 | Potomac State . . . . .                  | 994 | <u>4,149,540</u> |
| 28 | Total . . . . .                          |     | \$ 257,131,482   |

29       Any unexpended balances remaining in the appropriations  
30 for Primary Health Education Medical School Program Support  
31 (fund 0586, activity 177), Jackson's Mill (fund 0586, activity  
32 461), State Priorities-Brownfield Professional Development  
33 (fund 0586, activity 531), and Jackson's Mill-Surplus (fund  
34 0586, activity 842) at the close of fiscal year 2006 are hereby  
35 reappropriated for expenditure during the fiscal year 2007.

36       Included in the appropriation for WVU—School of Health  
37 Sciences and Marshall Medical School are \$943,080 and  
38 \$295,477, respectively, for Graduate Medical Education which  
39 may be transferred to the Department of Health and Human  
40 Resources' Medical Service Fund (fund 5084) for the purpose  
41 of matching federal or other funds to be used in support of  
42 graduate medical education, subject to the Vice-Chancellor for

43 Health Sciences and the Secretary of the Department of Health  
44 and Human Resources. If approval is denied, the funds may be  
45 utilized by the respective institutions for expenditure on  
46 graduate medical education.

47 Included in the above appropriation for WVU—School of  
48 Health Sciences is \$511,105 for the WVU Charleston Division  
49 Poison Control Hotline. This amount shall be enhanced by an  
50 allocation for the director’s salary as well as in-kind assistance.  
51 These amounts shall be allocated equally among the four  
52 quarters of the fiscal year for disbursement to the WVU-  
53 Charleston Division Poison Control Hotline. Included in the  
54 appropriation for West Virginia University is funding for the  
55 WVU College of Law, which shall continue to operate as the  
56 State’s exclusive public college of law. Also included is  
57 \$800,000 for the Blanchette Rockefeller Project.

58 Included in the above appropriation for West Virginia  
59 University is \$34,500 for the Marshall and WVU Faculty and  
60 Course Development International Study Project, \$246,429 for  
61 the WVU Law School—Skills Program, \$147,857 for the WVU  
62 Coal and Energy Research Bureau, \$19,714 for the WVU  
63 College of Engineering and Mineral Resources—Diesel  
64 Training—Transfer, \$165,000 for the WVU-Sheep  
65 Study/Potomac Equine Program, \$500,000 for the Mining  
66 Engineering Program, \$500,000 for the Center for Multiple  
67 Sclerosis Program, \$75,000 for Reedsville Farm for capital  
68 improvements and equipment, \$75,000 for Stewarts Town Farm  
69 for capital improvements and equipment, \$200,000 for  
70 Reymann Memorial Farm for capital improvements and  
71 equipment, \$100,000 for the Completion of an arena at  
72 Reymann Memorial Farm, \$80,000 for a Landscape Architect  
73 at Davis College of Forestry Agriculture and Consumer  
74 Sciences, \$100,000 for the WVU-Soil Testing Program,  
75 \$100,000 for a veterinarian, 50,000 for the WVU Cancer Study,  
76 220,000 for the WVU Petroleum Engineering Program and  
77 \$100,000 for the rifle team.

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

82       Included in the above appropriation for Marshall University  
83 is \$181,280 for the Marshall University-Southern WV CTC 2+2  
84 Program and \$795,597 for the Marshall University Autism  
85 Training Center.

86       Included in the above appropriation for Concord University  
87 is \$100,000 for the Geographic Alliance.

88       Included in the above appropriation for Shepherd Univer-  
89 sity is \$100,000 for the Gateway Program.

90       Included in the above appropriation for WVU-Potomac  
91 State is \$50,000 for maintenance, repairs and equipment and  
92 \$75,000 for Potomac State Farms for maintenance, repairs and  
93 equipment.

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

98       From the above appropriations to the respective medical  
99 schools, the line items for BRIM subsidies funding shall be paid  
100 to the Board of Risk and Insurance Management as a general  
101 revenue subsidy against the “Total Premium Billed” to each  
102 institution as part of the full cost of their malpractice insurance  
103 coverage.

*90-Higher Education Policy Commission-*

*Legislative-*

*Funding Priorities*

*Control Account*

(WV Code Chapter 18B)

Fund 0591 FY 2007 Org 0441

1 Any unexpended balances remaining in the appropriations  
 2 for Higher Education—Special Projects (fund 0591, activity  
 3 488), Independently Accredited Community and Technical  
 4 College Development (fund 0591, activity 491), and Research  
 5 Challenge (fund 0591, activity 502) at the close of the fiscal  
 6 year 2006 are hereby reappropriated for expenditure during the  
 7 fiscal year 2007.

8 The above appropriation shall be allocated only to the  
 9 State’s post-secondary institutions with compacts approved by  
 10 the Higher Education Policy Commission or West Virginia  
 11 Council for Community and Technical College Education, as  
 12 stated in §18B-1A-5.

13 Total TITLE II, Section 1-  
 14 General Revenue ..... \$3,629,099,788

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 eleven-b of the code the following amounts, as itemized, for  
 5 expenditure during the fiscal year two thousand seven.

**DEPARTMENT OF TRANSPORTATION**

*91-Division of Motor Vehicles*

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

Fund 9007 FY 2007 Org 0802

|   |                         | Activity | State<br>Road<br>Fund |
|---|-------------------------|----------|-----------------------|
| 1 | Personal Services ..... | 001      | \$13,598,983          |
| 2 | Annual Increment .....  | 004      | 214,525               |
| 3 | Employee Benefits ..... | 010      | 5,901,381             |
| 4 | Unclassified .....      | 099      | <u>17,617,666</u>     |
| 5 | Total .....             |          | \$37,332,555          |

*92-Division of Highways*

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2007 Org 0803

|    |  |     |                         |
|----|--|-----|-------------------------|
| 1  | Debt Service .....                                 | 040 | \$ 41,000,000           |
| 2  | Maintenance .....                                  | 237 | 256,700,000             |
| 3  | Maintenance, Contract Paving<br>and Secondary Road |     |                         |
| 5  | Maintenance .....                                  | 272 | 37,000,000              |
| 6  | Bridge Repair and Replacement ...                  | 273 | 30,000,000              |
| 7  | Inventory Revolving .....                          | 275 | 2,000,000               |
| 8  | Equipment Revolving .....                          | 276 | 15,000,000              |
| 9  | General Operations .....                           | 277 | 42,500,000              |
| 10 | Interstate Construction .....                      | 278 | 84,000,000              |
| 11 | Other Federal Aid Programs .....                   | 279 | 325,700,000             |
| 12 | Appalachian Programs .....                         | 280 | 150,000,000             |
| 13 | Nonfederal Aid Construction .....                  | 281 | 25,000,000              |
| 14 | Highway Litter Control .....                       | 282 | 1,664,000               |
| 15 | PSC Weight Enforcement .....                       | 345 | <u>4,667,295</u>        |
| 16 | Total .....  |     | <u>\$ 1,015,231,295</u> |

17 The above appropriation for PSC Weight Enforcement  
18 (activity 345) shall be transferred to the Public Service Com-  
19 mission Fund (fund 8623).

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

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

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

34       It is the intent of the Legislature to capture and match all  
35 federal funds available for expenditure on the Appalachian  
36 highway system at the earliest possible time. Therefore, should  
37 amounts in excess of those appropriated be required for the  
38 purposes of Appalachian programs, funds in excess of the  
39 amount appropriated may be made available upon recommen-  
40 dation of the commissioner and approval of the governor.  
41 Further, for the purpose of Appalachian programs, funds  
42 appropriated to line items may be transferred to other line items  
43 upon recommendation of the commissioner and approval of the  
44 governor.

45       From the above appropriation, \$125,000 is for King Coal  
46 Highway Authority; \$125,000 is for Coal Field Expressway  
47 Authority; \$100,000 is for Coal Heritage Highway Authority;  
48 \$100,000 is for Coal Heritage Area Authority; \$25,000 is for  
49 Little Kanawha River Parkway; \$50,000 is for Midland Trail  
50 Scenic Highway Association; \$57,000 is for Shawnee Parkway

51 Authority; \$100,000 is for Corridor G Highway Authority;  
 52 \$125,000 is for Corridor H Authority\*; ~~and \$200,000 is for~~  
 53 ~~repairs to Pemco Road.~~

54 Additionally, the department shall assist the Federal  
 55 Government in the construction, engineering and financing of  
 56 an access road to the Beckley Veterans Administration Medical  
 57 Center.

58 Total TITLE II, Section 2-  
 59 State Road Fund ..... \$1,052,707,959

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, eleven-b of  
 4 the code the following amounts, as itemized, for expenditure  
 5 during the fiscal year two thousand seven.

**LEGISLATIVE**

*93-Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 1731 FY 2007 Org 2300

|                           | <b>Activity</b> | <b>Other<br/>Funds</b> |
|---------------------------|-----------------|------------------------|
| 1 Personal Services ..... | 001             | \$ 214,000             |
| 2 Annual Increment .....  | 004             | 5,000                  |
| 3 Employee Benefits ..... | 010             | 75,000                 |
| 4 Unclassified .....      | 099             | 55,603                 |
| 5 Economic Loss Claim     |                 |                        |
| 6 Payment Fund (R) .....  | 334             | <u>2,921,500</u>       |
| 7 Total .....             |                 | \$ 3,271,103           |

---

\* **CLERK'S NOTE:** The Governor struck language on line 52 through line 53.

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 2006 is hereby reappropriated for  
 11 expenditure during the fiscal year 2007.

### EXECUTIVE

#### *94-Auditor's Office-*

#### *Land Operating Fund*

(WV Code Chapters 11A, 12 and 36)

#### Fund 1206 FY 2007 Org 1200

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 256,786     |
| 2 | Annual Increment .....  | 004 | 7,500          |
| 3 | Employee Benefits ..... | 010 | 92,952         |
| 4 | Unclassified .....      | 099 | <u>676,054</u> |
| 5 | Total .....             |     | \$ 1,033,292   |

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.

#### *95-Auditor's Office-*

#### *Securities Regulation Fund*

(WV Code Chapter 32)

#### Fund 1225 FY 2007 Org 1200



|   |                         |     |                  |
|---|-------------------------|-----|------------------|
| 1 | Personal Services ..... | 001 | \$ 1,083,357     |
| 2 | Annual Increment .....  | 004 | 14,700           |
| 3 | Employee Benefits ..... | 010 | 357,839          |
| 4 | Unclassified .....      | 099 | <u>1,391,122</u> |
| 5 | Total .....             |     | \$ 2,847,018     |

*96-Auditor's Office-**Technology Support and Acquisition*

(WV Code Chapter 12)

Fund 1233 FY 2007 Org 1200

|   |  |     |            |
|---|--|-----|------------|
| 1 | Unclassified-Total .....                                     | 096 | \$ 400,000 |
| 2 | Fifty percent of the deposits made into this fund shall be   |     |            |
| 3 | transferred to the Treasurer's Office-Technology Support and |     |            |
| 4 | Acquisition (fund 1329, org 1300) for expenditure for the    |     |            |
| 5 | purposes described in West Virginia Code § 12-3-10c.         |     |            |

*97-Auditor's Office-**Purchasing Card Administration Fund*

(WV Code Chapter 12)

Fund 1234 FY 2007 Org 1200

|   |                          |     |              |
|---|--------------------------|-----|--------------|
| 1 | Unclassified-Total ..... | 096 | \$ 1,216,702 |
|---|--------------------------|-----|--------------|

*98-Auditor's Office-**Office of the Chief Inspector*

(WV Code Chapter 6)

Fund 1235 FY 2007 Org 1200

|   |                         |     |              |
|---|-------------------------|-----|--------------|
| 1 | Personal Services ..... | 001 | \$ 1,931,509 |
|---|-------------------------|-----|--------------|

|     |                   |                |                |
|-----|-------------------|----------------|----------------|
| 142 |                   | APPROPRIATIONS | [Ch. 6         |
| 2   | Annual Increment  | 004            | 31,500         |
| 3   | Employee Benefits | 010            | 664,676        |
| 4   | Unclassified      | 099            | <u>622,315</u> |
| 5   | Total             |                | \$ 3,250,000   |

*99-Treasurer's Office-*

*College Prepaid Tuition and Savings Program*

*Administrative Account*

(WV Code Chapter 18)

Fund 1301 FY 2007 Org 1300

|   |                    |     |            |
|---|--------------------|-----|------------|
| 1 | Unclassified-Total | 096 | \$ 651,952 |
|---|--------------------|-----|------------|

*100-Treasurer's Office-*

*Technology Support and Acquisition*

(WV Code Chapter 12)

Fund 1329 FY 2007 Org 1300

|   |                    |     |            |
|---|--------------------|-----|------------|
| 1 | Unclassified-Total | 096 | \$ 475,000 |
|---|--------------------|-----|------------|

*101-Department of Agriculture-*

*Agriculture Fees Fund*

(WV Code Chapter 19)

Fund 1401 FY 2007 Org 1400

|   |                   |     |                  |
|---|-------------------|-----|------------------|
| 1 | Personal Services | 001 | \$ 1,013,144     |
| 2 | Annual Increment  | 004 | 16,000           |
| 3 | Employee Benefits | 010 | 400,081          |
| 4 | Unclassified      | 099 | <u>1,177,586</u> |
| 5 | Total             |     | \$ 2,606,811     |

*102-Department of Agriculture-*

*West Virginia Rural Rehabilitation Program*

(WV Code Chapter 19)

Fund 1408 FY 2007 Org 1400

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 51,204         |
| 2 | Annual Increment .....  | 004 |    | 800            |
| 3 | Employee Benefits ..... | 010 |    | 14,292         |
| 4 | Unclassified .....      | 099 |    | <u>977,000</u> |
| 5 | Total .....             |     | \$ | 1,043,296      |

*103-Department of Agriculture-*

*General John McCausland Memorial Farm*

(WV Code Chapter 19)

Fund 1409 FY 2007 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.

*104-Department of Agriculture-*

*Farm Operating Fund*

(WV Code Chapter 19)

Fund 1412 FY 2007 Org 1400

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

*105-Department of Agriculture-*

*Donated Food Fund*

(WV Code Chapter 19)

Fund 1446 FY 2007 Org 1400

1 Unclassified-Total . . . . . 096 \$3,062,331

*106-Department of Agriculture-*

*Integrated Predation Management Fund*

(WV Code Chapter 7)

Fund 1465 FY 2007 Org 1400

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

*107-Attorney General-*

*Antitrust Enforcement*

(WV Code Chapter 47)

Fund 1507 FY 2007 Org 1500

|   |                             |     |                |
|---|-----------------------------|-----|----------------|
| 1 | Personal Services . . . . . | 001 | \$ 252,718     |
| 2 | Annual Increment . . . . .  | 004 | 1,965          |
| 3 | Employee Benefits . . . . . | 010 | 80,436         |
| 4 | Unclassified . . . . .      | 099 | <u>134,749</u> |
| 5 | Total . . . . .             |     | \$ 469,868     |

*108-Attorney General-*

*Preneed Funeral Regulation Fund*

(WV Code Chapter 47)

Fund 1513 FY 2007 Org 1500

1 Unclassified-Total . . . . . 096 \$ 231,123

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

(WV Code Chapter 47)

Fund 1514 FY 2007 Org 1500

|   |                          |     |    |         |
|---|--------------------------|-----|----|---------|
| 1 | Unclassified-Total ..... | 096 | \$ | 755,000 |
|---|--------------------------|-----|----|---------|

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

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2007 Org 1600

|   |                         |     |    |                  |
|---|-------------------------|-----|----|------------------|
| 1 | Personal Services ..... | 001 | \$ | 1,136,600        |
| 2 | Annual Increment .....  | 004 |    | 10,300           |
| 3 | Employee Benefits ..... | 010 |    | 332,645          |
| 4 | Unclassified .....      | 099 |    | <u>1,055,306</u> |
| 5 | Total .....             |     | \$ | 2,534,851        |

*111-Secretary of State-**State Election Fund*

(WV Code Chapter 3)

Fund 1614 FY 2007 Org 1600

1 Any unexpended balance remaining in the appropriation for  
 2 Unclassified-Total (fund 1614, activity 096) at the close of the  
 3 fiscal year 2006 is hereby reappropriated for expenditure during  
 4 the fiscal year 2007.

**DEPARTMENT OF ADMINISTRATION***112-Office of the Secretary-*

*Tobacco Settlement Fund*

(WV Code Chapter 4)

Fund 2041 FY 2007 Org 0201

1 Tobacco Settlement Fund-Transfer . . . . 902 \$ 25,400,000

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.

*113-Division of Information Services and Communications*

(WV Code Chapter 5A)

Fund 2220 FY 2007 Org 0210

|   |                             |     |                  |
|---|-----------------------------|-----|------------------|
| 1 | Personal Services . . . . . | 001 | \$ 10,519,733    |
| 2 | Annual Increment . . . . .  | 004 | 145,000          |
| 3 | Employee Benefits . . . . . | 010 | 3,190,588        |
| 4 | Unclassified . . . . .      | 099 | <u>3,440,000</u> |
| 5 | Total . . . . .             |     | \$ 17,295,321    |

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

14 ~~\*From the above fund, the provisions of West Virginia~~  
15 ~~Code §11B-2-18 shall not operate to permit expenditures in~~  
16 ~~excess of the funds authorized for expenditure herein.~~

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\* CLERK'S NOTE: The Governor struck language on line 14 through line 16.

*114-Division of Personnel*

(WV Code Chapter 29)

Fund 2440 FY 2007 Org 0222

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 2,644,457   |
| 2 | Annual Increment .....  | 004 | 58,190         |
| 3 | Employee Benefits ..... | 010 | 916,528        |
| 4 | Unclassified .....      | 099 | <u>974,509</u> |
| 5 | Total .....             |     | \$ 4,593,684   |

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.

*115-WV Prosecuting Attorneys Institute*

(WV Code Chapter 7)

Fund 2521 FY 2007 Org 0228

|   |                              |     |            |
|---|------------------------------|-----|------------|
| 1 | Unclassified-Total (R) ..... | 096 | \$ 545,887 |
|---|------------------------------|-----|------------|

2 Any unexpended balance remaining in the appropriation for  
 3 Unclassified-Total (fund 2521, activity 096) at the close of the  
 4 fiscal year 2006 is hereby reappropriated for expenditure during  
 5 the fiscal year 2007.

*116-Office of Technology*

(WV Code Chapter 5A)

Fund 2531 FY 2007 Org 0231

|   |                    |     |                |
|---|--------------------|-----|----------------|
| 1 | Unclassified ..... | 099 | \$ 1,880,405   |
| 2 | EPSCoR .....       | 571 | <u>150,000</u> |
| 3 | Total .....        |     | \$ 2,030,405   |

4 From the above fund, the provisions of West Virginia Code  
 5 §11B-2-18 shall not operate to permit expenditures in excess of  
 6 the funds authorized for expenditure herein.

**DEPARTMENT OF COMMERCE**

*117-Division of Forestry*

(WV Code Chapter 19)

Fund 3081 FY 2007 Org 0305

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 349,920        |
| 2 | Annual Increment .....  | 004 |    | 4,750          |
| 3 | Employee Benefits ..... | 010 |    | 121,458        |
| 4 | Unclassified .....      | 099 |    | <u>260,795</u> |
| 5 | Total .....             |     | \$ | 736,923        |

*118-Division of Forestry-*

*Timbering Operations Enforcement Fund*

(WV Code Chapter 19)

Fund 3082 FY 2007 Org 0305

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

*119-Division of Forestry-*

*Severance Tax Operations*

(WV Code Chapter 11)

Fund 3084 FY 2007 Org 0305

|   |                          |     |    |           |
|---|--------------------------|-----|----|-----------|
| 1 | Unclassified-Total ..... | 096 | \$ | 2,839,024 |
|---|--------------------------|-----|----|-----------|



*120-Geological and Economic Survey*

(WV Code Chapter 29)

Fund 3100 FY 2007 Org 0306

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 43,480         |
| 2 | Annual Increment .....  | 004 |    | 584            |
| 3 | Employee Benefits ..... | 010 |    | 15,227         |
| 4 | Unclassified .....      | 099 |    | <u>157,099</u> |
| 5 | Total .....             |     | \$ | 216,390        |

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

*121-West Virginia Development Office-*

*Energy Assistance*

(WV Code Chapter 5B)

Fund 3144 FY 2007 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 2006 is hereby reappropriated for expenditure  
 5 during the fiscal year 2007.

*122-West Virginia Development Office-*

*Office of Coal Field Community Development*

(WV Code Chapter 5B)

Fund 3162 FY 2007 Org 0307

|   |                              |     |    |         |
|---|------------------------------|-----|----|---------|
| 1 | Unclassified-Total (R) ..... | 096 | \$ | 694,104 |
|---|------------------------------|-----|----|---------|

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 2006 is hereby reappropriated for expenditure  
 5 during the fiscal year 2007.

*123-Division of Labor-*

*Contractor Licensing Board Fund*

(WV Code Chapter 21)

Fund 3187 FY 2007 Org 0308

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 993,874     |
| 2 | Annual Increment .....  | 004 | 14,663         |
| 3 | Employee Benefits ..... | 010 | 435,959        |
| 4 | Unclassified .....      | 099 | <u>475,769</u> |
| 5 | Total .....             |     | \$ 1,920,265   |

*124-Division of Labor-*

*Elevator Safety Act*

(WV Code Chapter 21)

Fund 3188 FY 2007 Org 0308

|   |                         |     |               |
|---|-------------------------|-----|---------------|
| 1 | Personal Services ..... | 001 | \$ 76,697     |
| 2 | Annual Increment .....  | 004 | 660           |
| 3 | Employee Benefits ..... | 010 | 25,117        |
| 4 | Unclassified .....      | 099 | <u>74,262</u> |
| 5 | Total .....             |     | \$ 176,736    |

*125-Division of Labor-*

*Crane Operator Certification Fund*

(WV Code Chapter 21)

Fund 3191 FY 2007 Org 0308

1 Unclassified-Total ..... 096 \$ 111,271

*126-Division of Labor-*

*Amusement Rides and Amusement Attraction Safety Fund*

(WV Code Chapter 21)

Fund 3192 FY 2007 Org 0308

1 Unclassified-Total ..... 096 \$ 102,172

*127-Division of Labor-*

*State Manufactured Housing Administration Fund*

(WV Code Chapter 21)

Fund 3195 FY 2007 Org 0310

|   |                         |     |    |              |
|---|-------------------------|-----|----|--------------|
| 1 | Personal Services ..... | 001 | \$ | 97,000       |
| 2 | Annual Increment .....  | 004 |    | 1,508        |
| 3 | Employee Benefits ..... | 010 |    | 45,811       |
| 4 | Unclassified .....      | 099 |    | 27,377       |
| 5 | BRIM Premium .....      | 913 |    | <u>3,304</u> |
| 6 | Total .....             |     | \$ | 175,000      |

*128-Division of Natural Resources*

(WV Code Chapter 20)

Fund 3200 FY 2007 Org 0310

|   |                          |     |    |           |
|---|--------------------------|-----|----|-----------|
| 1 | Wildlife Resources ..... | 023 | \$ | 6,824,103 |
| 2 | Administration .....     | 155 |    | 1,845,985 |

|   |                             |     |                  |
|---|-----------------------------|-----|------------------|
| 3 | Capital Improvements and    |     |                  |
| 4 | Land Purchase (R) . . . . . | 248 | 1,504,254        |
| 5 | Law Enforcement . . . . .   | 806 | <u>6,877,993</u> |
| 6 | Total . . . . .             |     | \$ 17,052,335    |

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

10       Any unexpended balances remaining in the appropriations  
11 for Point of Sales Licensing System (fund 3200, activity 043),  
12 Capital Improvements and Land Purchase (fund 3200, activity  
13 248), and DEP-Compliance Mandate-Fish Hatchery (fund 3200,  
14 activity 668) at the close of the fiscal year 2006 are hereby  
15 reappropriated for expenditure during the fiscal year 2007.

*129-Division of Natural Resources-*

*Game, Fish and Aquatic Life Fund*

(WV Code Chapter 20)

Fund 3202 FY 2007 Org 0310

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

*130-Division of Natural Resources-*

*Nongame Fund*

(WV Code Chapter 20)

Fund 3203 FY 2007 Org 0310

|   |                             |     |                |
|---|-----------------------------|-----|----------------|
| 1 | Personal Services . . . . . | 001 | \$ 398,955     |
| 2 | Annual Increment . . . . .  | 004 | 4,300          |
| 3 | Employee Benefits . . . . . | 010 | 141,660        |
| 4 | Unclassified . . . . .      | 099 | <u>436,339</u> |
| 5 | Total . . . . .             |     | \$ 981,254     |

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

(WV Code Chapter 20)

Fund 3205 FY 2007 Org 0310

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 239,068        |
| 2 | Annual Increment .....  | 004 |    | 6,400          |
| 3 | Employee Benefits ..... | 010 |    | 91,219         |
| 4 | Unclassified .....      | 099 |    | <u>167,218</u> |
| 5 | Total .....             |     | \$ | 503,905        |

*132-Division of Natural Resources-**Whitewater Study and Improvement Fund*

(WV Code Chapter 20)

Fund 3253 FY 2007 Org 0310

|   |                          |     |    |         |
|---|--------------------------|-----|----|---------|
| 1 | Unclassified-Total ..... | 096 | \$ | 186,595 |
|---|--------------------------|-----|----|---------|

*133-Division of Natural Resources-**Whitewater Advertising and Promotion Fund*

(WV Code Chapter 20)

Fund 3256 FY 2007 Org 0310

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

*134-Miners' Health, Safety and Training Fund*

(WV Code Chapter 22A)

Fund 3355 FY 2007 Org 0314

|   |                         |     |    |         |
|---|-------------------------|-----|----|---------|
| 1 | Personal Services ..... | 001 | \$ | 402,000 |
|---|-------------------------|-----|----|---------|

|   |                                   |     |                  |
|---|-----------------------------------|-----|------------------|
| 2 | Annual Increment .....            | 004 | 550              |
| 3 | Employee Benefits .....           | 010 | 115,892          |
| 4 | WV Mining Extension Service ..... | 026 | 150,000          |
| 5 | Unclassified .....                | 099 | <u>1,928,130</u> |
| 6 | Total .....                       |     | \$ 2,596,572     |

7 From the appropriation above (fund 3355) at least \$500,000  
8 shall be used in developing, procuring and/or deploying,  
9 technologies to assist in locating and communicating with  
10 trapped miners, supporting life, transporting rescue personnel  
11 and rescued individuals through underground mines and  
12 otherwise assist with mine rescue operations.

### DEPARTMENT OF EDUCATION

#### *135-State Board of Education-*

#### *Strategic Staff Development*

(WV Code Chapter 18)

Fund 3937 FY 2007 Org 0402

1 Unclassified-Total (R) ..... 096 \$ 500,000

2 Any unexpended balance remaining in the appropriation for  
3 Unclassified-Total (fund 3937, activity 096) at the close of the  
4 fiscal year 2006 is hereby reappropriated for expenditure during  
5 the fiscal year 2007.

#### *136-State Department of Education-*

#### *School Building Authority*

(WV Code Chapter 18)

Fund 3959 FY 2007 Org 0402

1 Personal Services ..... 001 \$ 670,319

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 2 | Annual Increment .....  | 004 | 8,200          |
| 3 | Employee Benefits ..... | 010 | 237,754        |
| 4 | Unclassified .....      | 099 | <u>266,715</u> |
| 5 | Total .....             |     | \$1,182,988    |

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.

*137-State Department of Education-*

*FFA-FHA Camp and Conference Center*

(WV Code Chapter 18)

Fund 3960 FY 2007 Org 0402

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 850,000     |
| 2 | Annual Increment .....  | 004 | 12,100         |
| 3 | Employee Benefits ..... | 010 | 310,807        |
| 4 | Unclassified .....      | 099 | <u>777,093</u> |
| 5 | Total .....             |     | \$ 1,950,000   |

**DEPARTMENT OF EDUCATION AND THE ARTS**

*138-Office of the Secretary-*

*Lottery Education Fund Interest Earnings-*

*Control Account*

(WV Code Chapter 29)

Fund 3508 FY 2007 Org 0431

|   |                        |     |            |
|---|------------------------|-----|------------|
| 1 | EPSCoR—Total (R) ..... | 651 | \$ 352,659 |
|---|------------------------|-----|------------|

2 Any unexpended balance remaining in the appropriation for  
 3 Unclassified–Total (fund 3508, activity 096) and  
 4 EPSCoR—Total (fund 3508, activity 651) at the close of the  
 5 fiscal year 2006 are hereby reappropriated for expenditure  
 6 during the fiscal year 2007.

*139-Division of Culture and History—*

*Public Records and Preservation Revenue Account*

(WV Code Chapter 5A)

Fund 3542 FY 2007 Org 0432

|   |                              |     |            |
|---|------------------------------|-----|------------|
| 1 | Unclassified–Total . . . . . | 096 | \$ 934,407 |
|---|------------------------------|-----|------------|

*140-State Board of Rehabilitation-*

*Division of Rehabilitation Services-*

*West Virginia Rehabilitation Center-*

*Special Account*

(WV Code Chapter 18)

Fund 8664 FY 2007 Org 0932

|   |                                       |     |               |
|---|---------------------------------------|-----|---------------|
| 1 | Unclassified . . . . .                | 099 | \$ 2,766,188  |
| 2 | Workshop Development . . . . .        | 163 | 450,000       |
| 3 | Workshop-Supported Employment . . . . | 484 | <u>50,000</u> |
| 4 | Total . . . . .                       |     | \$ 3,266,188  |

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*141-Solid Waste Management Board*

(WV Code Chapter 22C)

Fund 3288 FY 2007 Org 0312



|   |                         |     |                  |
|---|-------------------------|-----|------------------|
| 1 | Personal Services ..... | 001 | \$ 595,650       |
| 2 | Annual Increment .....  | 004 | 3,800            |
| 3 | Employee Benefits ..... | 010 | 186,481          |
| 4 | Unclassified .....      | 099 | <u>1,759,569</u> |
| 5 | Total .....             |     | \$ 2,545,500     |

*142-Division of Environmental Protection-*

*The Hazardous Waste Management Fund*

(WV Code Chapter 22)

Fund 3023 FY 2007 Org 0313

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 301,676     |
| 2 | Annual Increment .....  | 004 | 1,500          |
| 3 | Employee Benefits ..... | 010 | 81,852         |
| 4 | Unclassified .....      | 099 | <u>212,263</u> |
| 5 | Total .....             |     | \$ 597,291     |

*143-Division of Environmental Protection-*

*Air Pollution Education and Environment Fund*

(WV Code Chapter 22)

Fund 3024 FY 2007 Org 0313

|   |                          |     |            |
|---|--------------------------|-----|------------|
| 1 | Unclassified—Total ..... | 096 | \$ 990,609 |
|---|--------------------------|-----|------------|

*144-Division of Environmental Protection-*

*Special Reclamation Fund*

(WV Code Chapter 22)

Fund 3321 FY 2007 Org 0313

|   |                         |     |              |
|---|-------------------------|-----|--------------|
| 1 | Personal Services ..... | 001 | \$ 1,200,710 |
|---|-------------------------|-----|--------------|

|   |                   |     |                   |
|---|-------------------|-----|-------------------|
| 2 | Annual Increment  | 004 | 12,500            |
| 3 | Employee Benefits | 010 | 414,026           |
| 4 | Unclassified      | 099 | <u>16,292,357</u> |
| 5 | Total             |     | \$ 17,919,593     |

*145-Division of Environmental Protection-*

*Oil and Gas Reclamation Fund*

(WV Code Chapter 22)

Fund 3322 FY 2007 Org 0313

|   |                    |     |            |
|---|--------------------|-----|------------|
| 1 | Unclassified-Total | 096 | \$ 340,294 |
|---|--------------------|-----|------------|

*146-Division of Environmental Protection-*

*Oil and Gas Operating Permit and Processing Fund*

(WV Code Chapter 22)

Fund 3323 FY 2007 Org 0313

|   |                   |     |                |
|---|-------------------|-----|----------------|
| 1 | Personal Services | 001 | \$ 440,188     |
| 2 | Annual Increment  | 004 | 4,540          |
| 3 | Employee Benefits | 010 | 154,105        |
| 4 | Unclassified      | 099 | <u>521,435</u> |
| 5 | Total             |     | \$ 1,120,268   |

*147-Division of Environmental Protection-*

*Mining and Reclamation Operations Fund*

(WV Code Chapter 22)

Fund 3324 FY 2007 Org 0313

|   |                   |     |              |
|---|-------------------|-----|--------------|
| 1 | Personal Services | 001 | \$ 4,510,038 |
| 2 | Annual Increment  | 004 | 53,706       |

|   |                         |     |                  |
|---|-------------------------|-----|------------------|
| 3 | Employee Benefits ..... | 010 | 1,479,236        |
| 4 | Unclassified .....      | 099 | <u>2,529,226</u> |
| 5 | Total .....             |     | \$ 8,572,206     |

*148-Division of Environmental Protection-*

*The Underground Storage Tank*

*Administrative Fund*

(WV Code Chapter 22)

Fund 3325 FY 2007 Org 0313

|   |                         |     |               |
|---|-------------------------|-----|---------------|
| 1 | Personal Services ..... | 001 | \$ 351,926    |
| 2 | Annual Increment .....  | 004 | 6,650         |
| 3 | Employee Benefits ..... | 010 | 129,545       |
| 4 | Unclassified .....      | 099 | <u>72,846</u> |
| 5 | Total .....             |     | \$ 560,967    |

*149-Division of Environmental Protection-*

*The Hazardous Waste Emergency Response Fund*

(WV Code Chapter 22)

Fund 3331 FY 2007 Org 0313

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 515,077     |
| 2 | Annual Increment .....  | 004 | 8,425          |
| 3 | Employee Benefits ..... | 010 | 178,229        |
| 4 | Unclassified .....      | 099 | <u>838,900</u> |
| 5 | Total .....             |     | \$ 1,540,631   |

*150-Division of Environmental Protection-*

*Solid Waste Reclamation and*

*Environmental Response Fund*

## (WV Code Chapter 22)

Fund 3332 FY 2007 Org 0313

|   |                         |     |                  |
|---|-------------------------|-----|------------------|
| 1 | Personal Services ..... | 001 | \$ 741,948       |
| 2 | Annual Increment .....  | 004 | 11,800           |
| 3 | Employee Benefits ..... | 010 | 248,793          |
| 4 | Unclassified .....      | 099 | <u>3,751,889</u> |
| 5 | Total .....             |     | \$ 4,754,430     |

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

## (WV Code Chapter 22)

Fund 3333 FY 2007 Org 0313

|   |                         |     |                  |
|---|-------------------------|-----|------------------|
| 1 | Personal Services ..... | 001 | \$ 1,607,480     |
| 2 | Annual Increment .....  | 004 | 25,850           |
| 3 | Employee Benefits ..... | 010 | 603,617          |
| 4 | Unclassified .....      | 099 | <u>1,033,940</u> |
| 5 | Total .....             |     | \$ 3,270,887     |

*152-Division of Environmental Protection-**Air Pollution Control Fund*

## (WV Code Chapter 22)

Fund 3336 FY 2007 Org 0313

|   |                         |     |                  |
|---|-------------------------|-----|------------------|
| 1 | Personal Services ..... | 001 | \$ 4,165,018     |
| 2 | Annual Increment .....  | 004 | 42,275           |
| 3 | Employee Benefits ..... | 010 | 1,332,111        |
| 4 | Unclassified .....      | 099 | <u>2,013,604</u> |
| 5 | Total .....             |     | \$ 7,553,008     |

*153-Division of Environmental Protection-**Environmental Laboratory**Certification Fund*

(WV Code Chapter 22)

Fund 3340 FY 2007 Org 0313

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 152,237        |
| 2 | Annual Increment .....  | 004 |    | 2,450          |
| 3 | Employee Benefits ..... | 010 |    | 56,024         |
| 4 | Unclassified .....      | 099 |    | <u>145,075</u> |
| 5 | Total .....             |     | \$ | 355,786        |

*154-Division of Environmental Protection-**Stream Restoration Fund*

(WV Code Chapter 22)

Fund 3349 FY 2007 Org 0313

|   |                          |     |    |         |
|---|--------------------------|-----|----|---------|
| 1 | Unclassified-Total ..... | 096 | \$ | 945,000 |
|---|--------------------------|-----|----|---------|

*155-Division of Environmental Protection-**Litter Control Fund*

(WV Code Chapter 22)

Fund 3486 FY 2007 Org 0313

|   |                          |     |    |        |
|---|--------------------------|-----|----|--------|
| 1 | Unclassified-Total ..... | 096 | \$ | 40,000 |
|---|--------------------------|-----|----|--------|

*156-Division of Environmental Protection-**Recycling Assistance Fund*

(WV Code Chapter 22)

Fund 3487 FY 2007 Org 0313

|   |                         |     |    |                  |
|---|-------------------------|-----|----|------------------|
| 1 | Personal Services ..... | 001 | \$ | 384,884          |
| 2 | Annual Increment .....  | 004 |    | 4,350            |
| 3 | Employee Benefits ..... | 010 |    | 155,464          |
| 4 | Unclassified (R) .....  | 099 |    | <u>2,202,034</u> |
| 5 | Total .....             |     | \$ | 2,746,732        |

6 Any unexpended balance remaining in Unclassified (fund  
7 3487, activity 099) at the close of the fiscal year 2006 is hereby  
8 reappropriated for expenditure during the fiscal year 2007.

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

(WV Code Chapter 22)

Fund 3490 FY 2007 Org 0313

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 772,296        |
| 2 | Annual Increment .....  | 004 |    | 8,300          |
| 3 | Employee Benefits ..... | 010 |    | 277,645        |
| 4 | Unclassified .....      | 099 |    | <u>477,178</u> |
| 5 | Total .....             |     | \$ | 1,535,419      |

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

(WV Code Chapter 22C)

Fund 3371 FY 2007 Org 0315

|   |                         |     |    |         |
|---|-------------------------|-----|----|---------|
| 1 | Personal Services ..... | 001 | \$ | 152,469 |
| 2 | Annual Increment .....  | 004 |    | 2,200   |

|   |                         |     |               |
|---|-------------------------|-----|---------------|
| 3 | Employee Benefits ..... | 010 | 36,553        |
| 4 | Unclassified .....      | 099 | <u>33,206</u> |
| 5 | Total .....             |     | \$ 224,428    |

**DEPARTMENT OF HEALTH  
AND HUMAN RESOURCES**

*159-Board of Barbers and Cosmetologists*

(WV Code Chapters 16 and 30)

Fund 5425 FY 2007 Org 0505

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 243,796     |
| 2 | Annual Increment .....  | 004 | 5,761          |
| 3 | Employee Benefits ..... | 010 | 103,375        |
| 4 | Unclassified .....      | 099 | <u>101,900</u> |
| 5 | Total .....             |     | \$ 454,832     |

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.

*160-WV Board of Medicine*

(WV Code Chapter 30)

Fund 5106 FY 2007 Org 0506

|   |                          |     |              |
|---|--------------------------|-----|--------------|
| 1 | Unclassified-Total ..... | 096 | \$ 1,186,978 |
|---|--------------------------|-----|--------------|

*161-Division of Health-*

*Tobacco Settlement Expenditure Fund*

(WV Code Chapter 4)

Fund 5124 FY 2007 Org 0506

|   |                                     |     |                  |
|---|-------------------------------------|-----|------------------|
| 1 | ABCA Tobacco Retailer Education     |     |                  |
| 2 | Program-Transfer .....              | 239 | \$ 200,000       |
| 3 | Institutional Facilities            |     |                  |
| 4 | Operations (R) .....                | 335 | 19,549,408       |
| 5 | Tobacco Education Program (R) ..... | 906 | <u>5,650,592</u> |
| 6 | Total .....                         |     | \$ 25,400,000    |

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 2006 are hereby reappropriated for  
11      expenditure during the fiscal year 2007.

12       From the above appropriation for ABCA Tobacco Retailer  
13      Education Program-Transfer (activity 239), \$200,000 shall be  
14      transferred to the Alcohol Beverage Control Administration  
15      (fund 7352, org 0708) for expenditure.

16       From the above appropriation to Tobacco Education  
17      Program (activity 906), \$250,000 shall be transferred to West  
18      Virginia State Police (fund 6502, org 0612) for Enhanced Drug  
19      Enforcement.

20       The secretary of the department of health and human  
21      resources, prior to the beginning of the fiscal year, shall file  
22      with the legislative auditor and the department of revenue an  
23      expenditure schedule for each formerly separate spending unit  
24      which has been consolidated into the above account and which  
25      receives a portion of the above appropriation for Institutional  
26      Facilities Operations. The secretary shall also, within fifteen  
27      days after the close of the six-month period of said fiscal year,  
28      file with the legislative auditor and the department of revenue  
29      an itemized report of expenditures made during the preceding  
30      six-month period.

31       Additional funds have been appropriated in fund 0525,  
32      fiscal year 2007, organization 0506, and fund 5156, fiscal year



33 2007, organization 0506, for the operation of the institutional  
 34 facilities. The secretary of the department of health and human  
 35 resources is authorized to utilize up to ten percent of the funds  
 36 from the Institutional Facilities Operations line item to facilitate  
 37 cost effective and cost saving services at the community level.

38 From the above appropriation to Institutional Facilities  
 39 Operations, together with available funds from the division of  
 40 health-hospital services revenue account (fund 5156, activity  
 41 335) and consolidated medical services fund (fund 0525,  
 42 activity 335), on July 1, 2006, the sum of one hundred sixty  
 43 thousand dollars shall be transferred to the department of  
 44 agriculture-land division as advance payment for the purchase  
 45 of food products; actual payments for such purchases shall not  
 46 be required until such credits have been completely expended.

*162-Division of Health-*

*Vital Statistics*

(WV Code Chapter 16)

Fund 5144 FY 2007 Org 0506

|   |                         |     |               |
|---|-------------------------|-----|---------------|
| 1 | Personal Services ..... | 001 | \$ 291,806    |
| 2 | Annual Increment .....  | 004 | 9,003         |
| 3 | Employee Benefits ..... | 010 | 130,114       |
| 4 | Unclassified. ....      | 099 | <u>98,688</u> |
| 5 | Total .....             |     | \$ 529,611    |

*163-Division of Health-*

*Hospital Services Revenue Account*

*(Special Fund)*

*(Capital Improvement, Renovation and Operations)*

## (WV Code Chapter 16)

Fund 5156 FY 2007 Org 0506

|   |                              |     |                   |
|---|------------------------------|-----|-------------------|
| 1 | Debt Service (R) .....       | 040 | \$ 2,420,000      |
| 2 | Institutional Facilities     |     |                   |
| 3 | Operations (R) .....         | 335 | 38,674,129        |
| 4 | Medical Services Trust Fund- |     |                   |
| 5 | Transfer (R) .....           | 512 | <u>23,300,000</u> |
| 6 | Total .....                  |     | \$ 64,394,129     |

7 Any unexpended balance remaining in the appropriation for  
8 hospital services revenue account at the close of the fiscal year  
9 2006 is hereby reappropriated for expenditure during the fiscal  
10 year 2007, except for fund 5156, activity 040 (fiscal year 2005)  
11 which shall expire on June 30, 2006.

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

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

22 Necessary funds from the above appropriation may be used  
23 for medical facilities operations, either in connection with this  
24 account or in connection with the line item designated Institu-  
25 tional Facilities Operations in the consolidated medical service  
26 fund (fund 0525, fiscal year 2007, organization 0506) and the  
27 tobacco settlement expenditure fund (fund 5124, fiscal year  
28 2007, organization 0506).

29 From the above appropriation to Institutional Facilities  
 30 Operations, together with available funds from the consolidated  
 31 medical services fund (fund 0525, activity 335) and the tobacco  
 32 settlement expenditure fund (fund 5124, activity 335), on July  
 33 1, 2006, the sum of one hundred sixty thousand dollars shall be  
 34 transferred to the department of agriculture-land division as  
 35 advance payment for the purchase of food products; actual  
 36 payments for such purchases shall not be required until such  
 37 credits have been completely expended.

*164-Division of Health-*

*Laboratory Services*

(WV Code Chapter 16)

Fund 5163 FY 2007 Org 0506

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 514,710     |
| 2 | Annual Increment .....  | 004 | 11,060         |
| 3 | Employee Benefits ..... | 010 | 208,533        |
| 4 | Unclassified .....      | 099 | <u>116,530</u> |
| 5 | Total .....             |     | \$ 850,833     |

*165-Division of Health-*

*Health Facility Licensing*

(WV Code Chapter 16)

Fund 5172 FY 2007 Org 0506

|   |                         |     |               |
|---|-------------------------|-----|---------------|
| 1 | Personal Services ..... | 001 | \$ 204,830    |
| 2 | Annual Increment .....  | 004 | 3,200         |
| 3 | Employee Benefits ..... | 010 | 75,923        |
| 4 | Unclassified .....      | 099 | <u>93,313</u> |
| 5 | Total .....             |     | \$ 377,266    |

*166-Division of Health-*

*Hepatitis B Vaccine*

(WV Code Chapter 16)

Fund 5183 FY 2007 Org 0506

|   |                         |     |    |                  |
|---|-------------------------|-----|----|------------------|
| 1 | Personal Services ..... | 001 | \$ | 57,871           |
| 2 | Annual Increment .....  | 004 |    | 1,530            |
| 3 | Employee Benefits ..... | 010 |    | 22,056           |
| 4 | Unclassified. ....      | 099 |    | <u>2,996,007</u> |
| 5 | Total .....             |     | \$ | 3,077,464        |

*167-Division of Health-*

*Lead Abatement Fund*

(WV Code Chapter 16)

Fund 5204 FY 2007 Org 0506

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

*168-Division of Health-*

*West Virginia Birth to Three Fund*

(WV Code Chapter 16)

Fund 5214 FY 2007 Org 0506

|   |                         |     |    |                   |
|---|-------------------------|-----|----|-------------------|
| 1 | Personal Services ..... | 001 | \$ | 511,400           |
| 2 | Annual Increment .....  | 004 |    | 4,750             |
| 3 | Employee Benefits ..... | 010 |    | 202,041           |
| 4 | Unclassified .....      | 099 |    | <u>19,141,165</u> |
| 5 | Total .....             |     | \$ | 19,859,356        |

*169-Division of Health-*

*Tobacco Control Special Fund*

(WV Code Chapter 16)

Fund 5218 FY 2007 Org 0506

1 Unclassified—Total . . . . . 096 \$ 85,000

*170-West Virginia Health Care Authority—*

*Health Care Cost Review Fund*

(WV Code Chapter 16)

Fund 5375 FY 2007 Org 0507

|   |                               |     |                  |
|---|-------------------------------|-----|------------------|
| 1 | Personal Services . . . . .   | 001 | \$ 2,218,904     |
| 2 | Annual Increment . . . . .    | 004 | 25,000           |
| 3 | Employee Benefits . . . . .   | 010 | 688,250          |
| 4 | Hospital Assistance . . . . . | 025 | 600,000          |
| 5 | Unclassified . . . . .        | 099 | <u>3,089,545</u> |
| 6 | Total . . . . .               |     | \$ 6,621,699     |

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.

*171-Division of Human Services-*

*Health Care Provider Tax*

(WV Code Chapter 11)

Fund 5090 FY 2007 Org 0511

1 Medical Services . . . . . 189 \$173,816,000

|   |                                |     |                |
|---|--------------------------------|-----|----------------|
| 2 | Medical Services               |     |                |
| 3 | Administrative Costs . . . . . | 789 | <u>400,000</u> |
| 4 | Total . . . . .                |     | \$ 174,216,000 |

5       From the above appropriation, an amount not to exceed two  
6 hundred thousand dollars shall be transferred to a special  
7 revenue account in the treasury for use by the department of  
8 health and human resources for administrative purposes. The  
9 remainder of all moneys deposited in the fund shall be trans-  
10 ferred to the West Virginia medical services fund (fund 5084).

*172-Division of Human Services-*

*Child Support Enforcement*

(WV Code Chapter 48A)

Fund 5094 FY 2007 Org 0511

|   |                                  |     |               |
|---|----------------------------------|-----|---------------|
| 1 | Unclassified-Total (R) . . . . . | 096 | \$ 34,640,532 |
|---|----------------------------------|-----|---------------|

2       Any unexpended balance remaining in the appropriation for  
3 Unclassified-Total (fund 5094, activity 096) at the close of the  
4 fiscal year 2006 is hereby reappropriated for expenditure during  
5 the fiscal year 2007, except for fund 5094, activity 096, fiscal  
6 year 2004 which shall expire on June 30, 2006.

*173-Division of Human Services-*

*Medical Services Trust Fund*

(WV Code Chapter 9)

Fund 5185 FY 2007 Org 0511

|   |   |     |                |
|---|---|-----|----------------|
| 1 | Medical Services . . . . .              | 189 | \$ 30,556,594  |
| 2 | Medical Services Administrative Costs . | 789 | <u>501,411</u> |
| 3 | Total . . . . .                         |     | \$ 31,058,005  |

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

*174-Division of Human Services-*

*James "Tiger" Morton Catastrophic Illness Fund*

(WV Code Chapter 16)

Fund 5454 FY 2007 Org 0511.

1   Unclassified-Total . . . . . 096   \$1,607,564

*175-Family Protection Services Board-*

*Domestic Violence Legal Services Fund*

(WV Code Chapter 48)

Fund 5455 FY 2007 Org 0511.

1   Unclassified-Total . . . . . 096   \$ 588,022

**DEPARTMENT OF MILITARY AFFAIRS  
AND PUBLIC SAFETY**

*176-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 2007 Org 0601

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

*177-State Armory Board-**General Armory Fund*

(WV Code Chapter 15)

Fund 6057 FY 2007 Org 0603

|   |                          |     |    |         |
|---|--------------------------|-----|----|---------|
| 1 | Unclassified-Total ..... | 096 | \$ | 239,500 |
|---|--------------------------|-----|----|---------|

*178-West Virginia Division of Corrections-**Parolee Supervision Fees*

(WV Code Chapter 62)

Fund 6362 FY 2007 Org 0608

|   |                         |     |    |                |
|---|-------------------------|-----|----|----------------|
| 1 | Personal Services ..... | 001 | \$ | 260,195        |
| 2 | Annual Increment .....  | 004 |    | 1,651          |
| 3 | Employee Benefits ..... | 010 |    | 91,177         |
| 4 | Unclassified .....      | 099 |    | <u>371,204</u> |
| 5 | Total .....             |     | \$ | 74,227         |

*179-West Virginia State Police-**Motor Vehicle Inspection Fund*

(WV Code Chapter 17C)

Fund 6501 FY 2007 Org 0612



|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 1,009,166   |
| 2 | Annual Increment .....  | 004 | 23,450         |
| 3 | Employee Benefits ..... | 010 | 378,652        |
| 4 | Unclassified .....      | 099 | 299,640        |
| 5 | BRIM Premium .....      | 913 | <u>293,623</u> |
| 6 | Total .....             |     | \$ 2,004,531   |

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.

*180-West Virginia State Police-*

*Drunk Driving Prevention Fund*

(WV Code Chapter 15)

Fund 6513 FY 2007 Org 0612

|   |                    |     |                |
|---|--------------------|-----|----------------|
| 1 | Unclassified ..... | 099 | \$ 885,531     |
| 2 | BRIM Premium ..... | 913 | <u>149,953</u> |
| 3 | Total .....        |     | \$ 1,035,484   |

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.

*181-West Virginia State Police-*

*Surplus Real Property Proceeds Fund*

(WV Code Chapter 15)

Fund 6516 FY 2007 Org 0612

|   |                    |     |            |
|---|--------------------|-----|------------|
| 1 | Unclassified ..... | 099 | \$ 444,980 |
|---|--------------------|-----|------------|

|   |                    |     |            |
|---|--------------------|-----|------------|
| 2 | BRIM Premium ..... | 913 | 74,973     |
| 3 | Total .....        |     | \$ 519,953 |

*182-West Virginia State Police-*

*Surplus Transfer Account*

(WV Code Chapter 15)

Fund 6519 FY 2007 Org 0612

|   |                        |     |            |
|---|------------------------|-----|------------|
| 1 | Unclassified (R) ..... | 099 | \$ 312,002 |
| 2 | BRIM Premium .....     | 913 | 52,488     |
| 3 | Total .....            |     | \$ 364,490 |

4 Any unexpended balances remaining in the appropriations  
 5 for Helicopter Purchase (fund 6519, activity 063) and Unclassi-  
 6 fied (fund 6519, activity 099) at the close of the fiscal year  
 7 2006 are hereby reappropriated for expenditure during the fiscal  
 8 year 2007.

*183-West Virginia State Police-*

*Central Abuse Registry Fund*

(WV Code Chapter 15)

Fund 6527 FY 2007 Org 0612

|   |                    |     |            |
|---|--------------------|-----|------------|
| 1 | Unclassified ..... | 099 | \$ 197,183 |
| 2 | BRIM Premium ..... | 913 | 17,984     |
| 3 | Total .....        |     | \$ 215,167 |

*184-West Virginia State Police-*

*Bail Bond Enforcer Fund*

(WV Code Chapter 15)

Fund 6532 FY 2007 Org 0612

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

*185-Division of Veterans' Affairs-*

*Veterans' Facilities Support Fund*

(WV Code Chapter 9A)

Fund 6703 FY 2007 Org 0613

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

*186-Regional Jail and Correctional Facility Authority*

(WV Code Chapter 31)

Fund 6675 FY 2007 Org 0615

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 1,237,996   |
| 2 | Annual Increment .....  | 004 | 17,600         |
| 3 | Employee Benefits ..... | 010 | 410,948        |
| 4 | Debt Service .....      | 040 | 9,000,000      |
| 5 | Unclassified .....      | 099 | <u>545,235</u> |
| 6 | Total .....             |     | \$ 11,211,779  |

*187-Division of Veterans' Affairs-*

*Veterans' Home*

(WV Code Chapter 9A)

Fund 6754 FY 2007 Org 0618

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

*188-Fire Commission-*

*Fire Marshal Fees*

(WV Code Chapter 29)

Fund 6152 FY 2007 Org 0619

|   |                         |     |               |
|---|-------------------------|-----|---------------|
| 1 | Personal Services ..... | 001 | \$ 1,931,950  |
| 2 | Annual Increment .....  | 004 | 22,000        |
| 3 | Employee Benefits ..... | 010 | 677,799       |
| 4 | Unclassified .....      | 099 | 460,062       |
| 5 | BRIM Premium .....      | 913 | <u>58,013</u> |
| 6 | Total .....             |     | \$ 3,149,824  |

7       Any unexpended cash balance remaining in fund 6152 at  
8 the close of the fiscal year 2006 is hereby available for expendi-  
9 ture as part of the fiscal year 2007 appropriation.

*189-Division of Criminal Justice Services-*

*WV Community Corrections Fund*

(WV Code Chapter 62)

Fund 6386 FY 2007 Org 0620

|   |                          |     |              |
|---|--------------------------|-----|--------------|
| 1 | Unclassified-Total ..... | 096 | \$ 2,002,425 |
|---|--------------------------|-----|--------------|

*190-Criminal Justice Services-*

*Court Security Fund*

(WV Code Chapter 51)

Fund 6804 FY 2007 Org 0620

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

**DEPARTMENT OF REVENUE***191-Division of Banking*

(WV Code Chapter 31A)

Fund 3041 FY 2007 Org 0303

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 1,856,100   |
| 2 | Annual Increment .....  | 004 | 14,500         |
| 3 | Employee Benefits ..... | 010 | 516,459        |
| 4 | Unclassified .....      | 099 | <u>441,388</u> |
| 5 | Total .....             |     | \$ 2,828,447   |

*192-Tax Division-**Cemetery Company Account*

(WV Code Chapter 35)

Fund 7071 FY 2007 Org 0702

|   |                         |     |              |
|---|-------------------------|-----|--------------|
| 1 | Personal Services ..... | 001 | \$ 17,274    |
| 2 | Annual Increment .....  | 004 | 200          |
| 3 | Employee Benefits ..... | 010 | 5,845        |
| 4 | Unclassified .....      | 099 | <u>7,797</u> |
| 5 | Total .....             |     | \$ 31,116    |

*193-Tax Division-**Special Audit and Investigative Unit*

(WV Code Chapter 11)

Fund 7073 FY 2007 Org 0702

|   |                         |     |            |
|---|-------------------------|-----|------------|
| 1 | Personal Services ..... | 001 | \$ 857,754 |
| 2 | Annual Increment .....  | 004 | 18,600     |

|     |                   |                |                |        |
|-----|-------------------|----------------|----------------|--------|
| 178 |                   | APPROPRIATIONS |                | [Ch. 6 |
| 3   | Employee Benefits | 010            | 323,783        |        |
| 4   | Unclassified      | 099            | <u>229,847</u> |        |
| 5   | Total             |                | \$ 1,429,984   |        |

*194-Tax Division-*

*Special District Excise Tax Administration Fund*

(WV Code Chapter 11)

Fund 7086 FY 2007 Org 0702

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

*195-State Budget Office-*

*Public Employees Insurance Reserve Fund*

(WV Code Chapter 11B)

Fund 7400 FY 2007 Org 0703

|   |  |     |              |
|---|--|-----|--------------|
| 1 | Public Employees Insurance Reserve                         |     |              |
| 2 | Fund—Transfer  | 903 | \$ 6,200,000 |
| 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. |     |              |

*196-Insurance Commissioner-*

*Examination Revolving Fund*

(WV Code Chapter 33)

Fund 7150 FY 2007 Org 0704

|   |                   |     |            |
|---|-------------------|-----|------------|
| 1 | Personal Services | 001 | \$ 566,230 |
| 2 | Annual Increment  | 004 | 3,500      |

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 3 | Employee Benefits ..... | 010 | 154,536        |
| 4 | Unclassified .....      | 099 | <u>487,242</u> |
| 5 | Total .....             |     | \$ 1,211,508   |

*197-Insurance Commissioner-**Consumer Advocate*

(WV Code Chapter 33)

Fund 7151 FY 2007 Org 0704

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 459,528     |
| 2 | Annual Increment .....  | 004 | 3,500          |
| 3 | Employee Benefits ..... | 010 | 142,409        |
| 4 | Unclassified .....      | 099 | <u>157,851</u> |
| 5 | Total .....             |     | \$ 763,288     |

*198-Insurance Commissioner*

(WV Code Chapter 33)

Fund 7152 FY 2007 Org 0704

|   |                             |     |                   |
|---|-----------------------------|-----|-------------------|
| 1 | Personal Services (R) ..... | 001 | \$ 17,600,000     |
| 2 | Annual Increment (R) .....  | 004 | 227,232           |
| 3 | Employee Benefits (R) ..... | 010 | 6,300,000         |
| 4 | Unclassified (R) .....      | 099 | <u>12,050,000</u> |
| 5 | Total .....                 |     | \$ 36,177,232     |

6 Any unexpended balances remaining in the appropriations  
7 for Personal Services (fund 7152, activity 001), Annual  
8 Increment (fund 7152, activity 004), Employee Benefits (fund  
9 7152, activity 010), and Unclassified (fund 7152, activity  
10 099) at the close of the fiscal year 2006 are hereby  
11 reappropriated for expenditure during the fiscal year 2007.

12       The total amount of this appropriation shall be paid from a  
 13 special revenue fund out of collections of fees and charges as  
 14 provided by law.

*199-Insurance Commissioner –*

*Workers' Compensation Old Fund*

(WV Code Chapter 23)

Fund 7162 FY 2007 Org 0704

|   |                          |     |                |
|---|--------------------------|-----|----------------|
| 1 | Unclassified-Total ..... | 096 | \$ 708,750,000 |
|---|--------------------------|-----|----------------|

*200-Insurance Commissioner –*

*Workers' Compensation Uninsured Employers' Fund*

(WV Code Chapter 23)

Fund 7163 FY 2007 Org 0704

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

*201-Insurance Commissioner –*

*Self-Insured Employer Guaranty Risk Pool*

(WV Code Chapter 23)

Fund 7164 FY 2007 Org 0704

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

*202-Insurance Commissioner –*

*Self-Insured Employer Security Risk Pool*

(WV Code Chapter 23)



Fund 7165 FY 2007 Org 0704

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

*203-Insurance Commissioner –*

*Private Carrier Guaranty Fund*

(WV Code Chapter 23)

Fund 7166 FY 2007 Org 0704

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

*204-Insurance Commissioner –*

*Assigned Risk Fund*

(WV Code Chapter 23)

Fund 7167 FY 2007 Org 0704

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

*205-Municipal Bond Commission*

(WV Code Chapter 13)

Fund 7253 FY 2007 Org 0706

|   |                             |     |    |               |
|---|-----------------------------|-----|----|---------------|
| 1 | Personal Services . . . . . | 001 | \$ | 164,862       |
| 2 | Annual Increment . . . . .  | 004 |    | 4,300         |
| 3 | Employee Benefits . . . . . | 010 |    | 64,485        |
| 4 | Unclassified . . . . .      | 099 |    | <u>76,772</u> |
| 5 | Total . . . . .             |     | \$ | 310,419       |

*206-Racing Commission-*

*Relief Fund*

(WV Code Chapter 19)

Fund 7300 FY 2007 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.

*207-Racing Commission-*

*Administration and Promotion*

(WV Code Chapter 19)

Fund 7304 FY 2007 Org 0707

|   |                             |     |               |
|---|-----------------------------|-----|---------------|
| 1 | Personal Services . . . . . | 001 | \$ 68,244     |
| 2 | Annual Increment . . . . .  | 004 | 1,000         |
| 3 | Employee Benefits . . . . . | 010 | 24,534        |
| 4 | Unclassified . . . . .      | 099 | <u>39,661</u> |
| 5 | Total . . . . .             |     | \$ 133,439    |

*208-Racing Commission-*

*General Administration*

(WV Code Chapter 19)

Fund 7305 FY 2007 Org 0707

|   |                             |     |              |
|---|-----------------------------|-----|--------------|
| 1 | Personal Services . . . . . | 001 | \$ 2,048,800 |
| 2 | Annual Increment . . . . .  | 004 | 20,250       |

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 3 | Employee Benefits ..... | 010 | 494,228        |
| 4 | Unclassified .....      | 099 | <u>380,728</u> |
| 5 | Total .....             |     | \$ 2,944,006   |

*209-Racing Commission-*

*Administration, Promotion and Education Fund*

(WV Code Chapter 19)

Fund 7307 FY 2007 Org 0707

|   |                          |     |           |
|---|--------------------------|-----|-----------|
| 1 | Unclassified-Total ..... | 096 | \$ 61,425 |
|---|--------------------------|-----|-----------|

*210-Alcohol Beverage Control Administration-*

*Wine License Special Fund*

(WV Code Chapter 60)

Fund 7351 FY 2007 Org 0708

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 231,468     |
| 2 | Annual Increment .....  | 004 | 4,300          |
| 3 | Employee Benefits ..... | 010 | 96,476         |
| 4 | Unclassified .....      | 099 | <u>113,069</u> |
| 5 | Total .....             |     | \$ 445,313     |

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

*211-Alcohol Beverage Control Administration*

(WV Code Chapter 60)

Fund 7352 FY 2007 Org 0708

|   |                         |     |              |
|---|-------------------------|-----|--------------|
| 1 | Personal Services ..... | 001 | \$ 3,783,914 |
|---|-------------------------|-----|--------------|

|   |                         |     |                  |
|---|-------------------------|-----|------------------|
| 2 | Annual Increment .....  | 004 | 79,000           |
| 3 | Employee Benefits ..... | 010 | 1,608,590        |
| 4 | Unclassified (R) .....  | 099 | <u>2,306,060</u> |
| 5 | Total .....             |     | \$ 7,777,564     |

6 Any unexpended balance remaining in the appropriation for  
 7 Unclassified (fund 7352, activity 099) at the close of the fiscal  
 8 year 2006 is hereby reappropriated for expenditure during the  
 9 fiscal year 2007.

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

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

14 The above appropriation includes the salary of the commis-  
 15 sioner and the salaries, expenses and equipment of administra-  
 16 tive offices, warehouses and inspectors.

17 There is hereby appropriated from liquor revenues, in  
 18 addition to the above appropriation, the necessary amount for  
 19 the purchase of liquor as provided by law.

## DEPARTMENT OF TRANSPORTATION

### *212-Division of Motor Vehicles-*

#### *Driver's License Reinstatement Fund*

(WV Code Chapter 17B)

Fund 8213 FY 2007 Org 0802

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 519,460     |
| 2 | Annual Increment .....  | 004 | 7,300          |
| 3 | Employee Benefits ..... | 010 | 220,087        |
| 4 | Unclassified .....      | 099 | <u>899,122</u> |
| 5 | Total .....             |     | \$1,645,969    |

*213-Division of Motor Vehicles-**Driver Rehabilitation*

(WV Code Chapter 17C)

Fund 8214 FY 2007 Org 0802

|   |                              |     |    |         |
|---|------------------------------|-----|----|---------|
| 1 | Unclassified-Total . . . . . | 096 | \$ | 553,777 |
|---|------------------------------|-----|----|---------|

*214-Division of Motor Vehicles-**Insurance Certificate Fees*

(WV Code Chapter 20)

Fund 8215 FY 2007 Org 0802

|   |                             |     |    |                |
|---|-----------------------------|-----|----|----------------|
| 1 | Personal Services . . . . . | 001 | \$ | 635,340        |
| 2 | Annual Increment . . . . .  | 004 |    | 16,900         |
| 3 | Employee Benefits . . . . . | 010 |    | 265,878        |
| 4 | Unclassified . . . . .      | 099 |    | <u>112,142</u> |
| 5 | Total . . . . .             |     | \$ | 1,030,260      |

*215-Division of Motor Vehicles-**Motorboat Licenses*

(WV Code Chapter 20)

Fund 8216 FY 2007 Org 0802

|   |                              |     |    |         |
|---|------------------------------|-----|----|---------|
| 1 | Unclassified-Total . . . . . | 096 | \$ | 484,869 |
|---|------------------------------|-----|----|---------|

*216-Division of Motor Vehicles-**Returned Check Fees*

(WV Code Chapter 17)

Fund 8217 FY 2007 Org 0802

1 Unclassified-Total ..... 096 \$ 19,374

*217-Division of Motor Vehicles-*

*Dealer Recovery Fund*

(WV Code Chapter 17)

Fund 8220 FY 2007 Org 0802

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

*218-Division of Highways-*

*A. James Manchin Fund*

(WV Code Chapter 17)

Fund 8319 FY 2007 Org 0803

1 Unclassified-Total ..... 096 \$ 3,320,000

**HIGHER EDUCATION**

*219-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 2007 Org 0442

|   |  |     |                |
|---|--|-----|----------------|
| 1 | Debt Service (R) . . . . .                 | 040 | \$ 4,822,241   |
| 2 | General Capital Expenditures (R) . . . . . | 306 | <u>500,000</u> |
| 3 | Total . . . . .                            |     | \$ 5,322,241   |

4 Any unexpended balances remaining in the appropriations  
 5 at the close of fiscal year 2006 are hereby reappropriated for  
 6 expenditure during the fiscal year 2007, except for fund 4902,  
 7 activity 040 (fiscal year 2003), fund 4902, activity 306 (fiscal  
 8 year 2002), and fund 4902, activity 306 (fiscal year 2003)  
 9 which shall expire on June 30, 2006.

10 The total amount of this appropriation shall be paid from  
 11 the special capital improvements 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 on July 1.

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

*220-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 2007 Org 0442

|   |                            |     |               |
|---|----------------------------|-----|---------------|
| 1 | Debt Service (R) . . . . . | 040 | \$ 23,630,168 |
|---|----------------------------|-----|---------------|

|   |  |     |                |
|---|--|-----|----------------|
| 2 | General Capital Expenditures (R) . . . . | 306 | 500,000        |
| 3 | Facilities Planning                      |     |                |
| 4 | and Administration (R) . . . . .         | 386 | <u>394,139</u> |
| 5 | Total . . . . .                          |     | \$ 24,524,307  |

6 Any unexpended balances remaining in the appropriations  
7 at the close of fiscal year 2006 are hereby reappropriated for  
8 expenditure during the fiscal year 2007, except for fund 4903,  
9 activity 040 (fiscal year 2003), fund 4903, activity 040 (fiscal  
10 year 2004), fund 4903, activity 306 (fiscal year 2002), and fund  
11 4903, activity 306 (fiscal year 2003) which shall expire on June  
12 30, 2006.

13 The total amount of this appropriation shall be paid from  
14 the special capital improvement fund created in section eight,  
15 article ten, chapter eighteen-b of the code. Projects are to be  
16 paid on a cash basis and made available on July 1.

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

*221-Higher Education Policy Commission-*

*1977 State System Registration Fee Refund Revenue Con-  
struction Fund*

(WV Code Chapters 18 and 18B)

Fund 4905 FY 2007 Org 0442

1 Any unexpended balance remaining in the appropriation at  
2 the close of the fiscal year 2006 is hereby reappropriated for  
3 expenditure during the fiscal year 2007.

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.

*222-Higher Education Policy Commission-*

*Tuition Fee Revenue Bond Construction Fund*

*(WV Code Chapters 18 and 18B)*

Fund 4906 FY 2007 Org 0442

1 Any unexpended balance remaining in the appropriation at  
2 the close of the fiscal year 2006 is hereby reappropriated for  
3 expenditure during the fiscal year 2007.

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.

*223-Health Sciences-*

*West Virginia University Health Sciences Center*

*(WV Code Chapters 18 and 18B)*

Fund 4179 FY 2007 Org 0463

1 Unclassified-Total (R) . . . . . 096 \$ 15,479,774

2 Any unexpended balance remaining in the appropriation at  
 3 the close of fiscal year 2006 is hereby reappropriated for  
 4 expenditure during the fiscal year 2007.

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*224-Hospital Finance Authority*

(WV Code Chapter 16)

Fund 5475 FY 2007 Org 0509

|   |                             |     |    |               |
|---|-----------------------------|-----|----|---------------|
| 1 | Personal Services . . . . . | 001 | \$ | 46,924        |
| 2 | Annual Increment . . . . .  | 004 |    | 800           |
| 3 | Employee Benefits . . . . . | 010 |    | 17,652        |
| 4 | Unclassified. . . . .       | 099 |    | <u>30,188</u> |
| 5 | Total . . . . .             |     | \$ | 95,564        |

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.

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

(WV Code Chapter 30)

Fund 8517 FY 2007 Org 0906

|   |                              |     |    |         |
|---|------------------------------|-----|----|---------|
| 1 | Unclassified-Total . . . . . | 096 | \$ | 367,344 |
|---|------------------------------|-----|----|---------|

*226-WV Board of Examiners for Registered Professional Nurses*

(WV Code Chapter 30)

Fund 8520 FY 2007 Org 0907

|   |                              |     |    |         |
|---|------------------------------|-----|----|---------|
| 1 | Unclassified-Total . . . . . | 096 | \$ | 895,792 |
|---|------------------------------|-----|----|---------|

*227-Public Service Commission*

(WV Code Chapter 24)

Fund 8623 FY 2007 Org 0926

|   |                                       |     |                |
|---|---------------------------------------|-----|----------------|
| 1 | Personal Services . . . . .           | 001 | \$ 8,063,255   |
| 2 | Annual Increment . . . . .            | 004 | 130,000        |
| 3 | Employee Benefits . . . . .           | 010 | 2,722,622      |
| 4 | Unclassified . . . . .                | 099 | 2,813,563      |
| 5 | Weight Enforcement Program . . . . .  | 345 | 4,667,295      |
| 6 | Debt Payment/Capital Outlay . . . . . | 520 | 350,000        |
| 7 | BRIM Premium . . . . .                | 913 | <u>115,000</u> |
| 8 | Total . . . . .                       |     | \$ 18,861,735  |

9       The total amount of this appropriation except for the PSC  
10 Weight Enforcement appropriation (activity 345) shall be paid  
11 from a special revenue fund out of collection for special license  
12 fees from public service corporations as provided by law. The  
13 amount appropriated to the PSC Weight Enforcement (activity  
14 345) shall be paid from the state road fund as provided by law.

15       The Public Service Commission is authorized to spend up  
16 to \$500,000, from surplus funds in this account, to meet the  
17 expected deficiencies in the Motor Carrier Division account due  
18 to passage of enrolled house bill no. 2715, regular session,  
19 1998.

*228-Public Service Commission-*

*Gas Pipeline Division—*

*Public Service Commission Pipeline Safety Fund*

(WV Code Chapter 24B)

Fund 8624 FY 2007 Org 0926

|   |                             |     |            |
|---|-----------------------------|-----|------------|
| 1 | Personal Services . . . . . | 001 | \$ 155,617 |
|---|-----------------------------|-----|------------|

|     |                   |                |               |
|-----|-------------------|----------------|---------------|
| 192 |                   | APPROPRIATIONS | [Ch. 6        |
| 2   | Annual Increment  | 004            | 5,556         |
| 3   | Employee Benefits | 010            | 53,458        |
| 4   | Unclassified      | 099            | <u>85,753</u> |
| 5   | Total             |                | \$ 300,384    |

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.

*229-Public Service Commission-*

*Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8625 FY 2007 Org 0926

|   |                   |     |                |
|---|-------------------|-----|----------------|
| 1 | Personal Services | 001 | \$ 1,614,046   |
| 2 | Annual Increment  | 004 | 40,000         |
| 3 | Employee Benefits | 010 | 569,345        |
| 4 | Unclassified      | 099 | <u>559,067</u> |
| 5 | Total             |     | \$ 2,782,458   |

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.

*230-Public Service Commission-*

*Consumer Advocate*

(WV Code Chapter 24)

Fund 8627 FY 2007 Org 0926

|   |                   |     |            |
|---|-------------------|-----|------------|
| 1 | Personal Services | 001 | \$ 511,877 |
|---|-------------------|-----|------------|

|   |                         |     |              |
|---|-------------------------|-----|--------------|
| 2 | Annual Increment .....  | 004 | 6,650        |
| 3 | Employee Benefits ..... | 010 | 161,070      |
| 4 | Unclassified .....      | 099 | 264,961      |
| 5 | BRIM Premium .....      | 913 | <u>3,978</u> |
| 6 | Total .....             |     | \$ 948,536   |

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.

*231-Real Estate Commission*

(WV Code Chapter 30)

Fund 8635 FY 2007 Org 0927

|   |                         |     |                |
|---|-------------------------|-----|----------------|
| 1 | Personal Services ..... | 001 | \$ 365,015     |
| 2 | Annual Increment .....  | 004 | 6,800          |
| 3 | Employee Benefits ..... | 010 | 118,885        |
| 4 | Unclassified .....      | 099 | <u>236,356</u> |
| 5 | Total .....             |     | \$ 727,056     |

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

*232-WV Board of Examiners for Speech-Language*

*Pathology and Audiology*

(WV Code Chapter 30)

Fund 8646 FY 2007 Org 0930

|   |                          |     |           |
|---|--------------------------|-----|-----------|
| 1 | Unclassified-Total ..... | 096 | \$ 71,939 |
|---|--------------------------|-----|-----------|

*233-WV Board of Respiratory Care*

(WV Code Chapter 30)

Fund 8676 FY 2007 Org 0935

1 Unclassified-Total ..... 096 \$ 106,438

*234-WV Board of Licensed Dietitians*

*(WV Code Chapter 30)*

Fund 8680 FY 2007 Org 0936

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

*235-Massage Therapy Licensure Board*

*(WV Code Chapter 30)*

Fund 8671 FY 2007 Org 0938

1 Unclassified-Total ..... 096 \$ 91,861

*236-Board of Treasury Investments*

*(WV Code Chapter 12)*

Fund 9152 FY 2007 Org 0950

1 Unclassified-Total ..... 096 \$1,081,655

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

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

|    |                            |                        |
|----|----------------------------|------------------------|
| 11 | Total TITLE II, Section 3- |                        |
| 12 | Other Funds . . . . .      | <u>\$1,449,133,213</u> |

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 an appropriation  
12 is made for Fund 3167 and Fund 4297, and is authorized to  
13 transfer any such amounts to Fund 3167 and Fund 4297 for that  
14 purpose. Upon receipt of reimbursement of amounts so trans-  
15 ferred, the director of the lottery shall deposit the reimburse-  
16 ment amounts to the following accounts as required by this  
17 section.

*237-Education, Arts, Sciences and Tourism-*

*Debt Service Fund*

(WV Code Chapter 5)

Fund 2252 FY 2007 Org 0211

|                                |     |               | <b>Lottery</b> |
|--------------------------------|-----|---------------|----------------|
|                                |     |               | <b>Funds</b>   |
| 1 Debt Service-Total . . . . . | 310 | \$ 10,000,000 |                |

*238-West Virginia Development Office-*

*Division of Tourism*

## (WV Code Chapter 5B)

Fund 3067 FY 2007 Org 0304

|   |  |     |    |                  |
|---|--|-----|----|------------------|
| 1 | Tourism-Telemarketing Center . . . . . | 463 | \$ | 90,000           |
| 2 | WV Film Office . . . . .               | 498 |    | 353,415          |
| 3 | Tourism-Advertising (R) . . . . .      | 618 |    | 3,155,715        |
| 4 | Tourism-Unclassified . . . . .         | 662 |    | <u>4,268,674</u> |
| 5 | Total . . . . .                        |     | \$ | 7,867,804        |

6 Any unexpended balances remaining in the appropriations  
7 for Capitol Complex-Capital Outlay (fund 3067, activity 417),  
8 Tourism-Advertising (fund 3067, activity 618), Tourism-  
9 Unclassified (fund 3067, activity 662), Tourism-Unclassified-  
10 Lottery Surplus (fund 3067, activity 773), and Tourism-Special  
11 Projects (fund 3067, activity 859) at the close of the fiscal year  
12 2006 are hereby reappropriated for expenditure during the fiscal  
13 year 2007.

*239-Division of Natural Resources*

## (WV Code Chapter 20)

Fund 3267 FY 2007 Org 0310

|    |                                       |     |    |               |
|----|---------------------------------------|-----|----|---------------|
| 1  | Gypsy Moth Suppression                |     |    |               |
| 2  | Program for State Parks (R) . . . . . | 017 | \$ | 42,997        |
| 3  | Unclassified (R) . . . . .            | 099 |    | 2,199,770     |
| 4  | Pricketts Fort State Park . . . . .   | 324 |    | 92,874        |
| 5  | Non-Game Wildlife (R) . . . . .       | 527 |    | 427,249       |
| 6  | State Parks and                       |     |    |               |
| 7  | Recreation Advertising (R) . . . . .  | 619 |    | 588,206       |
| 8  | West Virginia Stream                  |     |    |               |
| 9  | Partners Program (R) . . . . .        | 637 |    | <u>77,396</u> |
| 10 | Total . . . . .                       |     | \$ | 3,428,492     |

11 Any unexpended balances remaining in the appropriations  
12 for Gypsy Moth Suppression Program for State Parks (fund



13 3267, activity 017), Unclassified (fund 3267, activity 099),  
 14 Non-Game Wildlife (fund 3267, activity 527), State Parks and  
 15 Recreation Advertising (fund 3267, activity 619), West Virginia  
 16 Stream Partners Program (fund 3267, activity 637), and State  
 17 Parks-Special Projects (fund 3267, activity 860) at the close of  
 18 the fiscal year 2006 are hereby reappropriated for expenditure  
 19 during the fiscal year 2007.

*240-State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2007 Org 0402

|    |                                    |     |              |
|----|------------------------------------|-----|--------------|
| 1  | Unclassified .....                 | 099 | \$ 4,125,000 |
| 2  | Safe Schools .....                 | 143 | 0            |
| 3  | Technology Infrastructure          |     |              |
| 4  | Network (R) .....                  | 351 | 20,531,122   |
| 5  | READS Program .....                | 365 | 300,000      |
| 6  | MATH Program .....                 | 368 | 400,000      |
| 7  | FBI Checks .....                   | 372 | 102,651      |
| 8  | Vocational Education               |     |              |
| 9  | Equipment Replacement .....        | 393 | 819,750      |
| 10 | Assessment Program .....           | 396 | 6,425,030    |
| 11 | Educational Enhancements .....     | 695 | 0            |
| 12 | Sparse Population Allocation ..... | 973 | <u>0</u>     |
| 13 | Total .....                        |     | \$32,703,553 |

14 Any unexpended balances remaining in the appropriations  
 15 for Technology Infrastructure Network (fund 3951, activity  
 16 351), Technology Demonstration Project (fund 3951, activity  
 17 639), and Computer Study (fund 3951, activity 998) at the close  
 18 of the fiscal year 2006 are hereby reappropriated for expendi-  
 19 ture during the fiscal year 2007.

20 The above appropriation for Technology Infrastructure  
 21 Network shall be expended on the following programs and

22 technology: Computer Basic Skills, S.U.C.C.E.S.S., WVEIS,  
 23 Technology Repair and Modernization, Technology and  
 24 Telecommunications Initiative and other programs in the field  
 25 that will benefit the Counties.

*241-State Department of Education-*

*School Building Authority-*

*Debt Service Fund*

(WV Code Chapter 18)

Fund 3963 FY 2007 Org 0402

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

*242-Department of Education and the Arts-*

*Office of the Secretary-*

*Control Account-*

*Lottery Education Fund*

(WV Code Chapter 5F)

Fund 3508 FY 2007 Org 0431

|   |                                      |     |            |
|---|--------------------------------------|-----|------------|
| 1 | Unclassified . . . . .               | 099 | \$ 120,000 |
| 2 | WV Humanities Council . . . . .      | 168 | 400,000    |
| 3 | Commission for National and          |     |            |
| 4 | Community Service . . . . .          | 193 | 410,050    |
| 5 | Arts Programs (R) . . . . .          | 500 | 80,000     |
| 6 | College Readiness (R) . . . . .      | 579 | 200,450    |
| 7 | Challenger Learning Center . . . . . | 862 | 60,000     |
| 8 | Statewide STEM 21 <sup>st</sup>      |     |            |
| 9 | Century Academy . . . . .            | 897 | 40,000     |

|    |                                 |     |               |
|----|---------------------------------|-----|---------------|
| 10 | Literacy Project . . . . .      | 899 | 50,000        |
| 11 | Special Olympic Games . . . . . | 966 | <u>25,000</u> |
| 12 | Total . . . . .                 |     | \$1,385,500   |

13 Any unexpended balances remaining in the appropriations  
 14 for Unclassified (fund 3508, activity 099), Arts Programs (fund  
 15 3508, activity 500), College Readiness (fund 3508, activity  
 16 579), and LATA Access (fund 3508, activity 580) at the close  
 17 of fiscal year 2006 are hereby reappropriated for expenditure  
 18 during the fiscal year 2007.

*243-Division of Culture and History-*

*Lottery Education Fund*

(WV Code Chapter 29)

Fund 3534 FY 2007 Org 0432

|    |  |     |            |
|----|--|-----|------------|
| 1  | Huntington Symphony . . . . .              | 027 | \$ 100,000 |
| 2  | Martin Luther King, Jr.                    |     |            |
| 3  | Holiday Celebration . . . . .              | 031 | 10,800     |
| 4  | Fairs and Festivals . . . . .              | 122 | 2,350,000  |
| 5  | Archeological Curation/Capital             |     |            |
| 6  | Improvements (R) . . . . .                 | 246 | 50,344     |
| 7  | Historic Preservation Grants (R) . . . . . | 311 | 450,900    |
| 8  | West Virginia Public Theater . . . . .     | 312 | 200,000    |
| 9  | Tri-County Fair Association . . . . .      | 343 | 125,000    |
| 10 | George Tyler Moore Center for the          |     |            |
| 11 | Study of the Civil War . . . . .           | 397 | 60,000     |
| 12 | Theater Arts of West Virginia . . . . .    | 464 | 420,000    |
| 13 | Marshall Artists Series . . . . .          | 518 | 60,000     |
| 14 | Grants for Competitive                     |     |            |
| 15 | Arts Program (R) . . . . .                 | 624 | 810,000    |
| 16 | West Virginia State Fair . . . . .         | 657 | 50,000     |
| 17 | Contemporary American                      |     |            |
| 18 | Theater Festival . . . . .                 | 811 | 115,000    |

|    |  |     |                |
|----|--|-----|----------------|
| 19 | Independence Hall (R) . . . . .          | 812 | 50,000         |
| 20 | Mountain State Forest Festival . . . . . | 864 | 70,000         |
| 21 | WV Symphony . . . . .                    | 907 | 100,000        |
| 22 | Wheeling Symphony . . . . .              | 908 | 100,000        |
| 23 | Appalachian Children's Chorus . . . . .  | 916 | <u>100,000</u> |
| 24 | Total . . . . .                          |     | \$ 5,222,044   |

25       Any unexpended balances remaining in the appropriations  
26 for Archeological Curation/Capital Improvements (fund 3534,  
27 activity 246), Historic Preservation Grants (fund 3534, activity  
28 311), Capital Outlay, Repairs and Equipment (fund 3534,  
29 activity 589), Grants for Competitive Arts Program (fund 3534,  
30 activity 624), Independence Hall (fund 3534, activity 812), and  
31 Project ACCESS (fund 3534, activity 865) at the close of the  
32 fiscal year 2006 are hereby reappropriated for expenditure  
33 during the fiscal year 2007.

34       Included in the above appropriation for Fairs and Festivals  
35 (activity 122), funding shall be provided to the African-Ameri-  
36 can Cultural Heritage Festival 5,000, African-American  
37 Heritage Family Tree Museum 4,500, African-American  
38 Jubilee (Ohio) 5,500, Alderson 4th of July Celebration  
39 (Greenbrier) 3,000, Allegheny Echo (Pocahontas) 7,500, Alpine  
40 Festival/Leaf Peepers Festival (Tucker) 11,250, American  
41 Legion Post 8, Veterans Day Parade 2,000, Annual Labor Day  
42 Observance (Randolph) 2,000, Annual Law Enforcement Day  
43 (Lewis) 2,000, Apollo Theater - Summer Program (Berkeley)  
44 2,000, Appalachian Autumn Festival (Braxton) 3,500, Appala-  
45 chian Mountain Bike Race (Calhoun) 1,500, Apple Butter  
46 Festival (Morgan) 6,000, Aracoma Story (Logan) 50,000,  
47 Arkansas Homemaker's Heritage Weekend (Hardy) 3,500,  
48 Armed Forces Day-South Charleston 3,000, Arthurdale  
49 Heritage (Preston) 4,000, Athens Town Fair (Mercer) 2,000,  
50 Augusta Fair (Randolph) 5,000, Barbour County Arts &  
51 Humanities Council 1,500, Barbour County Fair 2,500,  
52 Barboursville Octoberfest (Cabell) 5,000, Bass Festival

53 (Pleasants) 1,850, Battelle District Fair (Monongalia) 5,000,  
54 Battle of Dry Creek (Greenbrier) 1,500, Battle of Point Pleasant  
55 Memorial Committee 5,000, Beckley Main Street (Raleigh)  
56 5,000, Belington VFD Community Fair (Barbour) 1,750, Belle  
57 Boyd House (Berkeley) 2,000, Belle Fall Festival (Kanawha)  
58 2,000, Bergoo Down Home Days (Webster) 2,500, Berkeley  
59 County Youth Fair 3,500, Birch River Days Festival (Nicholas)  
60 2,000, Black Bear 40K Mountain Bike Race 1,000, Black  
61 Heritage Festival (Harrison) 4,000, Black Walnut Festival  
62 (Roane) 3,800, Blue-Gray Reunion (Barbour) 3,500, Boone  
63 County Fair 6,500, Boone County Labor Day Celebration  
64 4,000, Bradshaw Fall Festival (McDowell) 2,000, Bramwell  
65 Street Fair (Mercer) 1,500, Braxton County Arts and Crafts Fair  
66 500, Braxton County Fairs and Festivals Association 9,000,  
67 Braxton County Homecoming 500, Brooke County Fair 2,500,  
68 Bruceton Historical Society Victorian May Event 2,000,  
69 Bruceton Mills Good Neighbor Days (Preston) 2,000, Buck-  
70 wheat Festival (Preston) 8,500, Buffalo 4th of July Celebration  
71 (Putnam) 500, Buffalo Creek Memorial (Logan) 5,000,  
72 Burlington Apple Harvest Festival (Mineral) 30,000, Cabell  
73 County Fair 10,000, Cabwaylingo Forest Foundation (Wayne)  
74 1,500, Calhoun County Wood Festival 2,000, Cape Coalwood  
75 Festival Association (McDowell) 2,500, Capon Bridge Annual  
76 VFD Celebration (Hampshire) 1,000, Capon Springs Ruritan  
77 4th of July (Hampshire) 1,000, Carnegie Hall, Inc. (Greenbrier)  
78 70,000, Cass Homecoming (Pocahontas) 2,000, Cedarville  
79 Town Festival (Braxton) 500, Celebration in the Park (Wood)  
80 4,000, Celebration of America (Monongalia) 6,000, Ceredo  
81 Historical Society (Wayne) 2,000, Ceredo Landmark Commis-  
82 sion (Wayne) 1,500, Ceredo-Kenova Railroad Museum  
83 (Wayne) 2,000, Chapmanville Apple Butter Festival (Logan)  
84 1,000, Chapmanville Fire Department 4th of July 3,000,  
85 Charles Town Christmas Festival 5,000, Charles Town Heritage  
86 Festival 5,000, Charles Town Summer Sampler (Jefferson)  
87 1,000, Charleston River Lights Project (Kanawha) 10,000,  
88 Charleston Sternwheel Regatta 20,000, Cherry River Festival

89 (Nicholas) 6,500, Chester Fireworks (Hancock) 1,500, Chief  
90 Logan State Park-Civil War Celebration 8,000, Christmas in  
91 Shepherdstown (Jefferson) 4,000, Christmas in the Park  
92 (Logan) 25,000, Civil War Horse Cavalry Race (Barbour)  
93 1,000, City of Dunbar Critter Dinner 10,000, FestivALL  
94 Charleston 20,000, Clay Co. Agriculture Youth Fair 1,500, Clay  
95 County Golden Delicious Festival 5,000, Coal Field Jamboree  
96 (Logan) 35,000, Coalton Days Fair (Randolph) 7,000, Collis P.  
97 Huntington Railroad Historical Society 10,000, Country Roads  
98 Festival (Fayette) 2,000, Cowen Railroad Festival (Webster)  
99 3,500, Craigsville Fall Festival 3,500, Cross Lanes Annual  
100 Festival (Kanawha) 8,000, Doddridge County Fair 5,200,  
101 Dunlow Fall Festival 2,000, Durbin Days (Pocahontas) 2,000,  
102 Elizabethtown Festival (Marshall) 4,000, Elbert/Filbert Reunion  
103 Festival (McDowell) 1,500, Ellenboro Glass Festival (Ritchie)  
104 3,000, Fairview 4th of July Celebration (Marion) 1,000, Farm  
105 Safety Day (Preston) 2,000, Fayette American Legion 4th of  
106 July 1,000, Fellowsville Firemen's Festival (Preston) 1,000,  
107 Festival of the Rivers (Summers) 10,000, First Stage Children's  
108 Theater Company (Cabell) 1,000, Flatwood Days (Braxton)  
109 1,000, Flemington Day Fair and Festival (Taylor) 3,500,  
110 Follansbee Community Days (Brooke) 6,250, Fort Ashby Fort  
111 (Mineral) 1,500, Fort Gay Mountain Heritage Days (Wayne)  
112 5,000, Fort New Salem (Harrison) 3,700, Fort Randolph  
113 (Mason) 5,000, Frankford Autumnfest (Greenbrier) 3,000,  
114 Friends Auxiliary of W.R. Sharpe Hospital 5,000, Frontier  
115 Fest/Canaan Valley (Taylor County) 5,000, Fund for the Arts-  
116 Wine & All that Jazz Festival 2,500, Gassaway Days Celebra-  
117 tion (Braxton) 5,000, General Adam Stephen Memorial  
118 Foundation 18,525, Gilbert Kiwanis Harvest Festival 1,000,  
119 Gilbert Spring Fling (Mingo) 1,000, Gilmer County Farm Show  
120 3,500, Grafton Mother's Day Shrine Committee (Taylor) 7,500,  
121 Grafton Railroad Festival (Taylor) 1,000, Grant County Arts  
122 Council 2,000, Grape Stomping Wine Festival (Nicholas)  
123 2,000, Greater Quinwood Days (Greenbrier) 2,000, Green  
124 Spring Days (Hampshire) 1,000, Greenbrier Valley Theater

125 50,000, Guyandotte Civil War Days (Cabell) 10,000, Hamlin  
126 4th of July Celebration (Lincoln) 3,500, Hampshire Civil War  
127 Celebration Days 1,000, Hampshire County Fair 6,000,  
128 Hampshire County French & Indian War Celebration 1,000,  
129 Hampshire Herbs & Arts Festival 1,000, Hampshire Heritage  
130 Days 2,000, Hardy County Commission - 4th of July 10,000,  
131 Hardy County Tour and Crafts Association (Hardy) 20,000,  
132 Harts Community Celebration (Lincoln) 1,000, Heritage Craft  
133 Center of the Eastern Panhandle 7,000, Heritage Craft Festival  
134 (Monroe) 1,000, Heritage Days Festival(Roane) 1,500, Hicks  
135 Festival (Tucker) 2,000, Hilltop Festival (Huntington) 500,  
136 Hinton Railroad Days (Summers) 3,000, Historic Fayette  
137 Theater (Fayette) 5,500, Historic Middleway Conservancy  
138 (Jefferson) 1,000, Holly River Festival (Webster) 1,500,  
139 Hundred 4th of July (Wetzel) 7,250, Huntington Outdoor  
140 Theater (Cabell) 1,000, Huntington Youth and Music Project  
141 5,000, Iaeger Lions Club Annual Golf Show (McDowell) 1,500,  
142 Iaeger Town Fair (McDowell) 1,500, Indian Mound Cemetery  
143 (Hampshire) 2,000, International Ramp Cook-Off (Randolph)  
144 2,000, Irish Heritage Festival of WV (Raleigh) 6,000, Irish  
145 Spring Festival (Lewis) 1,000, Italian Heritage Festival -  
146 Clarksburg 25,000, Jacksonburg Homecoming (Wetzel) 1,000,  
147 Jane Lew Arts and Crafts Fair (Lewis) 1,000, Jefferson Co.  
148 Black History Preservation Society 5,000, Jefferson Co.  
149 Historical Landmark Commission 8,000, Jefferson County  
150 African American Heritage Festival 5,000, Jefferson County  
151 Fair Association 25,000, Jersey Mountain Ruritan Pioneer Days  
152 (Hampshire) 1,000, John Henry Days Festival (Monroe) 4,000,  
153 Johnstown Community Fair (Harrison) 2,500, Junior Heifer  
154 Preview Show (Lewis) 2,000, Kanawha Coal Riverfest - St.  
155 Albans July 5,000, Kay Ford Reunion (Kanawha) 2,500,  
156 Kenova Fall Festival (Wayne) 5,000, Kermit Fall Festival  
157 (Mingo) 3,000, Keyser Old Fashioned 4th of July Celebration  
158 1,000, King Coal Festival (Mingo) 3,500, Kingwood Downtown  
159 Street Fair and Heritage Days 2,000, Lady of Agriculture  
160 (Preston) 1,000, Lamb and Steer Show 9,000, Last Blast of

161 Summer (McDowell) 5,000, Laurel Mt. Re-enactment Commit-  
162 tee (Barbour) 3,250, Levels VFD Lawn Association (Hamp-  
163 shire) 1,000, Lewis County Fair Association 3,500, Lewisburg  
164 Shanghai (Greenbrier) 2,000, Lincoln County Fall Festival  
165 6,000, Lincoln County Winterfest 5,000, Lincoln District Fair  
166 (Marion) 2,500, Lindsides 4th of July (Monroe) 500, Little Birch  
167 Days Celebration (Braxton) 500, Little Levels Heritage Festival  
168 2,000, Logan County Arts and Crafts Fair 4,000, Lost Creek  
169 Community Festival 6,000, Maddie Carroll House (Cabell)  
170 7,500, Mannington District Fair (Marion) 6,000, Maple Syrup  
171 Festival (Randolph) 1,000, Marmet Annual Labor Day Celebra-  
172 tion (Kanawha) 2,000, Marshall County Antique Power Show  
173 2,500, Marshall County Fair 7,500, Marshall County Historical  
174 Society 8,500, Marshall County Riverfront Festival 2,500,  
175 Mason County Fair 5,000, Mason Dixon Festival (Monongalia)  
176 7,000, Matewan-Magnolia Fair (Mingo) 4,000, McARTS-  
177 McDowell County 20,000, McCoy Theater (Hardy) 20,000,  
178 McDowell County Fair 2,500, McGrew House History Day  
179 2,000, McNeill's Rangers (Mineral) 8,000, Meadow Bridge  
180 Hometown Festival (Fayette) 1,250, Meadow River Days  
181 Festival 3,000, Mineral County Fair 1,750, Molasses Festival  
182 (Calhoun) 2,000, Moncove Lake Festival (Monroe) 2,000,  
183 Monroe County Farmer's Day - Union 2,000, Monroe County  
184 Harvest Festival 2,000, Mothers' Day Festival (Randolph)  
185 2,500, Moundsville Bass Festival 4,000, Moundsville July 4th  
186 Celebration (Marshall) 5,000, Mount Liberty Fall Festival  
187 (Barbour) 2,500, Mountain Festival (Mercer) 4,625, Mountain  
188 Heritage Arts and Crafts Festival (Jefferson) 5,000, Mountain  
189 Music Festival 2,500, Mountain State Apple Harvest Festival  
190 (Berkeley) 7,500, Mountain State Arts and Crafts Fair-Cedar  
191 Lakes (Jackson) 5,000, Mountaineer Boys' State (Lewis)  
192 10,000, Mountaineer Hot Air Balloon Festival 4,000, Mud  
193 River Festival (Lincoln) 8,000, Mullens Dogwood Festival  
194 (Wyoming) 6,000, Multi-Cultural Festival of West Virginia  
195 20,000, Museum in the Community (Putnam) 45,000, Music  
196 Hall of Fame (Marion) 5,000, New Cumberland 4th of July



197 (Hancock) 2,000, New River Bridge Day Festival (Fayette)  
198 35,000, Newburg Volunteer Fireman's Field Day (Preston)  
199 1,000, Newell Annual Clay Festival (Hancock) 3,000, Nicholas  
200 County Potato Festival 3,500, Nicholas Old Main Foundation  
201 (Nicholas) 2,000, Norman Dillon Farm Museum (Berkeley)  
202 10,000, North Preston Farmers Club - Civil War Times 1,000,  
203 North River Valley Festival (Hampshire) 1,000, Northern  
204 Preston Mule Pull and Farmers Days 4,000, West Virginia  
205 Fireman's Rodeo (Fayette) 2,500, Oak Leaf Festival (Fayette)  
206 4,000, Oceana Heritage Festival (Wyoming) 6,000, Oglebay  
207 City Park - Festival of Lights (Ohio) 80,000, Oglebay Festival  
208 (Ohio) 5,000, Ohio County Fair 8,500, Old Central City Fair  
209 (Huntington) 5,000, Old Opera House Theater Company  
210 (Jefferson) 15,000, Old Tyme Christmas (Jefferson) 2,325,  
211 Paden City Labor Day Festival (Wetzel) 6,500, Panther Fall  
212 Festival (McDowell) 4,000, Parkersburg Arts Center 20,000,  
213 Parkersburg Homecoming (Wood) 12,000, Patty Fest 2,000,  
214 Paw Paw District Fair (Marion) 3,500, Pax Reunion Committee  
215 (Fayette) 5,000, Pendleton County 4-H Weekend 2,000,  
216 Pendleton County Committee for Arts 15,000, Pendleton  
217 County Fair 25,000, Pennsboro Country Road Festival 2,000,  
218 Petersburg Fourth of July Celebration 20,000, Petersburg HS  
219 Celebration 10,000, Peterstown 4th of July Horse Show (Grant)  
220 1,000, Piedmont-Annual Back Street Festival 4,000, Pinch  
221 Reunion (Kanawha) 1,500, Pine Bluff Fall Festival 4,000, Pine  
222 Grove 4th of July Festival (Wetzel) 5,000, Pineville Festival  
223 (Wyoming) 6,000, Pleasants County Agriculture Youth Fair  
224 5,000, Poca Heritage Days (Putnam) 3,000, Pocahontas County  
225 Pioneer Days 7,000, Pocahontas Historic Opera House 6,000,  
226 Point Pleasant Artist Series 5,000, Point Pleasant Stern Wheel  
227 Regatta River 5,000, Potomac Highlands Maple Festival  
228 (Grant) 6,000, Princeton Civil War Heritage Days (Mercer)  
229 1,000, Princeton Town Fair (Mercer) 5,000, Putnam County  
230 Fair 5,000, Quartets on Parade (Wardensville) 4,000, Rainelle  
231 Fall Festival 3,000, Raleigh County All Wars Museum 10,000,  
232 Randolph County Community Arts Council 3,000, Ranson

233 Christmas Festival 5,000, Ranson Festival 5,000, Ravenswood  
234 Octoberfest 5,000, Reckhart Mill Festival (Preston) 1,000,  
235 Reedsville VFD Fair (Preston) 2,000, Renick Liberty Festival  
236 1,000, Rhododendron Girls' State (Ohio) 10,000, Riders of the  
237 Flood 3,000, Ripley 4th of July (Jackson) 15,000, Ritchie  
238 County Pioneer Days 1,000, Ritter Park Days (Cabell) 3,000,  
239 River Heritage Days - Speed Boat Race (Wetzel) 5,000, River  
240 Heritage Days Festival (Wetzel) 6,000, Riverfest (Marion)  
241 2,000, Roane Co. 4-H and FFA Youth Livestock Program  
242 5,000, Roane County Agriculture Field Day 3,000, Ronceverte  
243 River Festival (Greenbrier) 3,000, Rowlesburg Labor Day  
244 Festival (Preston) 1,000, Rupert Country Fling (Greenbrier)  
245 3,000, Salem Apple Butter Festival (Harrison) 4,000, Scottish  
246 Heritage Society/N. Central WV Central 5,000, Sistersville 4th  
247 of July Fireworks(Wetzel) 5,500, Smoke on the Water  
248 (Kanawha) 2,000, Smoke on the Water (Wetzel) 3,000, Sol-  
249 diers' Memorial Theater (Raleigh) 10,000, Southern WV  
250 Veterans' Museum(Summers)4,500, Spring Mountain Festival  
251 (Grant) 4,000, Springfield Peach Festival (Hampshire) 1,200,  
252 St. Albans City of Lights - December 5,000, Stoco Reunion  
253 (Raleigh) 2,500, Stonewall Jackson Heritage Arts and Crafts  
254 11,000, Storytelling Festival (Lewis) 500, Strawberry Festival  
255 (Upshur) 20,000, Summer Fest of Panther (McDowell) 1,500,  
256 Summers County Historic Landmark Commission 5,000,  
257 Summers County Railroad Days Festival 2,500, Sumner-Ramer  
258 Heritage, Inc (Berkeley) 3,000, Sylvester July 4th Celebration  
259 (Boone) 2,500, Taylor County Fair 2,500, Terra Alta VFD 4th  
260 of July Celebration (Preston) 1,000, Town of Delbarton 4<sup>th</sup>  
261 July Celebration (Mingo) 3,000, Those Who Served War  
262 Museum (Mercer) 4,000, Three Rivers Avian Center (Sum-  
263 mers) 15,000, Three Rivers Coal Festival (Marion) 7,750,  
264 Thunder on the Tygart - Mothers' Day Celebration 15,000,  
265 Treasure Mountain Festival (Pendleton) 25,000, Tri-County  
266 Fair (Grant) 15,000, Tucker County Arts Festival and Celebra-  
267 tion 18,000, Tucker County Fair 4,750, Tug Valley Arts  
268 Council (Mingo) 5,000, Tunnelton Depot Days (Preston) 1,000,

269 Tunnelton Fire Department Carnival (Preston) 750, Tunnelton  
270 Historical Society (Preston) 2,000, Turkey Festival (Hardy)  
271 3,000, Tyler County Fair 5,200, Tyler County Fourth of July  
272 500, Uniquely West Virginia Festival (Morgan) 2,000, Upper  
273 Ohio Valley Italian Festival (Ohio) 7,000, Upper West Fork  
274 Blue Grass Festival (Calhoun) 500, Upshur County Fair 7,000,  
275 Valley District Fair- Reedsville (Preston) 2,500, Volcano Days  
276 at Mountwood Park (Wood) 5,000, War Homecoming Fall  
277 Festival 1,500, Wardensville Fall Festival 5,000, Wayne County  
278 Fair 5,000, Wayne County Fall Festival 5,000, Webster County  
279 Woodchopping Festival 4,500, Webster Wild Water Weekend  
280 2,000, Weirton July 4th Celebration (Hancock) 3,000,  
281 Wellsburg 4th of July Celebration (Brooke) 5,500, Wellsburg  
282 Apple Festival of Brooke County 4,000, West Virginia Autumn  
283 Festival (Burnsville) 2,500, West Virginia Blackberry Festival  
284 5,000, West Virginia Coal Festival (Boone) 7,000, West  
285 Virginia Days - Hinton (Summers) 2,000, West Virginia Dairy  
286 Cattle Show 10,000, West Virginia Fair and Exposition (Wood)  
287 8,100, West Virginia Highland Games & Celtic Festival 3,000,  
288 West Virginia Honey Festival (Wood) 2,000, West Virginia  
289 Museum of Glass (Lewis) 5,000, West Virginia Oil and Gas  
290 Festival (Tyler) 11,000, West Virginia Polled Hereford Assoc.  
291 1,500, West Virginia Poultry Festival (Hardy) 5,000, West  
292 Virginia Pumpkin Festival (Cabell) 5,000, West Virginia  
293 Roundhouse Rail Days (Berkeley) 25,000, West Virginia State  
294 Folk Festival 4,500, West Virginia Strawberry Festival-Horse  
295 Pull 2,500, West Virginia Water Festival - City of Hinton  
296 16,000, West Virginia Wine & Jazz Festival (Monongalia)  
297 9,000, West Virginia Wine and Arts Festival (Berkeley) 5,000,  
298 Weston Carp Festival & Fishing Tournament 4,000, Weston  
299 VFD 4th of July Firemen Festival (Lewis) 2,000, Wetzel  
300 County Autumnfest 5,500, Wetzel County Town and Country  
301 Days 17,000, Wheeling Celtic Festival (Ohio) 2,000, Wheeling  
302 City of Lights 8,000, Wheeling Sterwheel Regatta 10,000,  
303 Whipple Community Action (Fayette) 2,500, Whitesville - Big  
304 Coal River Festival (Boone) 4,000, Widen Days Festival

305 (Calhoun) 2,000, Wileyville Homecoming (Wetzel) 4,000,  
 306 Wine Festival and Mountain Music Event (Harrison) 5,000,  
 307 Winter Festival of the Waters (Berkeley) 5,000, Wirt County  
 308 Fair 2,500, Wirt County Pioneer Days 2,000, Wood County  
 309 Beef Asociation 2,500, YMCA Camp Horseshoe 105,000,  
 310 Youth Museum of Southern WV (Raleigh) 12,000, Youth  
 311 Stockman Beef Expo. (Lewis) 2,000, Z.D. Ramsdell House  
 312 (Wayne) 4,500.

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

*244-Library Commission-*

*Lottery Education Fund*

(WV Code Chapter 10)

Fund 3559 FY 2007 Org 0433

|   |                                  |     |                  |
|---|----------------------------------|-----|------------------|
| 1 | Books and Films .....            | 179 | \$ 500,000       |
| 2 | Services to Libraries .....      | 180 | 500,000          |
| 3 | Grants to Public Libraries ..... | 182 | 7,348,884        |
| 4 | Digital Resources .....          | 309 | 219,992          |
| 5 | Libraries-Special Projects ..... | 625 | 800,000          |
| 6 | Infomine Network .....           | 884 | <u>1,152,984</u> |
| 7 | Total .....                      |     | \$ 10,521,860    |

*245-Educational Broadcasting Authority-*

*Lottery Education Fund*

(WV Code Chapter 10)

Fund 3587 FY 2007 Org 0439

1 Any unexpended balance remaining in the above appropria-  
 2 tion for Digital Conversion (fund 3587, activity 247) at the

3 close of the fiscal year 2006 is hereby reappropriated for  
4 expenditure during the fiscal year 2007.

*246-Bureau of Senior Services-*

*Lottery Senior Citizens Fund*

(WV Code Chapter 29)

Fund 5405 FY 2007 Org 0508

|    |  |     |    |              |
|----|--|-----|----|--------------|
| 1  | Personal Services .....                | 001 | \$ | 128,029      |
| 2  | Annual Increment .....                 | 004 |    | 2,600        |
| 3  | Employee Benefits .....                | 010 |    | 58,773       |
| 4  | Unclassified .....                     | 099 |    | 348,881      |
| 5  | Local Programs Service                 |     |    |              |
| 6  | Delivery Costs .....                   | 200 |    | 2,475,250    |
| 7  | Silver Haired Legislature .....        | 202 |    | 15,000       |
| 8  | Area Agencies Administration .....     | 203 |    | 78,685       |
| 9  | In-Home Services and Nutrition         |     |    |              |
| 10 | for Senior Citizens .....              |     |    | 2,000,000    |
| 11 | Senior Citizen Centers                 |     |    |              |
| 12 | and Programs (R) .....                 | 462 |    | 2,600,000    |
| 13 | Direct Services .....                  | 481 |    | 0            |
| 14 | Transfer to Division of Human Services |     |    |              |
| 15 | for Health Care and Title XIX Waiver   |     |    |              |
| 16 | for Senior Citizens .....              | 539 |    | 13,000,000   |
| 17 | Alzheimer's Respite Care .....         | 565 |    | 0            |
| 18 | Roger Tompkins Alzheimers              |     |    |              |
| 19 | Respite Care .....                     | 643 |    | 800,000      |
| 20 | Senior Services Medicaid Transfer .... | 871 |    | 10,300,000   |
| 21 | Legislative Initiatives                |     |    |              |
| 22 | for the Elderly .....                  | 904 |    | 10,000,000   |
| 23 | Long Term Care Ombudsman .....         | 905 |    | 321,325      |
| 24 | BRIM Premium .....                     | 913 |    | <u>7,243</u> |
| 25 | Total .....                            |     | \$ | 42,135,786   |

26 Any unexpended balance remaining in the appropriation for  
 27 Senior Citizen Centers and Programs (fund 5405, activity 462)  
 28 at the close of the fiscal year 2006 is hereby reappropriated for  
 29 expenditure during the fiscal year 2007.

30 The above appropriation for Transfer to Division of Human  
 31 Services for Health Care and Title XIX Waiver for Senior  
 32 Citizens in addition to the sum of \$3,700,000 from Medical  
 33 Services (fund 0403, activity 189), along with the federal  
 34 moneys generated thereby shall be used for reimbursement for  
 35 services provided under the program. Further, the program shall  
 36 be preserved within the aggregate of these funds.

*247-Higher Education Policy Commission-*

*Lottery Education-*

*Higher Education Policy Commission-*

*Control Account*

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2007 Org 0441

|    |  |     |            |
|----|--|-----|------------|
| 1  | Marshall Medical School-                 |     |            |
| 2  | RHI Program and Site Support (R) . . . . | 033 | \$ 444,678 |
| 3  | WVU Health Sciences                      |     |            |
| 4  | RHI Program and Site Support (R) . . . . | 035 | 1,215,640  |
| 5  | RHI Program and Site Support -           |     |            |
| 6  | District Consortia (R) . . . . .         | 036 | 2,410,172  |
| 7  | RHI Program and Site Support -           |     |            |
| 8  | RHEP Program                             |     |            |
| 9  | Administration (R) . . . . .             | 037 | 183,058    |
| 10 | RHI Program and Site Support -           |     |            |
| 11 | Grad Med Ed and                          |     |            |
| 12 | Fiscal Oversight (R) . . . . .           | 038 | 100,287    |

|    |   |     |                |
|----|---|-----|----------------|
| 13 | Higher Education Grant Program (R) . .      | 164 | 18,309,000     |
| 14 | Tuition Contract Program (R) . . . . .      | 165 | 1,020,404      |
| 15 | Minority Doctoral Fellowship (R) . . . . .  | 166 | 150,000        |
| 16 | Underwood—Smith Scholarship                 |     |                |
| 17 | Program-Student Awards (R) . . . . .        | 167 | 141,142        |
| 18 | School of Osteopathic Medicine (R) . . .    | 172 | 6,756,463      |
| 19 | Health Sciences Scholarship (R) . . . . .   | 176 | 149,217        |
| 20 | School of Osteopathic Medicine BRIM         |     |                |
| 21 | Subsidy (R) . . . . .                       | 403 | 169,396        |
| 22 | Rural Health Initiative—Medical Schools     |     |                |
| 23 | Support (R) . . . . .                       | 581 | 463,862        |
| 24 | Vice Chancellor for Health Sciences—        |     |                |
| 25 | Rural Health Residency                      |     |                |
| 26 | Program (R) . . . . .                       | 601 | 263,596        |
| 27 | MA Public Health Program and                |     |                |
| 28 | Health Science Technology (R) . . .         | 623 | 58,569         |
| 29 | Marshall University Graduate                |     |                |
| 30 | College Writing Project . . . . .           | 807 | 25,000         |
| 31 | HEAPS Grant Program (R) . . . . .           | 867 | 5,001,133      |
| 32 | WV Engineering, Science, and                |     |                |
| 33 | Technology Scholarship                      |     |                |
| 34 | Program (R) . . . . .                       | 868 | 470,473        |
| 35 | Health Sciences Career                      |     |                |
| 36 | Opportunities Program (R) . . . . .         | 869 | 367,000        |
| 37 | HSTA Program (R) . . . . .                  | 870 | 1,034,711      |
| 38 | Center for Excellence in Disabilities . . . | 967 | <u>100,000</u> |
| 39 | Total . . . . .                             |     | \$ 38,833,801  |

40 Any unexpended balances remaining in the appropriations  
41 at the close of fiscal year 2006 are hereby reappropriated for  
42 expenditure during the fiscal year 2007, with the exception of  
43 fund 4925, activity 847 which shall expire on June 30, 2006.

44 Total TITLE II, Section 4-  
45 Lottery Revenue . . . . . \$170,098,840

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.

*248-Lottery Commission-*

*Refundable Credit*

Fund 7207 FY 2007 Org 0705

|   | <b>Activity</b> | <b>Lottery<br/>Funds</b> |
|---|-----------------|--------------------------|
| 1   Unclassified-Total-Transfer . . . . . | 402             | \$ 6,000,000             |

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-one, 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 commis-  
 9 sioner’s request.

*249-Lottery Commission-*

*General Purpose Account*

Fund 7206 FY 2007 Org 0705

|   |     |               |
|---|-----|---------------|
| 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.



*250-Education Improvement Fund*

Fund 4295 FY 2007 Org 0441.

1 Unclassified-Total-Transfer (R) . . . . . 402 \$27,000,000

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

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

*251-Economic Development Authority-*

*Economic Development Project Fund*

Fund 3167 FY 2007 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.

*252-School Building Authority*

Fund 3514 FY 2007 Org 0402

1 Unclassified-Total-Transfer . . . . . 402 \$19,000,000

*253-West Virginia Infrastructure Council*Fund 3390 FY 2007 Org 0316

1 Unclassified-Total-Transfer (R) . . . . . 402 \$40,000,000

2 The above appropriation for Unclassified-Total-Transfer  
3 (activity 402) shall be transferred to the West Virginia Infra-  
4 structure Fund (fund 3384, org 0316) created by chapter thirty-  
5 one, article fifteen-a, section nine of the code.

*254-Higher Education Improvement Fund*Fund 4297 FY 2007 Org 0441

1 Unclassified-Total (R) . . . . . 096 \$10,000,000

*255-State Park Improvement Fund*Fund 3277 FY 2007 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 2006 is hereby reappropriated for  
4 expenditure during the fiscal year 2007.

*256-Lottery Commission-**Excess Lottery Revenue Fund Surplus*Fund 7208 FY 2007 Org 0705

|   |                                 |     |                   |
|---|---------------------------------|-----|-------------------|
| 1 | Unclassified-Transfer . . . . . | 482 | \$ 12,900,000     |
| 2 | Revenue Shortfall Reserve       |     |                   |
| 3 | Fund-Transfer . . . . .         | 590 | 0                 |
| 4 | Consolidated Public             |     |                   |
| 5 | Retirement-Transfer . . . . .   | 918 | <u>83,300,000</u> |
| 6 | Total . . . . .                 |     | \$ 96,200,000     |

7       The above appropriation for Unclassified-Transfer (activity  
8 482) shall be transferred to the General Revenue Fund only  
9 after all funding required by chapter twenty-nine, article  
10 twenty-two, section eighteen-a of the code has been satisfied as  
11 determined by the director of the lottery.

12       The above appropriation for Consolidated Public  
13 Retirement-Transfer (fund 7208, activity 918) shall be trans-  
14 ferred to the Consolidated Public Retirement Board - West  
15 Virginia Teachers' Retirement System Employers Accumula-  
16 tion fund (fund 2601) only after all funding required by chapter  
17 twenty-nine, article twenty-two, section eighteen-a of the code  
18 and the transfer to the General Revenue Fund (fund 7208, org  
19 0705, activity 482) has been satisfied as determined by the  
20 director of the lottery.

21       Should the actual revenues accruing to the total Excess  
22 Lottery Fund be insufficient to fully fund all appropriations, the  
23 appropriation to the Consolidated Public Retirement-Transfer  
24 (activity 918) shall be reduced to the extent funds are available  
25 and the appropriation made in the reduced amount and thereaf-  
26 ter transferred to the Consolidated Public Retirement Board -  
27 West Virginia Teachers' Retirement System Employers  
28 Accumulation fund (fund 2601).

*257—Governor's Office*

(WV Code Chapter 5)

Fund 1046 FY 2007 Org 0100

1       Any unexpended balance remaining in the appropriation for  
2 Publication of Papers and Transition Expenses—Lottery  
3 Surplus (fund 1046, activity 066) at the close of the fiscal year  
4 2006 is hereby reappropriated for expenditure during the fiscal  
5 year 2007.

*258-Division of Health—**Central Office*

(WV Code Chapter 16)

Fund 5219 FY 2007 Org 0506

1 Any unexpended balance remaining in the appropriation for  
 2 Chief Medical Examiner—Capital Improvements—Lottery  
 3 Surplus (fund 5219, activity 051) at the close of the fiscal year  
 4 2006 is hereby reappropriated for expenditure during the fiscal  
 5 year 2007.

*259-West Virginia State Police*

(WV Code Chapter 15)

Fund 6394 FY 2007 Org 0612

1 Any unexpended balance remaining in the appropriation for  
 2 Helicopter Purchase (fund 6394, activity 063) at the close of  
 3 fiscal year 2006 is hereby reappropriated for expenditure during  
 4 the fiscal year 2007.

*260—Tax Division*

(WV Code Chapter 11)

Fund 7082 FY 2007 Org 0702

1 Any unexpended balance remaining in the appropriation for  
 2 Remittance Processor—Lottery Surplus (fund 7082, activity  
 3 054) at the close of the fiscal year 2006 is hereby  
 4 reappropriated for expenditure during the fiscal year 2007.

5 Total TITLE II, Section 5-  
 6 Excess Lottery Funds

\$ 287,200,000

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, eleven-b of the code  
 5 the following amounts, as itemized, for expenditure during the  
 6 fiscal year two thousand seven.

**LEGISLATIVE**

*261-Crime Victims Compensation Fund*

(WV Code Chapter 14)

Fund 8738 FY 2007 Org 2300

|                            | <b>Activity</b> | <b>Federal<br/>Funds</b> |
|----------------------------|-----------------|--------------------------|
| 1 Unclassified-Total ..... | 096             | \$ 1,269,031             |

**JUDICIAL**

*262-Supreme Court-*

*Consolidated Federal Funds*

Fund 8867 FY 2007 Org 2400

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

**EXECUTIVE**

*263-Governor's Office-*

*Office of Economic Opportunity*

(WV Code Chapter 5)

Fund 8797 FY 2007 Org 0100

|                            |     |              |
|----------------------------|-----|--------------|
| 1 Unclassified-Total ..... | 096 | \$ 6,000,000 |
|----------------------------|-----|--------------|

*264-Governor's Office-*

*Commission for National and Community Service*

(WV Code Chapter 5)

Fund 8800 FY 2007 Org 0100

1 Unclassified-Total ..... 096 \$ 5,231,509

*265-Auditor's Office-*

*National White Collar Crime Center*

(WV Code Chapter 12)

Fund 8807 FY 2007 Org 1200

1 Unclassified-Total ..... 096 \$ 14,002,367

*266-Department of Agriculture*

(WV Code Chapter 19)

Fund 8736 FY 2007 Org 1400

1 Unclassified-Total ..... 096 \$ 4,262,367

*267-Department of Agriculture-*

*Meat Inspection*

(WV Code Chapter 19)

Fund 8737 FY 2007 Org 1400

1 Unclassified-Total ..... 096 \$ 839,565

*268-Department of Agriculture-*

*State Conservation Committee*

(WV Code Chapter 19)

Fund 8783 FY 2007 Org 1400

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

*269-Secretary of State-*

*State Election Fund*

(WV Code Chapter 3)

Fund 8854 FY 2007 Org 1600

1 Unclassified-Total ..... 096 \$ 4,821,424

**DEPARTMENT OF ADMINISTRATION**

*270-West Virginia Prosecuting Attorney's Institute*

(WV Code Chapter 7)

Fund 8834 FY 2007 Org 0228

1 Unclassified-Total ..... 096 \$ 199,671

*271-Children's Health Insurance Agency*

(WV Code Chapter 5)

Fund 8838 FY 2007 Org 0230

1 Unclassified-Total ..... 096 \$ 37,928,099

**DEPARTMENT OF COMMERCE**

*272-Division of Forestry*

(WV Code Chapter 19)

Fund 8703 FY 2007 Org 0305

1 Unclassified-Total ..... 096 \$ 4,145,804

*273-Geological and Economic Survey*

(WV Code Chapter 29)

Fund 8704 FY 2007 Org 0306

1 Unclassified-Total ..... 096 \$ 302,202

*274-West Virginia Development Office*

(WV Code Chapter 5B)

Fund 8705 FY 2007 Org 0307

1 Unclassified-Total ..... 096 \$ 10,639,627

*275-Division of Labor*

(WV Code Chapters 21 and 47)

Fund 8706 FY 2007 Org 0308

1 Unclassified-Total ..... 096 \$ 548,675

*276-Division of Natural Resources*

(WV Code Chapter 20)

Fund 8707 FY 2007 Org 0310

1 Unclassified-Total ..... 096 \$ 9,955,955

*277-Division of Miners' Health,*

*Safety and Training*



(WV Code Chapter 22)

Fund 8709 FY 2007 Org 0314

1 Unclassified-Total ..... 096 \$ 1,345,652

*278-Bureau of Employment Programs*

(WV Code Chapter 23)

Fund 8835 FY 2007 Org 0323

|   |                            |     |    |                  |
|---|----------------------------|-----|----|------------------|
| 1 | Unclassified .....         | 099 | \$ | 512,657          |
| 2 | Reed Act 2002—Unemployment |     |    |                  |
| 3 | Compensation .....         | 622 |    | 2,374,000        |
| 4 | Reed Act 2002—Employment   |     |    |                  |
| 5 | Services .....             | 630 |    | <u>1,371,000</u> |
| 6 | Total .....                |     | \$ | 4,257,657        |

7 Pursuant to the requirements of 42 U.S.C. 1103, Section  
8 903 of the Social Security Act, as amended, and the provisions  
9 of section nine, article nine, chapter twenty-one-a of the code  
10 of West Virginia, one thousand nine hundred thirty-one, as  
11 amended, the above appropriation to Unclassified shall be used  
12 by the bureau of employment programs for the specific purpose  
13 of administration of the state’s unemployment insurance  
14 program or job service activities, subject to each and every  
15 restriction, limitation or obligation imposed on the use of the  
16 funds by those federal and state statutes.

**DEPARTMENT OF EDUCATION**

*279-State Department of Education*

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2007 Org 0402

1 Unclassified-Total ..... 096 \$270,000,000

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

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2007 Org 0402

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

*281-State Board of Education-**Vocational Division*

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2007 Org 0402

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

*282-State Department of Education-**Aid for Exceptional Children*

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2007 Org 0402

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

**DEPARTMENT OF EDUCATION AND THE ARTS***283-Department of Education and the Arts-**Office of the Secretary*

(WV Code Chapter 5F)

Fund 8841 FY 2007 Org 0431

1 Unclassified-Total . . . . . 096 \$ 325,000

*284-Division of Culture and History*

(WV Code Chapter 29)

Fund 8718 FY 2007 Org 0432

1 Unclassified-Total ..... 096 \$ 1,772,510

*285-Library Commission*

(WV Code Chapter 10)

Fund 8720 FY 2007 Org 0433

1 Unclassified-Total ..... 096 \$ 1,939,018

*286-Educational Broadcasting Authority*

(WV Code Chapter 10)

Fund 8721 FY 2007 Org 0439

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

*287-State Board of Rehabilitation-*

*Division of Rehabilitation Services*

(WV Code Chapter 18)

Fund 8734 FY 2007 Org 0932

1 Unclassified-Total ..... 096 \$50,467,000

**DEPARTMENT OF ENVIRONMENTAL PROTECTION**

*288-Division of Environmental Protection*

(WV Code Chapter 22)

Fund 8708 FY 2007 Org 0313

1 Unclassified-Total ..... 096 \$108,362,697

**DEPARTMENT OF HEALTH  
AND HUMAN RESOURCES**

*289-Consolidated Medical Service Fund*

(WV Code Chapter 16)

Fund 8723 FY 2007 Org 0506

1 Unclassified-Total ..... 096 \$ 7,314,114

*290-Division of Health-*

*Central Office*

(WV Code Chapter 16)

Fund 8802 FY 2007 Org 0506

1 Unclassified-Total ..... 096 \$ 86,036,046

*291-Division of Health-*

*West Virginia Safe Drinking Water Treatment*

(WV Code Chapter 16)

Fund 8824 FY 2007 Org 0506

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

*292-West Virginia Health Care Authority*

(WV Code Chapter 16)

Fund 8851 FY 2007 Org 0507

1 Unclassified-Total ..... 096 \$ 200,000

*293-Human Rights Commission*

(WV Code Chapter 5)

Fund 8725 FY 2007 Org 0510

1 Unclassified-Total ..... 096 \$ 520,038

*294-Division of Human Services*

(WV Code Chapters 9, 48 and 49)

Fund 8722 FY 2007 Org 0511

|   |                            |     |                  |
|---|----------------------------|-----|------------------|
| 1 | Unclassified .....         | 099 | \$ 152,532,835   |
| 2 | Medical Services .....     | 189 | 1,826,784,280    |
| 3 | Medical Services           |     |                  |
| 4 | Administrative Costs ..... | 789 | 33,155,033       |
| 5 | Total .....                |     | \$ 2,012,472,148 |

**DEPARTMENT OF MILITARY AFFAIRS  
AND PUBLIC SAFETY**

*295-Office of the Secretary*

(WV Code Chapter 5F)

Fund 8876 FY 2007 Org 0601

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

*296-Adjutant General-State Militia*

(WV Code Chapter 15)

Fund 8726 FY 2007 Org 0603

1 Unclassified-Total ..... 096 \$ 95,915,322

*297-Division of Homeland Security and**Emergency Management**(WV Code Chapter 15)*Fund 8727 FY 2007 Org 0606

1 Unclassified-Total ..... 096 \$ 32,051,140

*298-Division of Corrections**(WV Code Chapters 25, 28, 49 and 62)*Fund 8836 FY 2007 Org 0608

1 Unclassified-Total ..... 096 \$ 650,000

*299-West Virginia State Police**(WV Code Chapter 15)*Fund 8741 FY 2007 Org 0612

1 Unclassified-Total ..... 096 \$ 880,944

*300-Division of Veterans' Affairs**(WV Code Chapter 9A)*Fund 8858 FY 2007 Org 0613

1 Unclassified-Total ..... 096 \$ 2,750,000

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

(WV Code Chapter 9A)

Fund 8728 FY 2007 Org 0618

1 Unclassified-Total ..... 096 \$ 1,766,228

*302-Division of Criminal Justice Services*

(WV Code Chapter 15)

Fund 8803 FY 2007 Org 0620

1 Unclassified-Total ..... 096 \$ 14,950,657

*303-Division of Juvenile Services*

(WV Code Chapter 49)

Fund 8855 FY 2007 Org 0621

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

**DEPARTMENT OF REVENUE**

*304-Tax Division*

(WV Code Chapter 11)

Fund 7069 FY 2007 Org 0702

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

*305-Insurance Commissioner*

(WV Code Chapter 33)

Fund 8883 FY 2007 Org 0704

1 Unclassified-Total ..... 096 \$ 650,000

**DEPARTMENT OF TRANSPORTATION**

*306-Division of Motor Vehicles*

(WV Code Chapter 17B)

Fund 8787 FY 2007 Org 0802

1 Unclassified-Total ..... 096 \$ 9,825,749

*307-Division of Public Transit*

(WV Code Chapter 17)

Fund 8745 FY 2007 Org 0805

1 Unclassified-Total ..... 096 \$ 16,365,341

*308-Public Port Authority*

(WV Code Chapter 17)

Fund 8830 FY 2007 Org 0806

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

**BUREAU OF SENIOR SERVICES**

*309-Bureau of Senior Services*

(WV Code Chapter 29)

Fund 8724 FY 2007 Org 0508

1 Unclassified-Total ..... 096 \$ 14,562,936

**MISCELLANEOUS BOARDS AND COMMISSIONS**

*310-Public Service Commission-*



*Motor Carrier Division*

(WV Code Chapter 24A)

Fund 8743 FY 2007 Org 0926

1 Unclassified-Total ..... 096 \$ 1,538,245

*311-Public Service Commission-*

*Gas Pipeline Division*

(WV Code Chapter 24B)

Fund 8744 FY 2007 Org 0926

1 Unclassified-Total ..... 096 \$ 275,704

*312-WV Statewide Addressing and Mapping Board*

(WV Code Chapter 24E)

Fund 8868 FY 2007 Org 0940

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

*313-National Coal Heritage Area Authority*

(WV Code Chapter 29)

Fund 8869 FY 2007 Org 0941

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

*314-Coal Heritage Highway Authority*

(WV Code Chapter 29)

Fund 8861 FY 2007 Org 0942

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

2 Total TITLE II, Section 6-  
3 Federal Funds \$ 3,116,165,442

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 2007.

*315-Governor's Office-*

*Office of Economic Opportunity*

*Community Services*

Fund 8799 FY 2007 Org 0100

1 Unclassified-Total ..... 096 \$ 9,507,444

*316-West Virginia Development Office-*

*Community Development*

Fund 8746 FY 2007 Org 0307

1 Unclassified-Total ..... 096 \$ 28,340,316

*317-Governor's Workforce Investment Office*

Fund 8888 FY 2007 Org 0331

1 Unclassified-Total ..... 096 \$ 39,733,496

*318-Division of Health-*

*Maternal and Child Health*

Fund 8750 FY 2007 Org 0506

1 Unclassified-Total ..... 096 \$ 10,944,362

*319-Division of Health-*

*Preventive Health*

Fund 8753 FY 2007 Org 0506

1 Unclassified-Total ..... 096 \$ 2,244,387

*320-Division of Health-*

*Substance Abuse Prevention and Treatment*

Fund 8793 FY 2007 Org 0506

1 Unclassified-Total ..... 096 \$ 11,575,501

*321-Division of Health-*

*Community Mental Health Services*

Fund 8794 FY 2007 Org 0506

1 Unclassified-Total ..... 096 \$ 3,332,225

*322-Division of Health-*

*Abstinence Education Program*

Fund 8825 FY 2007 Org 0506

1 Unclassified-Total ..... 096 \$ 978,261

*323-Division of Human Services-*

*Energy Assistance*

Fund 8755 FY 2007 Org 0511

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

*324-Division of Human Services-**Social Services*Fund 8757 FY 2007 Org 0511

1 Unclassified-Total ..... 096 \$ 15,340,326

*325-Division of Human Services-**Temporary Assistance Needy Families*Fund 8816 FY 2007 Org 0511

1 Unclassified-Total ..... 096 \$ 130,313,343

*326-Division of Human Services-**Child Care and Development*Fund 8817 FY 2007 Org 0511

1 Unclassified-Total ..... 096 \$ 40,023,926

*327-Division of Criminal Justice Services-**Juvenile Accountability Incentive*Fund 8829 FY 2007 Org 06201 Unclassified-Total ..... 096 \$ 572,263

2 Total TITLE II, Section 7-

3 Federal Block Grants ..... \$ 317,905,850

1 **Sec. 8. Awards for claims against the state.**—There are  
 2 hereby appropriated for fiscal year 2007, from the fund as  
 3 designated, in the amounts as specified, general revenue funds  
 4 in the amount of \$1,257,511, special revenue funds in the

5 amount of \$621,896, and state road funds in the amount of  
6 \$144,109 for payment of claims against the state.

1       **Sec. 9. Appropriations from surplus accrued.**-The  
2 following items are hereby appropriated from the state excess  
3 lottery revenue fund, and are to be available for expenditure  
4 during the fiscal year 2007 out of surplus funds only, as  
5 determined by the director of the lottery, accrued from the fiscal  
6 year ending the thirtieth day of June, 2006, subject to the terms  
7 and conditions set forth in this section.

8       It is the intent and mandate of the Legislature that the  
9 following appropriations be payable only from surplus accrued  
10 from the fiscal year ending the thirtieth day of June two  
11 thousand six.

12       In the event that surplus revenues available from the fiscal  
13 year ending the thirtieth day of June, two thousand six, are not  
14 sufficient to meet all the appropriations made pursuant to this  
15 section, then the appropriations shall be made to the extent that  
16 surplus funds are available and shall be allocated first to  
17 provide the necessary funds to meet the first appropriation of  
18 this section; next, to provide the funds necessary for the second  
19 appropriation of this section and subsequently to provide the  
20 funds necessary for each appropriation in succession before any  
21 funds are provided for the next subsequent appropriation.

*328-Joint Expenses-*

*(WV Code Chapter 4)*

Fund 1736 FY 2007 Org 2300

|   |                                   |     |               |
|---|-----------------------------------|-----|---------------|
| 1 | Tax Reduction and Federal Funding |     |               |
| 2 | Increased Compliance              |     |               |
| 3 | (TRAFFIC) .....                   | 642 | \$ 20,000,000 |

*329-Office of Technology-**(WV Code Chapter 5A)*Fund 2532 FY 2007 Org 0231

|   |                          |     |    |                  |
|---|--------------------------|-----|----|------------------|
| 1 | Network Monitoring ..... | 919 | \$ | 857,300          |
| 2 | Unclassified .....       | 099 |    | <u>1,000,000</u> |
| 3 | Total .....              |     | \$ | 1,857,300        |

*330-West Virginia Development Office-**(WV Code Chapter 5B)*Fund 3170 FY 2007 Org 0307

|   |                           |     |    |        |
|---|---------------------------|-----|----|--------|
| 1 | Connectivity Research and |     |    |        |
| 2 | Development .....         | 923 | \$ | 50,000 |

3 The above appropriation to Connectivity Research and  
4 Development shall be used by the West Virginia development  
5 office for the coordinated development of technical infrastruc-  
6 ture in areas where expanded resources and technical infrastruc-  
7 ture may be expected or required pursuant to the provisions of  
8 5a-6-4 of the code.

1 **Sec. 10. Special revenue appropriations.**-There are hereby  
2 appropriated for expenditure during the fiscal year two thou-  
3 sand seven appropriations made by general law from special  
4 revenues 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 eleven-b of the code, unless the spending unit has filed with the  
11 director of the budget and the legislative auditor prior to the  
12 beginning of each fiscal year:

13 (a) An estimate of the amount and sources of all revenues  
14 accruing to such fund;

15 (b) A detailed expenditure schedule showing for what  
16 purposes the fund is to be expended.

1 **Sec. 11. State improvement fund appropriations.-**  
2 Requests or donations of nonpublic funds, received by the  
3 governor on behalf of the state during the fiscal year two  
4 thousand seven, 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 seven 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.

1       **Sec. 15. Appropriations for local governments.**-There are  
2 hereby appropriated for payment to counties, districts and  
3 municipal corporations such amounts as will be necessary to  
4 pay taxes due counties, districts and municipal corporations and  
5 which have been paid into the treasury:

6       (a) For redemption of lands;



7 (b) By public service corporations;

8 (c) For tax forfeitures.

1 **Sec. 16. Total appropriations.**-Where only a total sum is  
2 appropriated to a spending unit, the total sum shall include  
3 personal services, annual increment, employee benefits, current  
4 expenses, repairs and alterations, equipment and capital outlay,  
5 where not otherwise specifically provided and except as  
6 otherwise provided in TITLE I-GENERAL PROVISIONS, Sec.  
7 3.

1 **Sec. 17. General school fund.**-The balance of the proceeds  
2 of the general school fund remaining after the payment of the  
3 appropriations made by this act is appropriated for expenditure  
4 in accordance with section sixteen, article nine-a, chapter  
5 eighteen of the code.

#### **TITLE III-ADMINISTRATION.**

§1. Appropriations conditional.

§2. Constitutionality.

#### **TITLE III-ADMINISTRATION.**

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 eleven-b 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 appropriations and reappropriations shall  
10 be to the succeeding or later spending unit created, unless  
11 otherwise indicated.

1       **Sec. 2. 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.

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## CHAPTER 7

**(S. B. 793 — By Senators Helmick, Sharpe, Plymale,  
Edgell, Love, Bailey, Bowman, Unger, Minear,  
Boley, Facemyer and Gulls)**

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[Passed March 10, 2006; in effect from passage.]

[Approved by the Governor on March 24, 2006.]

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AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the department of administration - consolidated public retirement board, fund 0195, fiscal year 2006, organization 0205, to the department of military affairs and public safety - office of the secretary, fund 0430, fiscal year 2006, organization 0601, and to the department of revenue - tax division, fund 0470, fiscal year 2006, organization 0702, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated the eleventh day of January, two thousand six, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year two thousand six, less net appropriation balances

forwarded and regular appropriations for fiscal year two thousand six; and

WHEREAS, It appears from the Governor’s Executive Budget document and statement of the State Fund - General Revenue there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; therefore

*Be it enacted by the Legislature of West Virginia:*

1 That the total appropriation for the fiscal year ending the  
2 thirtieth day of June, two thousand six, to fund 0195, fiscal year  
3 2006, organization 0205, be supplemented and amended by  
4 increasing an existing item of appropriation as follows:

5 TITLE II—APPROPRIATIONS.

6 Section 1. Appropriations from General Revenue.

7 DEPARTMENT OF ADMINISTRATION

8 *18-Consolidated Public Retirement Board*

9 (WV Code Chapter 5)

10 Fund 0195 FY 2006 Org 0205

|    |  |              |                |
|----|--|--------------|----------------|
| 11 |  |              | <b>General</b> |
| 12 |  | <b>Act-</b>  | <b>Revenue</b> |
| 13 |  | <b>ivity</b> | <b>Funds</b>   |

14 1 Unclassified - Total - Transfer . . 402 \$ 117,804,500

15 The above appropriation for Unclassified - Total Transfer  
16 (fund 0195, activity 402) shall be transferred to the West  
17 Virginia Teachers’ Retirement System Employers Accumula-  
18 tion Fund (fund 2601).

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19 And that the total appropriation for the fiscal year ending  
20 the thirtieth day of June, two thousand six, to fund 0430, fiscal  
21 year 2006, organization 0601, be supplemented and amended  
22 by adding thereto a new item of appropriation as follows:

23 TITLE II—APPROPRIATIONS.

24 **Section 1. DEPARTMENT OF MILITARY AFFAIRS**  
25 **AND PUBLIC SAFETY**

26 *61-Department of Military Affairs and Public Safety-*

27 *Office of the Secretary*

28 (WV Code Chapter 5F)

29 Fund 0430 FY 2006 Org 0601

|    |  |              |                |
|----|--|--------------|----------------|
| 30 |  |              | <b>General</b> |
| 31 |  | <b>Act-</b>  | <b>Revenue</b> |
| 32 |  | <b>ivity</b> | <b>Funds</b>   |

|    |                                 |     |              |
|----|---------------------------------|-----|--------------|
| 33 | 1a Capital Outlay (R) . . . . . | 511 | \$10,000,000 |
|----|---------------------------------|-----|--------------|

34 The above appropriation shall be used for the construction  
35 of the Kenneth “Honey” Rubenstein Center, formerly known as  
36 the Davis Juvenile Detention Center. This funding shall be  
37 expended only after all other funding previously appropriated  
38 for the construction of said facility has been expended.

39 And that the total appropriation for the fiscal year ending  
40 the thirtieth day of June, two thousand six, to fund 0470, fiscal  
41 year 2006, organization 0702, be supplemented and amended  
42 by increasing an existing item of appropriation as follows:

43 TITLE II—APPROPRIATIONS.

44 **Section 1. Appropriations from General Revenue.**

45

**DEPARTMENT OF REVENUE**

46

*76-Tax Division*

47

(WV Code Chapter 11)

48

Fund 0470 FY 2006 Org 0702

49

**General**

50

**Act-**

**Revenue**

51

**ivity**

**Funds**

52 1 Personal Services (R) . . . . . 001 \$ 92,500

53 3 Employee Benefits (R) . . . . . 010 \$ 36,075

54 4 Unclassified (R) . . . . . 099 \$ 317,500

55 The purpose of this supplemental appropriation bill is to  
56 supplement, amend, add and increase appropriations in the  
57 aforesaid accounts for the designated spending units for  
58 expenditure during the fiscal year two thousand six.



**CHAPTER 8**

**(S. B. 794 — By Senators Helmick, Sharpe, Plymale,  
Edgell, Love, Bailey, Bowman, Unger, Minear,  
Boley, Facemyer and Guills)**



[Passed March 10, 2006; in effect from passage.]

[Approved by the Governor on March 24, 2006.]



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 six, in the amount of five million four hundred thousand dollars from the Joint Expenses,

fund 0175, fiscal year 2005, organization 2300, activity 642, in the amount of one million dollars from the State Department of Education, fund 0313, fiscal year 2006, organization 0402, activity 097, in the amount of twenty-four million six hundred thousand dollars from the Tax Reduction and Federal Funding Increased Compliance Fund, fund 1732, fiscal year 2006, organization 2300, in the amount of six million six hundred twenty-nine thousand dollars from the Board of Risk and Insurance Management - Premium Tax Savings Fund, fund 2367, fiscal year 2006, organization 0218, and in the amount of one million two hundred fifty thousand dollars from the Public Service Commission, fund 8623, fiscal year 2006, organization 0926, and making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Agriculture, fund 0131, fiscal year 2006, organization 1400, to the West Virginia Conservation Agency, fund 0132, fiscal year 2006, organization 1400, to the Consolidated Public Retirement Board, fund 0195, fiscal year 2006, organization 0205, to the State Department of Education, fund 0313, fiscal year 2006, organization 0402, to the State Board of Rehabilitation Services - Division of Rehabilitation Services, fund 0310, fiscal year 2006, organization 0932, to the Division of Human Services, fund 0403, fiscal year 2006, organization 0511, to Division of Corrections - correctional units, fund 0450, fiscal year 2006, organization 0608, and to the Aeronautics Commission, fund 0582, fiscal year 2006, organization 0807, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Legislature finds that the account balance in the Joint Expenses, fund 0175, fiscal year 2005, organization 2300, activity 642, the State Department of Education, fund 0313, fiscal year 2006, organization 0402, activity 097, the Tax Reduction and Federal Funding Increased Compliance Fund, fund 1732, fiscal year 2006, organization 2300, the Board of Risk and Insurance Management - Premium Tax Savings Fund, fund 2367, fiscal year 2006,

organization 0218, the Public Service Commission, fund 8623, fiscal year 2006, organization 0926, exceeds that which is necessary for the purposes for which the accounts were established; and

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated the eleventh day of January, two thousand six, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year two thousand six, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand six; and

WHEREAS, It appears from the Governor's Executive Budget document, statement of the State Fund, General Revenue, and this legislation there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; 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 six, to the Joint Expenses, fund 0175, fiscal year 2005, organi-  
4 zation 2300, activity 642, be decreased by expiring the amount  
5 of five million four hundred thousand dollars; to the State  
6 Department of Education, fund 0313, fiscal year 2006, organi-  
7 zation 0402, activity 097, be decreased by expiring the amount  
8 of one million dollars; to the Tax Reduction and Federal  
9 Funding Increased Compliance Fund, fund 1732, fiscal year  
10 2006, organization 2300, be decreased by expiring the amount  
11 of twenty-four million six hundred thousand dollars; to the  
12 Board of Risk and Insurance Management - Premium Tax  
13 Savings Fund, fund 2367, fiscal year 2006, organization 0218,  
14 be decreased by expiring the amount of six million six hundred  
15 twenty-nine thousand dollars; and to the Public Service  
16 Commission, fund 8623, fiscal year 2006, organization 0926, be  
17 decreased by expiring the amount of one million two hundred

18 fifty thousand dollars to the unappropriated surplus balance of  
 19 the State Fund, General Revenue, to be available for appropri-  
 20 ation during the fiscal year two thousand six.

21 And that the total appropriation for the fiscal year ending  
 22 the thirtieth day of June, two thousand six, to fund 0131, fiscal  
 23 year 2006, organization 1400, be supplemented and amended  
 24 by increasing existing items of appropriation and adding new  
 25 items of appropriation as follows:

26 TITLE II—APPROPRIATIONS.

27 **Section 1. Appropriations from General Revenue.**

28 **EXECUTIVE**

29 *10-Department of Agriculture*

30 (WV Code Chapter 19)

31 Fund 0131 FY 2006 Org 1400

| 32 | 33  | 34                                   | Act-  | General    |
|----|-----|--------------------------------------|-------|------------|
|    |     |                                      | ivity | Revenue    |
|    |     |                                      |       | Funds      |
| 35 | 7   | Unclassified - Surplus (R) . . . . . | 097   | \$ 985,500 |
| 36 | 12  | Predator Control - Surplus (R) . . . |       | 65,000     |
| 37 | 20a | Jackson’s Mill - Surplus (R) . . . . | 842   | 500,000    |
| 38 | 20b | 4-H Camp Improvements -              |       |            |
| 39 |     | Surplus (R) . . . . .                |       | 600,000    |

40 Any unexpended balance remaining in the appropriation for  
 41 Predator Control - Surplus (fund 0131, activity ), Jackson’s Mill  
 42 - Surplus (fund 0131, activity 842), and 4-H Camp Improve-  
 43 ments - Surplus (fund 0131, activity ) at the close of the fiscal  
 44 year two thousand six is hereby reappropriated for expenditure  
 45 during the fiscal year two thousand seven.



46 And that the total appropriation for the fiscal year ending  
47 the thirtieth day of June, two thousand six, to fund 0132, fiscal  
48 year 2006, organization 1400, be supplemented and amended  
49 by increasing an existing item of appropriation as follows:

50 TITLE II—APPROPRIATIONS.

51 Section 1. Appropriations from General Revenue.

52 EXECUTIVE

53 *11-West Virginia Conservation Agency*

54 (WV Code Chapter 19)

55 Fund 0132 FY 2006 Org 1400

|    |  |              |                |
|----|--|--------------|----------------|
| 56 |  |              | <b>General</b> |
| 57 |  | <b>Act-</b>  | <b>Revenue</b> |
| 58 |  | <b>ivity</b> | <b>Funds</b>   |

|    |   |                              |     |              |
|----|---|------------------------------|-----|--------------|
| 59 | 5 | Soil Conservation Projects - |     |              |
| 60 |   | Surplus (R) .....            | 269 | \$ 2,100,000 |

61 And that the total appropriation for the fiscal year ending  
62 the thirtieth day of June, two thousand six, to fund 0195, fiscal  
63 year 2006, organization 0205, be supplemented and amended  
64 by increasing an existing item of appropriation as follows:

65 TITLE II—APPROPRIATIONS.

66 Section 1. Appropriations from general revenue.

67 DEPARTMENT OF ADMINISTRATION

68 *18—Consolidated Public Retirement Board*

69 (WV Code Chapter 5)

70 Fund 0195 FY 2006 Org 0205

|    |  |              |                |
|----|--|--------------|----------------|
| 71 |  |              | <b>General</b> |
| 72 |  | <b>Act-</b>  | <b>Revenue</b> |
| 73 |  | <b>ivity</b> | <b>Fund</b>    |

|    |   |                              |                  |
|----|---|------------------------------|------------------|
| 74 | 1 | Unclassified - Total -       |                  |
| 75 |   | Transfer - Surplus . . . . . | 682 \$32,895,500 |

76 From the above appropriation for Unclassified - Total -  
 77 Transfer - Surplus (fund 0195, activity 682) shall be transferred  
 78 to the Consolidated Public Retirement Board - West Virginia  
 79 Teachers' Retirement System Employers Accumulation Fund  
 80 (fund 2601).

81 And that the total appropriation for the fiscal year ending  
 82 the thirtieth day of June, two thousand six, to fund 0313, fiscal  
 83 year 2006, organization 0402, be supplemented and amended  
 84 by adding new items of appropriation as follows:

85 TITLE II—APPROPRIATIONS.

86 Section 1. Appropriations from General Revenue.

87 DEPARTMENT OF EDUCATION

88 *41-State Department of Education*

89 (WV Code Chapters 18 and 18A)

90 Fund 0313 FY 2006 Org 0402

|    |  |              |                |
|----|--|--------------|----------------|
| 91 |  |              | <b>General</b> |
| 92 |  | <b>Act-</b>  | <b>Revenue</b> |
| 93 |  | <b>ivity</b> | <b>Funds</b>   |

|    |     |                            |              |
|----|-----|----------------------------|--------------|
| 94 | 27a | Transportation Costs -     |              |
| 95 |     | Surplus (R) . . . . .      | \$ 3,500,000 |
| 96 | 27b | Educational Enhancements - |              |
| 97 |     | Surplus (R) . . . . .      | 4,000,000    |

98 Any unexpended balance remaining in the appropriation for  
 99 Transportation Costs - Surplus (fund 0313, activity ) and  
 100 Educational Enhancements - Surplus (fund 0313, activity ) at  
 101 the close of the fiscal year two thousand six is hereby  
 102 reappropriated for expenditure in the fiscal year two thousand  
 103 seven.

104 And that the total appropriation for the fiscal year ending  
 105 the thirtieth day of June, two thousand six, to fund 0310, fiscal  
 106 year 2006, organization 0932, be supplemented and amended  
 107 by increasing an existing item of appropriation and adding a  
 108 new item of appropriation as follows:

109 TITLE II—APPROPRIATIONS.

110 **Section 1. Appropriations from General Revenue.**

111 **DEPARTMENT OF EDUCATION AND THE ARTS**

112 *51-State Board of Rehabilitation-*

113 *Division of Rehabilitation Services*

114 (WV Code Chapter 18)

115 Fund 0310 FY 2006 Org 0932

| 116 |    |                                       |              | <b>General</b> |
|-----|----|---------------------------------------|--------------|----------------|
| 117 |    |                                       | <b>Act-</b>  | <b>Revenue</b> |
| 118 |    |                                       | <b>ivity</b> | <b>Funds</b>   |
| 119 | 1  | Personal Services - Surplus . . . . . | 243          | \$ 246,000     |
| 120 | 10 | Capital Outlay, Repairs and           |              |                |
| 121 |    | Equipment - Surplus (R) . . .         | 677          | 782,000        |

122 And that the total appropriation for the fiscal year ending  
 123 the thirtieth day of June, two thousand six, to fund 0403, fiscal

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124 year 2006, organization 0511, be supplemented and amended  
125 by increasing an existing item of appropriation as follows:

126 TITLE II—APPROPRIATIONS.

127 Section 1. Appropriations from General Revenue.

128 DEPARTMENT OF HEALTH AND  
129 HUMAN RESOURCES

130 *60-Division of Human Services*

131 (WV Code Chapters 9, 48 and 49)

132 Fund 0403 FY 2006 Org 0511

|     |  |              |                |
|-----|--|--------------|----------------|
| 133 |  |              | <b>General</b> |
| 134 |  | <b>Act-</b>  | <b>Revenue</b> |
| 135 |  | <b>ivity</b> | <b>Funds</b>   |

|     |   |     |            |
|-----|---|-----|------------|
| 136 | 32 Indigent Burials-Surplus (R) . . . . . | 076 | \$ 100,000 |
|-----|---|-----|------------|

137 And that the total appropriation for the fiscal year ending  
138 the thirtieth day of June, two thousand six, to fund 0450, fiscal  
139 year 2006, organization 0608, be supplemented and amended  
140 by increasing an existing item of appropriation as follows:

141 TITLE II—APPROPRIATIONS.

142 Section 1. Appropriations from General Revenue.

143 DEPARTMENT OF MILITARY AFFAIRS

144 AND PUBLIC SAFETY

145 *67-Division of Corrections-*

146 *Correctional Units*

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

148 Fund 0450 FY 2006 Org 0608

|     |  |              |                |
|-----|--|--------------|----------------|
| 149 |  |              | <b>General</b> |
| 150 |  | <b>Act-</b>  | <b>Revenue</b> |
| 151 |  | <b>ivity</b> | <b>Funds</b>   |

|     |   |                                  |     |             |
|-----|---|----------------------------------|-----|-------------|
| 152 | 1 | Unclassified - Surplus . . . . . | 097 | \$1,500,000 |
|-----|---|----------------------------------|-----|-------------|

153 Any unexpended balanceremaining in the appropriation for  
 154 Unclassified - Surplus (fund 0450, activity 097) at the close of  
 155 the fiscal year two thousand six is hereby reappropriated for  
 156 expenditure during the fiscal year two thousand seven.

157 And that the total appropriation for the fiscal year ending  
 158 the thirtieth day of June, two thousand six, to fund 0582, fiscal  
 159 year 2006, organization 0807, be supplemented and amended  
 160 by increasing an existing item of appropriation as follows:

161 TITLE II – APPROPRIATIONS.

162 Section 1. Appropriations from General Revenue.

163 DEPARTMENT OF TRANSPORTATION

164 *83-Aeronautics Commission*

165 (WV Code Chapter 29)

166 Fund 0582 FY 2006 Org 0807

|     |  |              |                |
|-----|--|--------------|----------------|
| 167 |  |              | <b>General</b> |
| 168 |  | <b>Act-</b>  | <b>Revenue</b> |
| 169 |  | <b>ivity</b> | <b>Funds</b>   |

|     |   |                                      |     |            |
|-----|---|--------------------------------------|-----|------------|
| 170 | 1 | Unclassified - Surplus (R) . . . . . | 097 | \$ 400,000 |
|-----|---|--------------------------------------|-----|------------|

171 The purpose of this bill is to expire funds into the unappro-  
172 priated surplus balance in the state fund, general revenue, and  
173 to supplement, amend, add and increase items of appropriation  
174 in the aforesaid accounts for the designated spending units for  
175 expenditure during the fiscal year two thousand six.



## CHAPTER 9

**(S. B. 795 —By Senators Helmick, Sharpe, Plymale, Chafin,  
Edgell, Love, Bailey, Bowman, McCabe, Unger, Minear,  
Boley, Facemyer, Yoder, Sprouse and Gulls)**

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[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on March 24, 2006.]

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AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Military Affairs and Public Safety - Office of Emergency Services, fund 0443, fiscal year 2006, organization 0606, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor submitted to the Legislature the Executive Budget document, dated the eleventh day of January, two thousand six, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of the first day of July, two thousand five; and further included the estimate of revenues for the fiscal year two thousand six, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand six; and

WHEREAS, It appears from the Governor's Executive Budget document and statement of the State Fund, General Revenue there

now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand six; therefore

*Be it enacted by the Legislature of West Virginia:*

1 That chapter sixteen, Acts of the Legislature, regular  
2 session, two thousand five, known as the Budget Bill, be  
3 supplemented, amended and increased as follows:

4 TITLE II--APPROPRIATIONS.

5 Section 1. Appropriations from General Revenue.

6 DEPARTMENT OF MILITARY AFFAIRS

7 AND PUBLIC SAFETY

8 65-Office of Emergency Services

9 (WV Code Chapter 15)

10 Fund 0443 FY 2006 Org 0606

|    |     |                             | <b>General</b>  |
|----|-----|-----------------------------|-----------------|
|    |     | <b>Act-</b>                 | <b>Revenue</b>  |
|    |     | <b>ivity</b>                | <b>Funds</b>    |
| 14 | 10a | Homeland Security Over      |                 |
| 15 | 10b | Obligation (R) . . . . .    | 693 \$4,357,273 |
| 16 | 10c | Homeland Security Operating |                 |
| 17 | 10d | Expenses . . . . .          | 779 310,237     |

18 Any unexpended balance remaining in the appropriation for  
19 Homeland Security Over Obligation (fund 0443, activity 693)  
20 at the close of the fiscal year two thousand six is hereby  
21 reappropriated for expenditure during the fiscal year two  
22 thousand seven.

23 The purpose of this supplementary appropriation bill is to  
24 supplement and increase this account in the budget act for the  
25 fiscal year ending the thirtieth day of June, two thousand six, by  
26 providing for new line items of appropriation to be established  
27 therein for the designated spending unit for expenditure during  
28 the fiscal year two thousand six.

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## CHAPTER 10

**(H. B. 4855 — By Delegates Michael, Doyle, Proudfoot, Cann, Boggs,  
Frederick, H.K. White, Williams, Anderson and Ashley)**

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[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on March 23, 2006.]

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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 six, to the Department of Education and the Arts - Office of the Secretary - lottery education fund interest earnings - control account, fund 3508, fiscal year 2006, organization 0431; to the department of environmental protection - division of environmental protection - oil and gas reclamation fund, fund 3322, fiscal year 2006, organization 0313; to the department of environmental protection - division of environmental protection - oil and gas operating permit and processing fund, fund 3323, fiscal year 2006, organization 0313; to the department of environmental protection - division of environmental protection - the underground storage tank administrative fund, fund 3325, fiscal year 2006, organization 0313; to the department of environmental protection - division of environmental protection - air pollution control fund, fund 3336, fiscal year 2006, organization 0313; to the department of environmental protection - division of environmental protection - mountaintop



removal fund, fund 3490, fiscal year 2006, organization 0313; to the department of health and human resources - division of human services - health care provider tax, fund 5090, fiscal year 2006, organization 0511; to the department of health and human resources - division of human services - medical services trust fund, fund 5185, fiscal year 2006, organization 0511; to the department of military affairs and public safety - west virginia division of corrections - parolee supervision fees, fund 6362, fiscal year 2006, organization 0608; to the department of military affairs and public safety - criminal justice services - court security fund, fund 6804, fiscal year 2006, organization 0620; to the department of transportation - division of motor vehicles - insurance certificate fees, fund 8215, fiscal year 2006, organization 0802; to the public service commission - consumer advocate, fund 8627, fiscal year 2006, organization 0926; and to the massage therapy licensure board, fund 8671, fiscal year 2006, organization 0938, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the department of education and the arts - office of the secretary - lottery education fund interest earnings - control account, fund 3508, fiscal year 2006, organization 0431; in the department of environmental protection - division of environmental protection - oil and gas reclamation fund, fund 3322, fiscal year 2006, organization 0313; in the department of environmental protection - division of environmental protection - oil and gas operating permit and processing fund, fund 3323, fiscal year 2006, organization 0313; in the department of environmental protection - division of environmental protection - the underground storage tank administrative fund, fund 3325, fiscal year 2006, organization 0313; in the department of environmental protection - division of environmental protection - air pollution control fund, fund 3336, fiscal year 2006, organization 0313; in the department of environmental protection - division of environmental protection - mountaintop removal fund, fund 3490, fiscal year



7 (WV Code Chapter 29)

8 Fund 3508 FY 2006 Org 0431

| 9  | 10                           | <b>Act-</b>  | <b>Other</b> |
|----|------------------------------|--------------|--------------|
| 10 |                              | <b>ivity</b> | <b>Funds</b> |
| 11 | 1 EPSCoR-Total (R) . . . . . | 651          | \$ 50,000    |

12 And, That the total appropriation for the fiscal year ending  
13 the thirtieth day of June, two thousand six, to fund 3322, fiscal  
14 year 2006, organization 0313, be supplemented and amended  
15 by increasing the total appropriation as follows:

16 TITLE II – APPROPRIATIONS.

17 **Sec. 3. Appropriations from other funds.**

18 **DEPARTMENT OF ENVIRONMENTAL**  
19 **PROTECTION**

20 *142-Division of Environmental Protection*

21 *Oil and Gas Reclamation Fund*

22 (WV Code Chapter 22)

23 Fund 3322 FY 2006 Org 0313

| 24 | 25                             | <b>Act-</b>  | <b>Other</b> |
|----|--------------------------------|--------------|--------------|
| 25 |                                | <b>ivity</b> | <b>Funds</b> |
| 26 | 1 Unclassified-Total . . . . . | 096          | \$ 100,000   |

27 And, That the total appropriation for the fiscal year ending  
28 the thirtieth day of June, two thousand six, to fund 3323, fiscal  
29 year 2006, organization 0313, be supplemented and amended  
30 by increasing the total appropriation as follows:

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31

TITLE II – APPROPRIATIONS.

32

**Sec. 3. Appropriations from other funds.**

33

**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

34

35

*143-Division of Environmental Protection-*

36

*Oil and Gas Operating Permit and Processing Fund*

37

(WV Code Chapter 22)

38

Fund 3323 FY 2006 Org 0313

39

**Act-**

**Other**

40

**ivity**

**Funds**

41

1

Personal Services . . . . .

001

\$ 55,000

42

3

Employee Benefits . . . . .

010

15,500

43

4

Unclassified . . . . .

099

129,500

44

And, That the total appropriation for the fiscal year ending  
the thirtieth day of June, two thousand six, to fund 3325, fiscal  
year 2006, organization 0313, be supplemented and amended  
by increasing the total appropriation as follows:

48

TITLE II – APPROPRIATIONS.

49

**Sec. 3. Appropriations from other funds.**

50

**DEPARTMENT OF ENVIRONMENTAL  
PROTECTION**

51

52

*145-Division of Environmental Protection-*

53

*The Underground Storage Tank*

54

*Administrative Fund*

55 (WV Code Chapter 22)

56 Fund 3325 FY 2006 Org 0313

| 57 |                               | <b>Act-</b>  |    | <b>Other</b> |
|----|-------------------------------|--------------|----|--------------|
| 58 |                               | <b>ivity</b> |    | <b>Funds</b> |
| 59 | 1 Personal Services . . . . . | 001          | \$ | 10,500       |
| 60 | 3 Employee Benefits . . . . . | 010          |    | 4,000        |
| 61 | 4 Unclassified . . . . .      | 099          |    | 35,500       |

62 And, That the total appropriation for the fiscal year ending  
63 the thirtieth day of June, two thousand six, to fund 3336, fiscal  
64 year 2006, organization 0313, be supplemented and amended  
65 by increasing the total appropriation as follows:

66 TITLE II – APPROPRIATIONS.

67 **Sec. 3. Appropriations from other funds.**

68 **DEPARTMENT OF ENVIRONMENTAL**  
69 **PROTECTION**

70 *149-Division of Environmental Protection-*

71 *Air Pollution Control Fund*

72 (WV Code Chapter 22)

73 Fund 3336 FY 2006 Org 0313

| 74 |                               | <b>Act-</b>  |    | <b>Other</b> |
|----|-------------------------------|--------------|----|--------------|
| 75 |                               | <b>ivity</b> |    | <b>Funds</b> |
| 76 | 1 Personal Services . . . . . | 001          | \$ | 93,147       |
| 77 | 3 Employee Benefits . . . . . | 010          |    | 74,517       |
| 78 | 4 Unclassified . . . . .      | 099          |    | 204,924      |

79 And, That the total appropriation for the fiscal year ending  
 80 the thirtieth day of June, two thousand six, to fund 3490, fiscal  
 81 year 2006, organization 0313, be supplemented and amended  
 82 by increasing the total appropriation as follows:

83 TITLE II – APPROPRIATIONS.

84 **Sec. 3. Appropriations from other funds.**

85 **DEPARTMENT OF ENVIRONMENTAL**  
 86 **PROTECTION**

87 *152-Division of Environmental Protection-*

88 *Mountaintop Removal Fund*

89 (WV Code Chapter 22)

90 Fund 3490 FY 2006 Org 0313

| 91 |   |                             | <b>Act-</b>  | <b>Other</b> |
|----|---|-----------------------------|--------------|--------------|
| 92 |   |                             | <b>ivity</b> | <b>Funds</b> |
| 93 | 1 | Personal Services . . . . . | 001          | \$ 29,817    |
| 94 | 3 | Employee Benefits . . . . . | 010          | 10,754       |
| 95 | 4 | Unclassified . . . . .      | 099          | 134,741      |

96 And, That the total appropriation for the fiscal year ending  
 97 the thirtieth day of June, two thousand six, to fund 5090, fiscal  
 98 year 2006, organization 0511, be supplemented and amended  
 99 by increasing the total appropriation as follows:

100 TITLE II – APPROPRIATIONS.

101 **Sec. 3. Appropriations from other funds.**

102 **DEPARTMENT OF HEALTH AND**  
 103 **HUMAN RESOURCES**



126 And, That the total appropriation for the fiscal year ending  
127 the thirtieth day of June, two thousand six, to fund 6362, fiscal  
128 year 2006, organization 0608, be supplemented and amended  
129 by increasing the total appropriation as follows:

130 TITLE II – APPROPRIATIONS.

131 **Sec. 3. Appropriations from other funds.**

132 **DEPARTMENT OF MILITARY**  
133 **AFFAIRS AND PUBLIC SAFETY**

134 *173-West Virginia Division of Corrections-*

135 *Parolee Supervision Fees*

136 (WV Code Chapter 62)

137 Fund 6362 FY 2006 Org 0608

| 138 | 139 |                             | <b>Act-<br/>ivity</b> | <b>Other<br/>Funds</b> |
|-----|-----|-----------------------------|-----------------------|------------------------|
| 140 | 1   | Personal Services . . . . . | 001                   | \$ 139,200             |
| 141 | 3   | Employee Benefits . . . . . | 010                   | 38,280                 |
| 142 | 4   | Unclassified . . . . .      | 099                   | 158,520                |

143 And, That the total appropriation for the fiscal year ending  
144 the thirtieth day of June, two thousand six, to fund 6804, fiscal  
145 year 2006, organization 0620, be supplemented and amended  
146 by increasing the total appropriation as follows:

147 TITLE II – APPROPRIATIONS.

148 **Sec. 3. Appropriations from other funds.**

149 **DEPARTMENT OF MILITARY**  
150 **AFFAIRS AND PUBLIC SAFETY**





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172 And, That the total appropriation for the fiscal year ending  
173 the thirtieth day of June, two thousand six, to fund 8627, fiscal  
174 year 2006, organization 0926, be supplemented and amended  
175 by increasing the total appropriation as follows:

176 TITLE II – APPROPRIATIONS.

177 **Sec. 3. Appropriations from other funds.**

178 **MISCELLANEOUS BOARDS AND COMMISSIONS**

179 *228-Public Service Commission-*

180 *Consumer Advocate*

181 (WV Code Chapter 24)

182 Fund 8627 FY 2006 Org 0926

| 183 |                          | <b>Act-</b>  | <b>Other</b> |
|-----|--------------------------|--------------|--------------|
| 184 |                          | <b>ivity</b> | <b>Funds</b> |
| 185 | 4 Unclassified . . . . . | 099          | \$ 50,000    |

186 And, That the total appropriation for the fiscal year ending  
187 the thirtieth day of June, two thousand six, to fund 8671, fiscal  
188 year 2006, organization 0938, be supplemented and amended  
189 by increasing the total appropriation as follows:

190 TITLE II – APPROPRIATIONS.

191 **Sec. 3. Appropriations from other funds.**

192 **MISCELLANEOUS BOARDS AND COMMISSIONS**

193 *233-Massage Therapy Licensure Board*

194 (WV Code Chapter 30)

|     |   |   |              |              |
|-----|---|---|--------------|--------------|
| 195 |   | Fund <u>8671</u> FY <u>2006</u> Org <u>0938</u> |              |              |
| 196 |   |   | <b>Act-</b>  | <b>Other</b> |
| 197 |   |   | <b>ivity</b> | <b>Funds</b> |
| 198 | 1 | Unclassified-Total . . . . .                    | 099          | \$ 10,000    |

199        The purpose of this supplementary appropriation bill is to  
 200 supplement and increase items of appropriations in the afore-  
 201 said accounts for the designated spending units for expenditure  
 202 during the fiscal year two thousand six.

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## CHAPTER 11

**(H. B. 4856 — By Delegates Michael, Stalnaker, Kominar,  
 Frederick, Browning, Boggs, Susman,  
 G. White, Wakim and Carmichael)**

---

[Passed March 11, 2006; in effect from passage.]  
 [Approved by the Governor on March 23, 2006.]

---

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 six, to the department of commerce - miners' health, safety and training fund, fund 3355, fiscal year 2006, organization 0314, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the department of commerce - miners' health, safety and training fund, fund 3355, fiscal year 2006, organiza-

tion 0314, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand six, 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 six, to fund 3355, fiscal year 2006, organization 0314, 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 COMMERCE**

4 *131-Miners’ Health, Safety and Training Fund*

5 (WV Code Chapter 22A)

6 Fund 3355 FY 2006 Org 0314

| 7  | 8 |                             | <b>Act-<br/>ivity</b> | <b>Other<br/>Funds</b> |
|----|---|-----------------------------|-----------------------|------------------------|
| 9  | 1 | Personal Services . . . . . | 001                   | \$ 105,000             |
| 10 | 3 | Employee Benefits . . . . . | 010                   | 39,907                 |
| 11 | 5 | Unclassified . . . . .      | 099                   | 65,280                 |

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 the fiscal year two thousand six.

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## CHAPTER 12

**(H. B. 4857 — By Delegates Michael, Doyle, Proudfoot, Browning,  
Williams, Cann, Palumbo, Kominar and Stalnaker)**

---

[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on March 23, 2006.]

---

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 six, to the department of administration - children's health insurance agency, fund 8838, fiscal year 2006, organization 0230; to the department of commerce - division of natural resources, fund 8707, fiscal year 2006, organization 0310; to the department of environmental protection - division of environmental protection, fund 8708, fiscal year 2006, organization 0313; to the department of health and human resources - west virginia health care authority, fund 8851, fiscal year 2006, organization 0507; to the department of military affairs and public safety - office of the secretary, fund 8876, fiscal year 2006, organization 0601; to the department of transportation - public port authority, fund 8830, fiscal year 2006, organization 0806; and to the department of military affairs and public safety - division of criminal justice services - juvenile accountability incentive, fund 8829, fiscal year 2006, organization 0620, by supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand six.

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

six, 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 six, to fund 8838, fiscal year 2006, organization 0230, be supplemented and amended by increasing the total appropriation as follows:

|   |   |                              |                  |
|---|---|------------------------------|------------------|
| 1 | TITLE II – APPROPRIATIONS.                      |                              |                  |
| 2 | <b>Sec. 6. Appropriations of federal funds.</b> |                              |                  |
| 3 | <b>DEPARTMENT OF ADMINISTRATION</b>             |                              |                  |
| 4 | <i>270-Children’s Health Insurance Agency</i>   |                              |                  |
| 5 | (WV Code Chapter 5)                             |                              |                  |
| 6 | Fund <u>8838</u> FY <u>2006</u> Org <u>0230</u> |                              |                  |
| 7 |   | <b>Act-</b>                  | <b>Federal</b>   |
| 8 |   | <b>ivity</b>                 | <b>Funds</b>     |
| 9 | 1   | Unclassified-Total . . . . . | 096 \$ 4,102,903 |

10 And, That the total appropriation for the fiscal year ending  
11 the thirtieth day of June, two thousand six, to fund 8707, fiscal  
12 year 2006, organization 0310, be supplemented and amended  
13 by increasing the total appropriation as follows:

|    |   |  |  |
|----|---|--|--|
| 14 | TITLE II – APPROPRIATIONS.                      |  |  |
| 15 | <b>Sec. 6. Appropriations of federal funds.</b> |  |  |
| 16 | <b>DEPARTMENT OF COMMERCE</b>                   |  |  |
| 17 | <i>275-Division of Natural Resources</i>        |  |  |

18 (WV Code Chapter 20)

19 Fund 8707 FY 2006 Org 0310

|    |  |  |              |                |
|----|--|--|--------------|----------------|
| 20 |  |  | <b>Act-</b>  | <b>Federal</b> |
| 21 |  |  | <b>ivity</b> | <b>Funds</b>   |

|    |   |                              |     |    |           |
|----|---|------------------------------|-----|----|-----------|
| 22 | 1 | Unclassified-Total . . . . . | 096 | \$ | 1,107,800 |
|----|---|------------------------------|-----|----|-----------|

23 And, That the total appropriation for the fiscal year ending  
24 the thirtieth day of June, two thousand six, to fund 8708, fiscal  
25 year 2006, organization 0313, be supplemented and amended  
26 by increasing the total appropriation as follows:

27 TITLE II – APPROPRIATIONS.

28 **Sec. 6. Appropriations of federal funds.**

29 **DEPARTMENT OF ENVIRONMENTAL**  
30 **PROTECTION**

31 *287-Division of Environmental Protection*

32 (WV Code Chapter 22)

33 Fund 8708 FY 2006 Org 0313

|    |  |  |              |                |
|----|--|--|--------------|----------------|
| 34 |  |  | <b>Act-</b>  | <b>Federal</b> |
| 35 |  |  | <b>ivity</b> | <b>Funds</b>   |

|    |   |                              |     |    |            |
|----|---|------------------------------|-----|----|------------|
| 36 | 1 | Unclassified-Total . . . . . | 096 | \$ | 10,000,000 |
|----|---|------------------------------|-----|----|------------|

37 And, That the total appropriation for the fiscal year ending  
38 the thirtieth day of June, two thousand six, to fund 8851, fiscal  
39 year 2006, organization 0507, be supplemented and amended  
40 by increasing the total appropriation as follows:

41 TITLE II – APPROPRIATIONS.

42 **Sec. 6. Appropriations of federal funds.**

43 DEPARTMENT OF HEALTH AND  
44 HUMAN RESOURCES

45 291-West Virginia Health Care Authority

46 (WV Code Chapter 16)

47 Fund 8851 FY 2006 Org 0507

|    |  |  |              |                |
|----|--|--|--------------|----------------|
| 48 |  |  | <b>Act-</b>  | <b>Federal</b> |
| 49 |  |  | <b>ivity</b> | <b>Funds</b>   |

|    |   |                              |     |    |         |
|----|---|------------------------------|-----|----|---------|
| 50 | 1 | Unclassified-Total . . . . . | 096 | \$ | 175,000 |
|----|---|------------------------------|-----|----|---------|

51 And, That the total appropriation for the fiscal year ending  
52 the thirtieth day of June, two thousand six, to fund 8876, fiscal  
53 year 2006, organization 0601, be supplemented and amended  
54 by increasing the total appropriation as follows:

55 TITLE II – APPROPRIATIONS.

56 **Sec. 6. Appropriations of federal funds.**

57 DEPARTMENT OF MILITARY AFFAIRS  
58 AND PUBLIC SAFETY

59 294-Office of the Secretary

60 (WV Code Chapter 5F)

61 Fund 8876 FY 2006 Org 0601

|    |  |  |              |                |
|----|--|--|--------------|----------------|
| 62 |  |  | <b>Act-</b>  | <b>Federal</b> |
| 63 |  |  | <b>ivity</b> | <b>Funds</b>   |

|    |   |                              |     |    |            |
|----|---|------------------------------|-----|----|------------|
| 64 | 1 | Unclassified-Total . . . . . | 096 | \$ | 10,000,000 |
|----|---|------------------------------|-----|----|------------|

65 And, That the total appropriation for the fiscal year ending  
66 the thirtieth day of June, two thousand six, to fund 8830, fiscal



67 year 2006, organization 0806, be supplemented and amended  
68 by increasing the total appropriation as follows:

69 TITLE II – APPROPRIATIONS.

70 **Sec. 6. Appropriations of federal funds.**

71 **DEPARTMENT OF TRANSPORTATION**

72 *307-Public Port Authority*

73 (WV Code Chapter 17)

74 Fund 8830 FY 2006 Org 0806

| 75 | <b>Act-</b>                        | <b>Federal</b> |
|----|------------------------------------|----------------|
| 76 | <b>ivity</b>                       | <b>Funds</b>   |
| 77 | 1 Unclassified-Total . . . . . 096 | \$ 200,000     |

78 And, That the total appropriation for the fiscal year ending  
79 the thirtieth day of June, two thousand six, to fund 8829, fiscal  
80 year 2006, organization 0620, be supplemented and amended  
81 by increasing the total appropriation as follows:

82 TITLE II – APPROPRIATIONS.

83 **Sec. 7. Appropriations from federal block grants.**

84 *329-Division of Criminal Justice Services-*

85 *Juvenile Accountability Incentive*

86 Fund 8829 FY 2006 Org 0620

| 87 | <b>Act-</b>                        | <b>Federal</b> |
|----|------------------------------------|----------------|
| 88 | <b>ivity</b>                       | <b>Funds</b>   |
| 89 | 1 Unclassified-Total . . . . . 096 | \$ 427,737     |

90 The purpose of this supplementary appropriation bill is to  
91 supplement and increase items of appropriations in the afore-  
92 said accounts for the designated spending units for expenditure  
93 during the fiscal year two thousand six.

---

## CHAPTER 13

**(H. B. 4858 — By Delegates Michael, Doyle, Frederick,  
Susman, Browning, H. White, Anderson,  
Ashley, G. White and Border)**

---

[Passed March 11, 2006; in effect from passage.]  
[Approved by the Governor on March 23, 2006.]

---

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 six, to the secretary of state - state election fund, fund 8854, fiscal year 2006, organization 1600, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

WHEREAS, The Governor has established the availability of federal funds for a continuing program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand six, 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 fiscal year ending the thirtieth day of June, two thousand six, to fund 8854, fiscal year 2006, organization 1600, be supplemented and amended by increasing the total appropriation as follows:

1 TITLE II – APPROPRIATIONS.

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

3 **EXECUTIVE**

4 *268-Secretary of State-*

5 *State Election Fund*

6 (WV Code Chapter 3)

7 Fund 8854 FY 2006 Org 1600

|   |  |              |                |
|---|--|--------------|----------------|
| 8 |  | <b>Act-</b>  | <b>Federal</b> |
| 9 |  | <b>ivity</b> | <b>Funds</b>   |

|    |   |                                |     |    |           |
|----|---|--------------------------------|-----|----|-----------|
| 10 | 1 | Unclassified - Total . . . . . | 096 | \$ | 4,500,000 |
|----|---|--------------------------------|-----|----|-----------|

11 The purpose of this supplementary appropriation bill is to  
 12 supplement and increase an item of appropriation in the  
 13 aforesaid account for the designated spending unit for expendi-  
 14 ture during the fiscal year two thousand six.



# CHAPTER 14

**(Com. Sub. for H. B. 4119 — By Delegates Cann, Kominar,  
 Michael, H. White, Browning, Craig, Stalnaker,  
 Poling, G. White and Azinger)**

---

[Passed March 11, 2006; in effect from passage.]  
 [Approved by the Governor on March 30, 2006.]

---

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §20-15-1, §20-15-2, §20-

15-3, §20-15-4, §20-15-5, §20-15-6, §20-15-7 and §20-15-8, all relating to creating the ATV responsibility act; providing for findings, definitions and scope; providing the duties of authorized outfitters and licensees; providing the duties and the responsibilities of participants; providing indemnification and liabilities of authorized outfitters, licensees and participants; and requiring authorized outfitters; and licensees to carry insurance.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §20-15-1, §20-15-2, §20-15-3, §20-15-4, §20-15-5, §20-15-6, §20-15-7 and §20-15-8, all to read as follows:

**ARTICLE 15. ATV RESPONSIBILITY ACT.**

§20-15-1. Legislative findings.

§20-15-2. Definitions.

§20-15-3. Scope.

§20-15-4. Duties of authorized outfitters or licensees.

§20-15-5. Duties of participants.

§20-15-6. Liability of authorized outfitters and licensees.

§20-15-7. Liability of participants.

§20-15-8. Authorized outfitters required to carry insurance.

**§20-15-1. Legislative findings.**

1       The West Virginia Legislature finds that trail-oriented  
2 recreation for off-highway vehicle enthusiasts offered by the  
3 Hatfield-McCoy Trail significantly contributes to the economy  
4 of West Virginia and is enjoyed by a large and growing number  
5 of residents and nonresidents alike. Since it is recognized that  
6 there are inherent risks in the operation of such off-highway  
7 vehicles which should be understood by each operator and  
8 which cannot be eliminated by authorized outfitters or licens-  
9 ees, it is the purpose of this article to define the areas of  
10 responsibility and affirmative acts which authorized outfitters

11 must perform or risk being liable for loss, damage or injury  
12 suffered by participants, and to define the risk which the  
13 participants expressly assume and for which there can be no  
14 recovery.

### **§20-15-2. Definitions.**

1 The terms in this article have the following meaning, unless  
2 the context clearly requires a different meaning:

3 (1) "All-terrain vehicle" or "ATV" shall mean any motor  
4 vehicle, fifty-two inches or less in width, having an unladen  
5 weight of eight hundred pounds or less, traveling on four or  
6 more low pressure tires with a seat designed to be straddled by  
7 the rider, designed for or capable of travel over unimproved  
8 terrain.

9 (2) "Motorcycle" means any motor vehicle having a seat or  
10 saddle for the use of the rider and designed to travel on not  
11 more than two wheels in contact with the ground.

12 (3) "Authorized outfitter" or "licensee" means a commer-  
13 cial outfitter, which is a person, partnership, limited liability  
14 company ("LLC"), corporation, other organization, or any  
15 combination thereof, licensed by the Hatfield-McCoy Regional  
16 Recreation Authority, who operate from any temporary or  
17 permanent camp, private or public lodge, or private home, who  
18 provide guided tours or the rental of all-terrain vehicles or  
19 motorcycles for use on assigned lands for monetary profit or  
20 gain.

21 (4) "Participant" means any person using the services or  
22 equipment of an authorized outfitter or licensee, including  
23 passengers of an all-terrain vehicle or motorcycle.

### **§20-15-3. Scope.**

1       The provisions of this article shall only apply to authorized  
2 outfitters or licensees licensed by the Hatfield-McCoy Regional  
3 Recreation Authority and any participant as defined in section  
4 two.

**§20-15-4. Duties of authorized outfitters or licensees.**

1       (a) Every authorized outfitter or licensee shall:

2       (1) Mark for identification purposes all equipment and  
3 vehicles used in the business;

4       (2) Maintain all equipment and vehicles used in the  
5 business in such condition that the equipment and vehicles are  
6 safe to operate or use as intended and recommended by the  
7 manufacturer;

8       (3) Provide facilities, equipment and services, conforming  
9 to safety and other requirements established by the rules  
10 promulgated by the Hatfield-McCoy Regional Recreation  
11 Authority;

12       (4) Provide facilities, equipment and services as advertised  
13 or as agreed to by the authorized outfitter or licensee and the  
14 participant;

15       (5) Provide protective helmets which are size appropriate  
16 and which meet the current performance specifications estab-  
17 lished by the American National Standards Institute standard,  
18 z 90.1, the United States Department of Transportation federal  
19 motor vehicle safety standard no. 218 or Snell safety standards  
20 for protective headgear for vehicle users as defined by subdivi-  
21 sion (5), subsection (a), section one, article one, chapter  
22 seventeen-f of this code, to all persons using all-terrain vehicles  
23 or motorcycles;

24       (6) Provide all-terrain vehicles or motorcycles which are  
25 age and size appropriate as recommended by the manufacturer;

26       (7) Make reasonable and prudent efforts to ensure that  
27 participants have received the safety training required by the  
28 provisions of the legislative rule for the use of the Hatfield-  
29 McCoy Regional Recreation Area;

30       (8) Make certain that every guide offered to participants by  
31 the authorized outfitter or licensee has a current standard first  
32 aid training certificate and CPR certificate issued by the  
33 American Red Cross or its equivalent and ATV safety training  
34 through the ATV Safety Institute;

35       (9) Make certain that employees carry first aid kits when  
36 acting as guides; and

37       (10) Make known to any participant any dangerous condi-  
38 tion as to trail lands, facilities or equipment to be traversed or  
39 used which is known by the outfitter or licensee.

40       (b) An authorized outfitter or licensee may not rent or lease  
41 an all-terrain vehicle or motorcycle to a person under the age of  
42 eighteen years or allow any owner-operated all-terrain vehicle  
43 or motorcycle on any guided tour when operated by any person  
44 under the age of eighteen years without first obtaining a written  
45 statement, signed by the minor's parent or guardian certifying  
46 that:

47       (1) Any machine to be operated by the minor or his parent  
48 or guardian is of a model that is recommended by the manufac-  
49 turer as appropriate to the minor's age and size;

50       (2) All rules governing the use of the vehicle and the  
51 Hatfield-McCoy Recreation Area have been explained to the  
52 minor in sufficient detail to enable the minor to abide by the  
53 rules; and

54       (3) Any minor under the age of sixteen will remain under  
55 the supervision of and the sight of the parent or guardian at all  
56 times.

57 (c) An authorized outfitter or licensee shall provide a  
58 participant with written notification of his or her duties as  
59 prescribed in section five of this article, and the participant shall  
60 sign the notification and shall be kept on file by the outfitter or  
61 licensee for not less than five years.

**§20-15-5. Duties of participants.**

1 (a) All participants:

2 (1) Shall comply with any requirements established by law,  
3 including those in section one, article one, chapter seventeen-f  
4 of this code which defines those acts prohibited by operators of  
5 all-terrain vehicles;

6 (2) Shall comply with the rules or regulations established  
7 for use of the Hatfield-McCoy Recreation Area;

8 (3) Shall, as to the operator or licensee, expressly assume  
9 the risk of and legal responsibility for any injury, loss or  
10 damage to person or property which results from participation  
11 in operating an all-terrain vehicle or motorcycle owned by the  
12 authorized outfitter or licensee, and caused by any of the  
13 following:

14 (A) Variations in terrain, slope or angle of terrain;

15 (B) Surface or subsurface conditions including: Rocks,  
16 trees or other forms of forest growth or debris;

17 (C) Collisions with signs, markers, width restrictors,  
18 culverts, bridges, pipes, equipment, vehicles or any other  
19 objects or fixtures used in trail management, maintenance,  
20 construction or development;

21 (D) Collisions with signs, markers, pipes, equipment,  
22 vehicles, or any component thereof used in natural resource  
23 maintenance, development, or extraction;



24 (E) Collisions with electrical transmission poles, towers,  
25 lines, guy wires or any component thereof.

26 (4) Shall obey all rules or instructions announced by the  
27 authorized outfitter or licensee, with regard to the operation of  
28 the all-terrain vehicle or motorcycle he or she is operating; and

29 (5) Shall wear all safety equipment provided by the  
30 authorized outfitter or licensee, or which might otherwise be  
31 required by law.

32 (b) Each participant shall have the sole individual responsi-  
33 bility for:

34 (1) Knowing the range of his or her own ability to negotiate  
35 any slope or trail;

36 (2) Operating the ATV or motorcycle within the limits of  
37 the participant's own ability;

38 (3) Maintaining reasonable control of speed and course at  
39 all times;

40 (4) Heeding all posted warnings;

41 (5) Operating only on trails designated by the Hatfield-  
42 McCoy Regional Recreation Authority; and

43 (6) Refraining from acting in a manner which may cause or  
44 contribute to the injury of any person.

45 (c) If while riding an ATV or motorcycle, any participant  
46 collides with any object or person, the responsibility for the  
47 collision shall be solely that of the participant or participants  
48 involved and not that of the authorized outfitter or licensee  
49 unless the authorized outfitter or licensee or his or her agent  
50 caused the collision in a tortious manner.

51 (d) After an accident, a participant may not leave the area  
52 where the accident took place without:

53 (1) Leaving personal identification, including his or her  
54 name and address;

55 (2) Notifying the proper authorities; and

56 (3) Obtaining assistance when he or she knows or reason-  
57 ably should know that any other person involved in the accident  
58 is in need of medical or other assistance.

59 (e) Where a participant is a lawful passenger, that partici-  
60 pant may not distract or perform any act which might interfere  
61 with the safe operation of the all-terrain vehicle or motorcycle  
62 of which he or she is a passenger.

63 (f) Any person under the age of sixteen years shall remain  
64 under the direct supervision and within sight of a parent or  
65 guardian both of whom must otherwise comply with state or  
66 federal laws and any rules or regulations promulgated thereun-  
67 der.

68 (g) A participant may not make any alterations or tamper  
69 with the all-terrain vehicle or motorcycle he or she is operating  
70 or of which he or she is a passenger in any way which would  
71 interfere with the continued safe operation of that machine.

**§20-15-6. Liability of authorized outfitters and licensees.**

1 (a) Any authorized outfitter or licensee is liable for injury,  
2 loss or damage caused by failure to follow the duties set forth  
3 in section four of this article where the violation of duty is  
4 causally related to the injury, loss or damage suffered.

5 (b) An authorized outfitter or licensee is not liable for any  
6 injury, loss or damage caused by the negligence of any person  
7 who is not an agent or employee of the authorized outfitter or  
8 licensee.

9 (c) An authorized outfitter or licensee is not liable for any  
10 injury, loss or damage caused by a participant's violation of any  
11 duty described in section five of this article.

12 (d) An authorized outfitter or licensee is not liable for any  
13 injury, loss or damage caused solely by the participant's failure  
14 to negotiate the terrain or environment over which or through  
15 which the participant is operating his or her all-terrain vehicle  
16 or motorcycle as described in section five of this article.

**§20-15-7. Liability of participants.**

1 Any participant is liable for injury, loss or damage resulting  
2 from violations of the duties established in section five of this  
3 article where the violation of duty is causally related to the  
4 injury, loss or damage suffered.

**§20-15-8. Authorized outfitters required to carry insurance.**

1 Every authorized outfitter or licensee shall carry public  
2 liability insurance in limits of not less than three hundred  
3 thousand dollars per occurrence.

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## CHAPTER 15.

**(Com. Sub. for S. B. 509 — By Senators Kessler, Tomblin, Mr. President, Harrison, Caruth, Oliverio, Chafin, Dempsey, Foster, Helmick, Jenkins, Minard, Love, White, Plymale, Deem, Facemyer, Weeks, Minear, Guills, Yoder, Bowman, Bailey, Boley, Unger and Sharpe)**

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[Passed March 8, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2006.]

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AN ACT to amend and reenact §17A-6A-3, §17A-6A-4, §17A-6A-8, §17A-6A-8a, §17A-6A-10 and §17A-6A-15 of the Code of West

Virginia, 1931, as amended, all relating generally to automobile franchise law; relationship of automobile dealers, distributors and manufacturers; providing clarification that material breach is required for good cause for cancellation of dealer contract; providing factors to be considered for dealer and public interest in cancellation of dealer contract; providing for compensation to a dealer from a manufacturer when a brand or line is phased out; expanding and clarifying prohibited practices; clarifying prohibited coercive acts when requiring a dealer enter into an agreement; adding requirement that manufacturers and distributors use fair and reasonable performance standards that are statistically sound and verifiable; exception for volume purchases; prohibiting manufacturers and distributors from requiring facility upgrades as a condition of offering certain vehicle models; requiring manufacturer or distributor responsibility for all damage to vehicles prior to dealer taking possession; and providing for payment of reasonable expenses for professional services by the manufacturer or distributor prior to the exercise of a first right of refusal.

*Be it enacted by the Legislature of West Virginia:*

That §17A-6A-3, §17A-6A-4, §17A-6A-8, §17A-6A-8a, §17A-6A-10 and 17A-6A-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLE-SALERS AND MANUFACTURERS.**

- §17A-6A-3. Definitions.
- §17A-6A-4. Cancellation of dealer contract; notification.
- §17A-6A-8. Reasonable compensation to dealer.
- §17A-6A-8a. Compensation to dealers for service rendered.
- §17A-6A-10. Prohibited practices.
- §17A-6A-15. Indemnity.

**§17A-6A-3. Definitions.**

1 For the purposes of this article, the words and phrases  
2 defined in this section have the meanings ascribed to them,  
3 except where the context clearly indicates a different meaning.

4 (1) “Dealer agreement” means the franchise, agreement or  
5 contract in writing between a manufacturer, distributor and a  
6 new motor vehicle dealer, which purports to establish the legal  
7 rights and obligations of the parties to the agreement or contract  
8 with regard to the purchase, lease or sale of new motor vehicles,  
9 accessories, service and sale of parts for motor vehicles.

10 (2) “Designated family member” means the spouse, child,  
11 grandchild, parent, brother or sister of a deceased new motor  
12 vehicle dealer who is entitled to inherit the deceased dealer’s  
13 ownership interest in the new motor vehicle dealership under  
14 the terms of the dealer’s will, or who has otherwise been  
15 designated in writing by a deceased dealer to succeed the  
16 deceased dealer in the new motor vehicle dealership, or is  
17 entitled to inherit under the laws of intestate succession of this  
18 state. With respect to an incapacitated new motor vehicle  
19 dealer, the term means the person appointed by a court as the  
20 legal representative of the new motor vehicle dealer’s property.  
21 The term also includes the appointed and qualified personal  
22 representative and the testamentary trustee of a deceased new  
23 motor vehicle dealer. However, the term means only that  
24 designated successor nominated by the new motor vehicle  
25 dealer in a written document filed by the dealer with the  
26 manufacturer or distributor, if such a document is filed.

27 (3) “Distributor” means any person, resident or nonresident,  
28 who, in whole or in part, offers for sale, sells or distributes any  
29 new motor vehicle to a new motor vehicle dealer or who  
30 maintains a factory representative, resident or nonresident, or  
31 who controls any person, resident or nonresident, who, in whole  
32 or in part, offers for sale, sells or distributes any new motor  
33 vehicle to a new motor vehicle dealer.

34 (4) “Established place of business” means a permanent,  
35 enclosed commercial building located within this state easily  
36 accessible and open to the public at all reasonable times and at  
37 which the business of a new motor vehicle dealer, including the  
38 display and repair of motor vehicles, may be lawfully carried on  
39 in accordance with the terms of all applicable building codes,  
40 zoning and other land-use regulatory ordinances and as licensed  
41 by the Division of Motor Vehicles.

42 (5) “Factory branch” means an office maintained by a  
43 manufacturer or distributor for the purpose of selling or offering  
44 for sale vehicles to a distributor, wholesaler or new motor  
45 vehicle dealer, or for directing or supervising, in whole or in  
46 part, factory or distributor representatives. The term includes  
47 any sales promotion organization maintained by a manufacturer  
48 or distributor which is engaged in promoting the sale of a  
49 particular make of new motor vehicles in this state to new  
50 motor vehicle dealers.

51 (6) “Factory representative” means an agent or employee of  
52 a manufacturer, distributor or factory branch retained or  
53 employed for the purpose of making or promoting the sale of  
54 new motor vehicles or for supervising or contracting with new  
55 motor vehicle dealers or proposed motor vehicle dealers.

56 (7) “Good faith” means honesty in fact and the observation  
57 of reasonable commercial standards of fair dealing in the trade.

58 (8) “Manufacturer” means any person who manufactures or  
59 assembles new motor vehicles; or any distributor, factory  
60 branch or factory representative.

61 (9) “Motor vehicle” means that term as defined in section  
62 one, article one of this chapter, including motorcycle and  
63 recreational vehicle as defined in subsections (c) and (nn),  
64 respectively, of said section, but not including a tractor or farm  
65 equipment.

66 (10) “New motor vehicle” means a motor vehicle which is  
67 in the possession of the manufacturer, distributor or wholesaler,  
68 or has been sold only to a new motor vehicle dealer and on  
69 which the original title has not been issued from the new motor  
70 vehicle dealer.

71 (11) “New motor vehicle dealer” means a person who holds  
72 a dealer agreement granted by a manufacturer or distributor for  
73 the sale of its motor vehicles, who is engaged in the business of  
74 purchasing, selling, leasing, exchanging or dealing in new  
75 motor vehicles, service of said vehicles, warranty work and sale  
76 of parts who has an established place of business in this state  
77 and is licensed by the Division of Motor Vehicles.

78 (12) “Person” means a natural person, partnership, corpora-  
79 tion, association, trust, estate or other legal entity.

80 (13) “Proposed new motor vehicle dealer” means a person  
81 who has an application pending for a new dealer agreement  
82 with a manufacturer or distributor. Proposed motor vehicle  
83 dealer does not include a person whose dealer agreement is  
84 being renewed or continued.

85 (14) “Relevant market area” means the area located within  
86 a fifteen air-mile radius around an existing same line-make new  
87 motor vehicle dealership.

**§17A-6A-4. Cancellation of dealer contract; notification.**

1 (1) Notwithstanding any agreement, a manufacturer or  
2 distributor shall not cancel, terminate, fail to renew or refuse to  
3 continue any dealer agreement with a new motor vehicle dealer  
4 unless the manufacturer or distributor has complied with all of  
5 the following:

6 (a) Satisfied the notice requirement of section seven of this  
7 article;

8 (b) Acted in good faith;

9 (c) Engaged in full and open communication with fran-  
10 chised dealer; and

11 (d) Has good cause for the cancellation, termination,  
12 nonrenewal or discontinuance.

13 (2) Notwithstanding any agreement, good cause exists when  
14 a manufacturer or distributor can demonstrate termination is  
15 necessary due to a material breach of a reasonable term or terms  
16 of the agreement by a dealer when weighed against the interests  
17 of the dealer and the public. The interests of the dealer and the  
18 public shall include consideration of:

19 (a) The relationship of the dealer's sales to the sales in the  
20 relevant market;

21 (b) The investment and financial obligations of the dealer  
22 under the terms of the franchise agreement;

23 (c) The effect on the public cancellation of the franchise  
24 agreement would cause;

25 (d) The adequacy of the dealer's sales and service facilities,  
26 equipment, parts and personnel in relation to other dealers in  
27 the relevant market;

28 (e) Whether the dealer is honoring existing warranties;

29 (f) Whether the dealer is complying, or can comply within  
30 a reasonable time, with reasonable capitalization requirements;  
31 and

32 (g) The dealer's overall performance under the reasonable  
33 terms of the franchise agreement. This shall include the overall  
34 fairness of the agreement terms, the enforceability of the  
35 agreement and the relative bargaining power of the parties.



36 (3) If the failure by the new motor vehicle dealer to comply  
37 with a provision of the dealer agreement relates to the perfor-  
38 mance of the new motor vehicle dealer in sales or service, good  
39 cause exists for the purposes of a termination, cancellation,  
40 nonrenewal or discontinuance under subsection (1) of this  
41 section when the new motor vehicle dealer failed to effectively  
42 carry out the performance provisions of the dealer agreement if  
43 all of the following have occurred:

44 (a) The new motor vehicle dealer was given written notice  
45 by the manufacturer or distributor of the failure;

46 (b) The notification stated that the notice of failure of  
47 performance was provided pursuant to this article;

48 (c) The new motor vehicle dealer was afforded a reasonable  
49 opportunity to exert good faith efforts to carry out the dealer  
50 agreement; and

51 (d) The failure continued for more than three hundred sixty  
52 days after the date notification was given pursuant to subdivi-  
53 sion (a) of this subsection.

**§17A-6A-8. Reasonable compensation to dealer.**

1 (1) Upon the termination, cancellation, nonrenewal or  
2 discontinuance of any dealer agreement, the new motor vehicle  
3 dealer shall be allowed fair and reasonable compensation by the  
4 manufacturer or distributor for the following:

5 (a) Any new motor vehicle inventory, manufactured for sale  
6 in the United States, purchased from the manufacturer, distribu-  
7 tor or other dealers, which has not been materially altered,  
8 substantially damaged or driven for more than seven hundred  
9 fifty miles, except that for any new motorcycle inventory  
10 purchased from the manufacturer or distributor, that inventory  
11 must not have been materially altered, substantially damaged or  
12 driven for more than fifty miles;

13 (b) Supplies and parts inventory purchased from the  
14 manufacturer or distributor and listed in the manufacturer's or  
15 distributor's current parts catalog;

16 (c) Equipment, furnishings and signs purchased from the  
17 manufacturer or distributor; and

18 (d) Special computer software, hardware, license fees and  
19 other programs mandated by the manufacturer to provide  
20 training or communication with the manufacturer.

21 (2) Upon the termination, cancellation, nonrenewal or  
22 discontinuance of a dealer agreement by the manufacturer or  
23 distributor, the manufacturer or distributor shall also pay to the  
24 new motor vehicle dealer a sum equal to the current, fair rental  
25 value of his or her established place of business for a period of  
26 three years from the effective date of termination, cancellation,  
27 nonrenewal or discontinuance, or the remainder of the lease,  
28 whichever is less. If the dealer, directly or indirectly, owns the  
29 dealership facility, the manufacturer shall pay the dealer a sum  
30 equal to the reasonable rental value of the dealership premises  
31 for three years. However, the dealer shall have the obligation to  
32 mitigate his or her damages, including, but not limited to,  
33 listing the facility with a commercial real estate agent and other  
34 reasonable steps to sell or lease the property. During this  
35 three-year period the manufacturer shall have the right to  
36 occupy and use the facilities until such time as the dealer is able  
37 to otherwise sell or lease the property to another party. The  
38 payment required by this subsection does not apply to any  
39 termination, cancellation, nonrenewal or discontinuance made  
40 pursuant to subsection (c), section five of this article.

41 (3) Upon the termination, cancellation or nonrenewal where  
42 the manufacturer or distributor is discontinuing the sale of a  
43 product line, the manufacturer or distributor shall pay or  
44 provide to the motor vehicle dealer:

45 (a) Compensation consistent with the length of time the  
46 dealer carried the line and the investment and timing thereof  
47 required by the manufacturer or distributor of the dealer; and

48 (b) Support of the manufacturer's or distributor's warranty  
49 obligations by making parts available and compensating dealers  
50 for warranty parts and labor for five years: *Provided*, That the  
51 motor vehicle dealer has adequate facilities, trained personnel  
52 and equipment to perform warranty repairs.

**§17A-6A-8a. Compensation to dealers for service rendered.**

1 (1) Every motor vehicle manufacturer, distributor or  
2 wholesaler, factory branch or distributor branch, or officer,  
3 agent or representative thereof, shall:

4 (a) Specify in writing to each of its motor vehicle dealers,  
5 the dealer's obligation for delivery, preparation, warranty and  
6 factory recall services on its products;

7 (b) Compensate the motor vehicle dealer for warranty and  
8 factory recall service required of the dealer by the manufac-  
9 turer, distributor or wholesaler, factory branch or distributor  
10 branch or officer, agent or representative thereof; and

11 (c) Provide the dealer the schedule of compensation to be  
12 paid the dealer for parts, work and service in connection with  
13 warranty and recall services and the time allowance for the  
14 performance of the work and service.

15 (2) In no event may:

16 (a) The schedule of compensation fail to compensate the  
17 dealers for the work and services they are required to perform  
18 in connection with the dealer's delivery and preparation  
19 obligations, or fail to adequately and fairly compensate the  
20 dealers for labor, parts and other expenses incurred by the

21 dealer to perform under and comply with manufacturer's  
22 warranty agreements and factory recalls;

23 (b) Any manufacturer, distributor or wholesaler, or repre-  
24 sentative thereof, pay its dealers an amount of money for  
25 warranty or recall work that is less than that charged by the  
26 dealer to the retail customers of the dealer for nonwarranty and  
27 nonrecall work of the like kind; and

28 (c) Any manufacturer, distributor or wholesaler, or repre-  
29 sentative thereof, compensate for warranty and recall work  
30 based on a flat-rate figure that is less than what the dealer  
31 charges for retail work.

32 (3) It is a violation of this section for any manufacturer,  
33 distributor, wholesaler or representative to require any dealer to  
34 pay in any manner, surcharges, limited allocation, audits,  
35 charge backs or other retaliation, if the dealer seeks to recover  
36 its nonwarranty retail rate for warranty and recall work.

37 (4) All claims made by motor vehicle dealers pursuant to  
38 this section for compensation for delivery, preparation, war-  
39 ranty and recall work, including labor, parts and other expenses,  
40 shall be paid by the manufacturer within thirty days after  
41 approval and shall be approved or disapproved by the manufac-  
42 turer within thirty days after receipt. When any claim is  
43 disapproved, the dealer shall be notified in writing of the  
44 grounds for disapproval. No claim which has been approved  
45 and paid may be charged back to the dealer unless it can be  
46 shown that the claim was false or fraudulent, that the repairs  
47 were not properly made or were unnecessary to correct the  
48 defective condition or the dealer failed to reasonably substanti-  
49 ate the claim in accordance with the written requirements of the  
50 manufacturer or distributor in effect at the time the claim arose.  
51 No charge back may be made until the dealer has had notice  
52 and an opportunity to support the claim in question. No  
53 otherwise valid reimbursement claims may be denied once

54 properly submitted within manufacturers' submission guide-  
55 lines due to a clerical error or omission or based on a different  
56 level of technician technical certification or the dealer's failure  
57 to subscribe to any manufacturer's computerized training  
58 programs.

59 (5) Notwithstanding the terms of a franchise agreement or  
60 provision of law in conflict with this section, the dealer's  
61 delivery, preparation, warranty and recall obligations consti-  
62 tutes the dealer's sole responsibility for product liability as  
63 between the dealer and manufacturer, and, except for a loss  
64 caused by the dealer's failure to adhere to these obligations, a  
65 loss caused by the dealer's negligence or intentional misconduct  
66 or a loss caused by the dealer's modification of a product  
67 without manufacturer authorization, the manufacturer shall  
68 reimburse the dealer for all loss incurred by the dealer, includ-  
69 ing legal fees, court costs and damages, as a result of the dealer  
70 having been named a party in a product liability action.

**§17A-6A-10. Prohibited practices.**

1 (1) A manufacturer or distributor may not require any new  
2 motor vehicle dealer in this state to do any of the following:

3 (a) Order or accept delivery of any new motor vehicle, part  
4 or accessory of the vehicle, equipment or any other commodity  
5 not required by law which was not voluntarily ordered by the  
6 new motor vehicle dealer. This section does not prevent the  
7 manufacturer or distributor from requiring that new motor  
8 vehicle dealers carry a reasonable inventory of models offered  
9 for sale by the manufacturer or distributor;

10 (b) Order or accept delivery of any new motor vehicle with  
11 special features, accessories or equipment not included in the  
12 list price of the new motor vehicle as publicly advertised by the  
13 manufacturer or distributor;

14 (c) Unreasonably participate monetarily in any advertising  
15 campaign or contest, or purchase any promotional materials,  
16 display devices, display decorations, brand signs and dealer  
17 identification, nondiagnostic computer equipment and displays,  
18 or other materials at the expense of the new motor vehicle  
19 dealer;

20 (d) Enter into any agreement with the manufacturer or  
21 distributor or do any other act prejudicial to the new motor  
22 vehicle dealer by threatening to terminate a dealer agreement,  
23 limit inventory, invoke sales and service warranty or other types  
24 of audits or any contractual agreement or understanding  
25 existing between the dealer and the manufacturer or distributor.  
26 Notice in good faith to any dealer of the dealer's violation of  
27 any terms or provisions of the dealer agreement is not a  
28 violation of this article;

29 (e) Change the capital structure of the new motor vehicle  
30 dealership or the means by or through which the dealer finances  
31 the operation of the dealership if the dealership at all times  
32 meets any reasonable capital standards determined by the  
33 manufacturer in accordance with uniformly applied criteria;

34 (f) Refrain from participation in the management of,  
35 investment in or the acquisition of any other line of new motor  
36 vehicle or related products, provided that the dealer maintains  
37 a reasonable line of credit for each make or line of vehicle,  
38 remains in compliance with reasonable facilities requirements  
39 and makes no change in the principal management of the  
40 dealer. Notwithstanding the terms of any franchise agreement,  
41 a manufacturer or distributor may not enforce any requirements,  
42 including facility requirements, that a new motor vehicle dealer  
43 establish or maintain exclusive facilities, personnel or display  
44 space, when the requirements are unreasonable considering  
45 current economic conditions and are not otherwise justified by  
46 reasonable business considerations. The burden of proving that

47 current economic conditions or reasonable business consider-  
48 ations justify exclusive facilities is on the manufacturer or  
49 distributor and must be proven by a preponderance of the  
50 evidence;

51 (g) Change the location of the new motor vehicle dealership  
52 or make any substantial alterations to the dealership premises,  
53 where to do so would be unreasonable; and

54 (h) Prospectively assent to a release, assignment, novation,  
55 waiver or estoppel which would relieve any person from  
56 liability imposed by this article or require any controversy  
57 between a new motor vehicle dealer and a manufacturer or  
58 distributor to be referred to a person other than the duly  
59 constituted courts of the state or the United States, if the referral  
60 would be binding upon the new motor vehicle dealer.

61 (2) A manufacturer or distributor may not do any of the  
62 following:

63 (a) Fail to deliver new motor vehicles or new motor vehicle  
64 parts or accessories within a reasonable time and in reasonable  
65 quantities relative to the new motor vehicle dealer's market area  
66 and facilities, unless the failure is caused by acts or occurrences  
67 beyond the control of the manufacturer or distributor, or unless  
68 the failure results from an order by the new motor vehicle  
69 dealer in excess of quantities reasonably and fairly allocated by  
70 the manufacturer or distributor. No manufacturer or distributor  
71 may penalize a new motor vehicle dealer for an alleged failure  
72 to meet sales quotas where the alleged failure is due to actions  
73 of the manufacturer or distributor;

74 (b) Refuse to disclose to a new motor vehicle dealer the  
75 method and manner of distribution of new motor vehicles by  
76 the manufacturer or distributor, including any numerical  
77 calculation or formula used, nationally or within the dealers  
78 market, to make the allocations;

79 (c) Refuse to disclose to a new motor vehicle dealer the  
80 total number of new motor vehicles of a given model, which the  
81 manufacturer or distributor has sold during the current model  
82 year within the dealer's marketing district, zone or region,  
83 whichever geographical area is the smallest;

84 (d) Increase prices of new motor vehicles which the new  
85 motor vehicle dealer had ordered and then eventually delivered  
86 to the same retail consumer for whom the vehicle was ordered,  
87 if the order was made prior to the dealer's receipt of the written  
88 official price increase notification. A sales contract signed by  
89 a private retail consumer and binding on the dealer is evidence  
90 of each order. In the event of manufacturer or distributor price  
91 reductions or cash rebates, the amount of any reduction or  
92 rebate received by a dealer shall be passed on to the private  
93 retail consumer by the dealer. Any price reduction in excess of  
94 five dollars shall apply to all vehicles in the dealer's inventory  
95 which were subject to the price reduction. A price difference  
96 applicable to new model or series motor vehicles at the time of  
97 the introduction of the new models or the series is not a price  
98 increase or price decrease. This subdivision does not apply to  
99 price changes caused by the following:

100 (i) The addition to a motor vehicle of required or optional  
101 equipment pursuant to state or federal law;

102 (ii) In the case of foreign made vehicles or components,  
103 revaluation of the United States dollar; or

104 (iii) Any increase in transportation charges due to an  
105 increase in rates charged by a common carrier and transporters;

106 (e) Offer any refunds or other types of inducements to any  
107 dealer for the purchase of new motor vehicles of a certain line-  
108 make to be sold to this state or any political subdivision of this  
109 state without making the same offer available upon request to  
110 all other new motor vehicle dealers of the same line-make;



111 (f) Release to an outside party, except under subpoena or in  
112 an administrative or judicial proceeding to which the new motor  
113 vehicle dealer or the manufacturer or distributor are parties, any  
114 business, financial or personal information which has been  
115 provided by the dealer to the manufacturer or distributor, unless  
116 the new motor vehicle dealer gives his or her written consent;

117 (g) Deny a new motor vehicle dealer the right to associate  
118 with another new motor vehicle dealer for any lawful purpose;

119 (h) Establish a new motor vehicle dealership which would  
120 unfairly compete with a new motor vehicle dealer of the same  
121 line-make operating under a dealer agreement with the manu-  
122 facturer or distributor in the relevant market area. A manufac-  
123 turer or distributor shall not be considered to be unfairly  
124 competing if the manufacturer or distributor is:

125 (i) Operating a dealership temporarily for a reasonable  
126 period.

127 (ii) Operating a dealership which is for sale at a reasonable  
128 price.

129 (iii) Operating a dealership with another person who has  
130 made a significant investment in the dealership and who will  
131 acquire full ownership of the dealership under reasonable terms  
132 and conditions;

133 (i) A manufacturer may not, except as provided by this  
134 section, directly or indirectly:

135 (i) Own an interest in a dealer or dealership;

136 (ii) Operate a dealership; or

137 (iii) Act in the capacity of a new motor vehicle dealer:  
138 *Provided*, That a manufacturer may own an interest, other than  
139 stock in a publicly held company, solely for investment  
140 purposes;

141 (j) A manufacturer or distributor may own an interest in a  
142 franchised dealer, or otherwise control a dealership, for a period  
143 not to exceed twelve months from the date the manufacturer or  
144 distributor acquires the dealership if:

145 (i) The person from whom the manufacturer or distributor  
146 acquired the dealership was a franchised dealer; and

147 (ii) The dealership is for sale by the manufacturer or  
148 distributor at a reasonable price and on reasonable terms and  
149 conditions;

150 (k) The twelve-month period may be extended for an  
151 additional twelve months. Notice of any such extension of the  
152 original twelve-month period must be given to any dealer of the  
153 same line-make whose dealership is located in the same county,  
154 or within fifteen air miles of, the dealership owned or controlled  
155 by the manufacturer or distributor prior to the expiration of the  
156 original twelve-month period. Any dealer receiving the notice  
157 may protest the proposed extension within thirty days of  
158 receiving notice by bringing a declaratory judgment action in  
159 the circuit court for the county in which the new motor vehicle  
160 dealer is located to determine whether good cause exists for the  
161 extension;

162 (l) For the purpose of broadening the diversity of its dealer  
163 body and enhancing opportunities for qualified persons who are  
164 part of a group who have historically been under represented in  
165 its dealer body, or other qualified persons who lack the re-  
166 sources to purchase a dealership outright, but for no other  
167 purpose, a manufacturer or distributor may temporarily own an  
168 interest in a dealership if the manufacturer's or distributor's  
169 participation in the dealership is in a bona fide relationship with  
170 a franchised dealer who:

171 (i) Has made a significant investment in the dealership,  
172 subject to loss;

- 173           (ii) Has an ownership interest in the dealership; and
- 174           (iii) Operates the dealership under a plan to acquire full  
175 ownership of the dealership within a reasonable time and under  
176 reasonable terms and conditions;
- 177           (m) Unreasonably withhold consent to the sale, transfer or  
178 exchange of the dealership to a qualified buyer capable of being  
179 licensed as a new motor vehicle dealer in this state;
- 180           (n) Fail to respond in writing to a request for consent to a  
181 sale, transfer or exchange of a dealership within sixty days after  
182 receipt of a written application from the new motor vehicle  
183 dealer on the forms generally utilized by the manufacturer or  
184 distributor for such purpose and containing the information  
185 required therein. Failure to respond to the request within the  
186 sixty days is consent;
- 187           (o) Unfairly prevent a new motor vehicle dealer from  
188 receiving reasonable compensation for the value of the new  
189 motor vehicle dealership;
- 190           (p) Audit any motor vehicle dealer in this state for warranty  
191 parts or warranty service compensation, service compensation,  
192 service incentives, rebates or other forms of sales incentive  
193 compensation more than twelve months after the claim for  
194 payment or reimbursement has been made by the automobile  
195 dealer: *Provided*, That the provisions of this subsection does not  
196 apply where a claim is fraudulent. In addition, the manufacturer  
197 or distributor is responsible for reimbursing the audited dealer  
198 for all copying, postage and administrative costs incurred by the  
199 dealer during the audit. Any charges to a dealer as a result of  
200 the audit must be separately billed to the dealer;
- 201           (q) Unreasonably restrict a dealer's ownership of a dealer-  
202 ship through noncompetition covenants, site control, sublease,  
203 collateral pledge of lease, right of first refusal, option to  
204 purchase, or otherwise. A right of first refusal is created when:

205 (i) A manufacturer has a contractual right of first refusal to  
206 acquire the new motor vehicle dealer's assets where the dealer  
207 owner receives consideration, terms, and conditions that are  
208 either the same as or better than those they have already  
209 contracted to receive under the proposed change of more than  
210 fifty percent of the dealers's ownership.

211 (ii) The proposed change of the dealership's ownership or  
212 the transfer of the new vehicle dealer's assets does not involve  
213 the transfer of assets or the transfer or issuance of stock by the  
214 dealer or one of the dealer's owners to one of the following:

215 (A) A designated family member of one or more of the  
216 dealer owners;

217 (B) A manager employed by the dealer in the dealership  
218 during the previous five years and who is otherwise qualified as  
219 a dealer operator;

220 (C) A partnership or corporation controlled by a designated  
221 family member of one of the dealers;

222 (D) A trust established or to be established:

223 (1) For the purpose of allowing the new vehicle dealer to  
224 continue to qualify as such under the manufacturer's or  
225 distributor's standards; or

226 (2) To provide for the succession of the franchise agree-  
227 ment to designated family members or qualified management  
228 in the event of death or incapacity of the dealer or its principle  
229 owner or owners.

230 (iii) Upon exercising the right of first refusal by a manufac-  
231 turer, it eliminates any requirement under its dealer agreement  
232 or other applicable provision of this statute that the manufac-  
233 turer evaluate, process or respond to the underlying proposed  
234 transfer by approving or rejecting the proposal, is not subject to

235 challenge as a rejection or denial of the proposed transfer by  
236 any party.

237 (iv) Except as otherwise provided in this subsection, the  
238 manufacturer or distributor agrees to pay the reasonable  
239 expenses, including reasonable out-of-pocket professional fees  
240 which shall include, but not be limited to, accounting, legal or  
241 appraisal services fees that are incurred by the proposed owner  
242 or transferee before the manufacturer's or distributor's exercise  
243 of its right of first refusal. Payment of the expenses and fees for  
244 professional services are not required if the dealer fails to  
245 submit an accounting of those expenses and fees within twenty  
246 days of the dealer's receipt of the manufacturer's or distribu-  
247 tor's written request for such an accounting. Such a written  
248 account of fees and expenses may be requested by a manufac-  
249 turer or distributor before exercising its right of first refusal;

250 (r) Except for experimental low-volume not-for-retail sale  
251 vehicles, cause warranty and recall repair work to be performed  
252 by any entity other than a new motor vehicle dealer;

253 (s) Make any material change in any franchise agreement  
254 without giving the new motor vehicle dealer written notice by  
255 certified mail of the change at least sixty days prior to the  
256 effective date of the change;

257 (t) Fail to reimburse a new motor vehicle dealer, at the  
258 dealers regular rate, or the full and actual cost of providing a  
259 loaner vehicle to any customer who is having a vehicle serviced  
260 at the dealership if the provision of the loaner vehicle is  
261 required by the manufacturer;

262 (u) Compel a new motor vehicle dealer through its finance  
263 subsidiaries to agree to unreasonable operating requirements or  
264 to directly or indirectly terminate a franchise through the  
265 actions of a finance subsidiary of the franchisor. This subsec-  
266 tion does not limit the right of a finance subsidiary to engage in

267 business practices in accordance with the usage of trade in retail  
268 or wholesale vehicle financing;

269 (v) Discriminate directly or indirectly between dealers on  
270 vehicles of like grade or quantity where the effect of the  
271 discrimination would substantially lessen competition; and

272 (w) Use or employ any performance standard that is not fair  
273 and reasonable and based upon accurate and verifiable data  
274 made available to the dealer.

275 (3) A manufacturer or distributor, either directly or through  
276 any subsidiary, may not terminate, cancel, fail to renew or  
277 discontinue any lease of the new motor vehicle dealer's  
278 established place of business except for a material breach of the  
279 lease.

280 (4) Except as may otherwise be provided in this article, no  
281 manufacturer or franchisor shall sell, directly or indirectly, any  
282 new motor vehicle to a consumer in this state, except through  
283 a new motor vehicle dealer holding a franchise for the line-  
284 make covering such new motor vehicle. This subsection shall  
285 not apply to manufacturer or franchisor sales of new motor  
286 vehicles to charitable organizations, qualified vendors or  
287 employees of the manufacturer or franchisor.

288 (5) Except when prevented by an act of God, labor strike,  
289 transportation disruption outside the control of the manufacturer  
290 or time of war, a manufacturer or distributor may not refuse or  
291 fail to deliver, in reasonable quantities and within a reasonable  
292 time, to a dealer having a franchise agreement for the retail sale  
293 of any motor vehicle sold or distributed by the manufacturer,  
294 any new motor vehicle or parts or accessories to new motor  
295 vehicles as are covered by the franchise if the vehicles, parts  
296 and accessories are publicly advertised as being available for  
297 delivery or are actually being delivered. All models offered for

298 sale by the manufacturer, without any enrollment, surcharge,  
299 unreasonable facility or building or any other unreasonable type  
300 of upgrade requirement or acquisition fee, shall be available to  
301 the franchised dealer at no additional cost for that particular  
302 model of vehicle.

**§17A-6A-15. Indemnity.**

1 Notwithstanding the terms of any dealer agreement, a  
2 manufacturer or distributor shall indemnify and hold harmless  
3 its dealers for any reasonable expenses incurred, including  
4 damages, court costs and attorney's fees, arising solely out of  
5 complaints, claims or actions which relate to the manufacture,  
6 assembly, design of a new motor vehicle or other functions by  
7 the manufacturer or distributor beyond the control of the dealer,  
8 including, without limitation, the selection by the manufacturer  
9 or distributor of parts or components for the vehicle, and any  
10 damages to merchandise occurring prior to acceptance of the  
11 vehicle by the dealer to the dealer if the carrier is designated by  
12 the manufacturer or distributor, if the new motor vehicle dealer  
13 gives timely notice to the manufacturer or distributor of the  
14 complaint, claim or action.

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## CHAPTER 16

**(Com. Sub. for S. B. 270 — By Senators Minard,  
Jenkins, Barnes and Plymale)**

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[Passed February 28, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 10, 2006.]

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AN ACT to amend and reenact §31A-3-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding

thereto a new section, designated §31A-3-5, all relating to the appointment of members of banking institutions to the Board of Banking and Financial Institutions; qualifications of members appointed to represent the public on the board; and continuing the Board of Banking and Financial Institutions.

*Be it enacted by the Legislature of West Virginia:*

That §31A-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §31A-3-5, all to read as follows:

**ARTICLE 3. BOARD OF BANKING AND FINANCIAL INSTITUTIONS.**

§31A-3-1. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel; continuation.

§31A-3-5. Continuation of the West Virginia Board of Banking and Financial Institutions.

**§31A-3-1. Board created; appointment, qualifications, terms, oath, etc., of members; quorum; meetings; when members disqualified from participation; compensation; records; office space; personnel; continuation.**

1       (a) There is hereby created the West Virginia Board of  
2 Banking and Financial Institutions which shall consist of six  
3 members and the commissioner, who shall be chairman. The  
4 six members shall be appointed by the Governor by and with  
5 the advice and consent of the Senate. Three of the members  
6 shall be executive officers of state banking institutions. After  
7 the first day of July, two thousand six, when a vacancy oc-  
8 curs among the executive officers of state banking institu-  
9 tions the commissioner shall list all state banking institu-  
10 tions according to each bank's asset size and then divide the list



11 into three groups so that there is an equal number of banking  
12 institutions in each group. The vacancy shall then be filled  
13 from the appropriate group to ensure that each group has a  
14 representative on the board. One member shall be an execu-  
15 tive officer of a financial institution other than a banking  
16 institution. Two members shall represent the public, neither  
17 of whom shall be an employee, officer, trustee, director or  
18 owner of five percent or more of the outstanding shares of  
19 any financial institution. No member shall hold any other  
20 office, employment or position with the United States, any  
21 state, county, municipality or other governmental entity, any  
22 instrumentality or agency of any of the foregoing or with any  
23 political party.

24 (b) The members of the board shall be appointed for  
25 overlapping terms of six years, except that of the original  
26 appointments, two members shall be appointed for a term of  
27 two years, two members shall be appointed for a term of four  
28 years and two members shall be appointed for a term of six  
29 years and in every instance until their respective successors  
30 have been appointed and qualified. Any member appointed  
31 for a full six-year term may not be reappointed until two  
32 years after the expiration of such term. Any member ap-  
33 pointed for less than a full six-year term shall be eligible for  
34 reappointment for a full term. Before entering upon the per-  
35 formance of his or her duties, each member shall take and  
36 subscribe to the oath required by section five, article IV of  
37 the Constitution of this state. The Governor shall, within  
38 sixty days following the occurrence of a vacancy on the  
39 board, fill the same by appointing a person for the unexpired  
40 term of, and meeting the same requirements for membership  
41 as, the person vacating said office. Any member may be re-  
42 moved by the Governor in case of incompetency, neglect of  
43 duty, gross immorality or malfeasance in office.

44 (c) A majority of the members of the board shall consti-  
45 tute a quorum. The board shall meet at least once in each  
46 calendar quarter on a date fixed by the board. The commis-  
47 sioner may, upon his or her own motion, or shall upon the  
48 written request of three members of the board, call additional  
49 meetings of the board upon at least twenty-four hours' notice.  
50 No member shall participate in a proceeding before the board  
51 to which a corporation, partnership or unincorporated associ-  
52 ation is a party and of which he or she is, or was at any time  
53 in the preceding twelve months, a director, officer, owner,  
54 partner, employee, member or stockholder. A member may  
55 disqualify himself or herself from participation in a proceed-  
56 ing for any other cause deemed by him or her to be sufficient.  
57 Each member shall receive fifty dollars for each day or por-  
58 tion thereof spent in attending meetings of the board and  
59 shall be reimbursed for all reasonable and necessary expenses  
60 incurred incident to his or her duties as a member of the  
61 board.

62 (d) The board shall keep an accurate record of all its  
63 proceedings and make certificates thereupon as may be re-  
64 quired by law. The commissioner shall make available neces-  
65 sary office space and secretarial and other assistance as the  
66 board may reasonably require.

**§31A-3-5. Continuation of the West Virginia Board of Banking  
and Financial Institutions.**

1 Pursuant to the provisions of article ten, chapter four of  
2 this code, the West Virginia Board of Banking and Financial  
3 Institutions shall continue to exist until the first day of July,  
4 two thousand seven, unless sooner terminated, continued or  
5 reestablished.

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## CHAPTER 17

(Com. Sub. for H. B. 4063 — By Delegates Ron Thompson,  
H. White and Perry)

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[Passed March 2, 2006; in effect ninety days from passage.]  
[Approved by the Governor on March 13, 2006.]

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AN ACT to amend and reenact §31A-4-2 of the Code of West Virginia, 1931, as amended, relating to banks; authorizing use of certain banking terms in connection with the name of a business; and setting forth the limitations on such authorization.

*Be it enacted by the Legislature of West Virginia:*

That §31A-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

#### **ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.**

#### **§31A-4-2. Use of terms; unlawfully engaging in banking business; penalties; enforcement.**

1       (a) No person doing business in this state, except a bank-  
2       ing institution, a person authorized by the commissioner  
3       under the terms of this section or an insurer licensed pursuant  
4       to article three, chapter thirty-three of this code under a name  
5       including the terms set forth herein as of the thirty-first day  
6       of December, two thousand three, may use or advertise in  
7       connection with such business, or as a designation or title  
8       thereof, the term “bank,” “banker,” “banking,” “banking  
9       company,” “industrial bank,” “savings bank” or “trust com-  
10      pany” and the Insurance Commissioner shall notify the com-

11 missioner of each insurer so licensed. Notwithstanding the  
12 foregoing restriction, the term “banker” may be used in (1)  
13 the legal name of a real estate franchisor; and (2) the  
14 tradename of a real estate brokerage firm who is a current or  
15 future franchisee of a real estate franchise system, if in either  
16 case the use of the term “banker” stems from a family sur-  
17 name belonging to a principal or former principal of the firm,  
18 whether or not such principal or former principal is currently  
19 living. No person doing business in this state except a bank-  
20 ing institution or a person authorized by the commissioner  
21 under this article may engage in the banking or trust business  
22 in this state. A nonbanking subsidiary of a bank holding com-  
23 pany or a nonbanking subsidiary of a banking institution  
24 having a bank branch or bank main office in this state that  
25 provides trust services pursuant to section fourteen of this  
26 article may use the term “trust company” in its title and ad-  
27 vertising. A trust entity owned jointly by federally insured  
28 depository institutions located within this state and autho-  
29 rized by the commissioner to operate in this state may use the  
30 term “trust company” in its title and advertising.

31 (b) It is unlawful for any person other than banking insti-  
32 tutions, as herein excepted, to advertise or hold himself, her-  
33 self, itself or themselves, as the case may be, out to the public  
34 in any manner indicating, directly, indirectly or by implica-  
35 tion, that any of them are engaged in the banking or trust  
36 business or is authorized and approved to engage therein in  
37 this state. A nonbanking subsidiary of a bank holding com-  
38 pany or nonbanking subsidiary of a banking institution hav-  
39 ing a bank branch or bank main office in this state that pro-  
40 vides trust services pursuant to section fourteen of this article  
41 may hold itself out to the public as engaged in the trust busi-  
42 ness. A trust entity owned jointly by federally insured deposi-  
43 tory institutions located within this state and authorized by  
44 the commissioner to operate in this state may hold itself out  
45 to the public as engaged in the trust business.

46 (c) The commissioner may authorize a person to use the  
47 term “bank,” or “banc” in connection with nonprofit organi-  
48 zations or medical businesses where the term would have a  
49 common meaning separate and apart from a financial institu-  
50 tion and would not result in confusion to the public (e.g.,  
51 food bank; medical databank); and in connection with bank  
52 holding companies or their nonbanking affiliates where the  
53 term denotes the entities’ common affiliation and would not  
54 result in confusion to the public.

55 (d) Any violation of the provisions of this section is a  
56 misdemeanor offense, punishable as provided in section fif-  
57 teen, article eight of this chapter.

58 (e) The Commissioner of Banking, or any one or more  
59 banking institutions, acting individually or jointly may peti-  
60 tion the circuit court of the county in which any violation of  
61 the provisions of this section occur or are threatened to occur  
62 for injunction or other appropriate judicial remedies for en-  
63 forcement of the provisions of this section and the prevention  
64 of further or continued violations of this section.

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## CHAPTER 18

**(S. B. 242 — By Senators Minard, Jenkins and McCabe)**

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[Passed March 7, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2006.]

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AN ACT to amend and reenact §31A-4-3 of the Code of West Virginia, 1931, as amended, relating to the authority of a state banking institution to issue more than one class of stock.

*Be it enacted by the Legislature of West Virginia:*

That §31A-4-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.**

**§31A-4-3. Minimum capital stock; classes 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 judg-  
6 ment, 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) of  
10 this section, the Commissioner or the West Virginia Board of  
11 Banking and Financial Institutions may approve the incorpo-  
12 ration of a bank newly organized solely for the purpose of  
13 facilitating the acquisition of another bank if the proposed  
14 newly organized bank has a bona fide subscribed capital  
15 stock and capital surplus of at least sixty thousand dollars.

16       (c) Banking institutions shall issue shares of one or more  
17 classes of stock and the shares shall have a nominal or par  
18 value of not less than one dollar nor more than one hundred  
19 dollars each and, as to each banking institution, each share  
20 shall be equal in all respects with any other share within each  
21 class of stock.

22       (d) Any banking institution may change the par value of  
23 its shares when and to the extent that any such action may be  
24 authorized in writing by the commissioner.

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## CHAPTER 19

**(S. B. 244— By Senators Minard, Jenkins and McCabe)**

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[Passed February 28, 2006; in effect ninety days from passage.]  
[Approved by the Governor on March 10, 2006.]

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AN ACT to amend and reenact §31A-4-13 of the Code of West Virginia, 1931, as amended, relating to powers of state banking institutions.

*Be it enacted by the Legislature of West Virginia:*

That §31A-4-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.**

**§31A-4-13. Powers of state banking institutions generally.**

1       (a) Any state-chartered banking institution has and may  
2 exercise all of the powers necessary for, or incidental to, the  
3 business of banking and, without limiting or restricting such  
4 general powers, it shall have the right to buy or discount  
5 promissory notes and bonds; negotiate drafts, bills of ex-  
6 change and other evidences of indebtedness; borrow money;  
7 receive deposits on such terms and conditions as its officers  
8 may prescribe; buy, sell or exchange bank notes, bullion or  
9 coin; loan money on personal or other security; rent safe-  
10 deposit boxes and receive on deposit for safekeeping jewelry,  
11 plate, stocks, bonds and personal property of whatsoever  
12 description; and provide customer services incidental to the  
13 business of banking, including, but not limited to, the issu-

14    ance and servicing of and lending money by means of credit  
15    cards as letters of credit or otherwise. Any state-chartered  
16    banking institution may accept, for payment at a future date  
17    not to exceed one year, drafts drawn upon it by its customers.  
18    Any state-chartered banking institution may issue letters of  
19    credit, with a specified expiration date or for a definite term,  
20    authorizing the holders thereof to draw drafts upon it or its  
21    correspondents, at sight or on time. Any such banking institu-  
22    tion may organize, acquire, own, operate, dispose of and  
23    otherwise manage wholly owned subsidiary corporations or  
24    entities that are jointly owned with other insured depository  
25    institutions for purposes incident to the banking powers and  
26    services authorized by this chapter provided any wholly  
27    owned or jointly owned entities are subject to federal and  
28    state examination and supervision as if the activities are con-  
29    ducted by the bank.

30           (b) Any state-chartered banking institution may acquire,  
31    own, hold, use and dispose of real estate which may not be  
32    carried on its books at a value greater than the actual cost:  
33    *Provided*, That the property must be necessary for the conve-  
34    nient transaction of its business, including any buildings,  
35    office space or other facilities to rent as a source of income:  
36    *Provided, however*, That the investment hereafter made may  
37    not exceed sixty-five percent of the amount of its capital  
38    stock and surplus, unless the consent in writing of the com-  
39    missioner of banking is first secured.

40           (c) Any state-chartered banking institution may acquire,  
41    own, hold, use and dispose of real estate which shall be car-  
42    ried on its books at the lower of fair value or cost as defined  
43    in rules promulgated by the Commissioner of Banking, sub-  
44    ject to the following limitations:

45           (1) Such as may be mortgaged to it in good faith as secu-  
46    rity for debts in its favor;



47       (2) Such as may be conveyed to it in satisfaction of debts  
48 previously contracted in the course of its business dealings;  
49 and

50       (3) Such as it may purchase at sales under judgments,  
51 decrees, trust deeds or mortgages in its favor, or may pur-  
52 chase at private sale, to secure and effectuate the payment of  
53 debts due to it.

54       (d) The value at which any real estate is held may not be  
55 increased by the addition thereto of taxes, insurance, interest,  
56 ordinary repairs or other charges which do not materially  
57 enhance the value of the property.

58       (e) Any real estate acquired by any such banking institu-  
59 tion under subdivisions (2) and (3), subsection (c) of this  
60 section shall be disposed of by the banking institution at the  
61 earliest practicable date, but the officers thereof shall have a  
62 reasonable discretion in the matter of the time to dispose of  
63 such property in order to save the banking institution from  
64 unnecessary losses: *Provided*, That in every case such prop-  
65 erty shall be disposed of within ten years from the time it is  
66 acquired by the banking institution, unless an extension of  
67 time is given in writing by the Commissioner of Banking.

68       (f) The sale of insurance by state-chartered banking insti-  
69 tutions is subject to the following:

70       Any state-chartered banking institution having its main  
71 or a branch office in any place the population of which does  
72 not exceed five thousand inhabitants, as shown by the last  
73 preceding decennial census, through its employees or agents,  
74 may, from that place or office, directly or through a con-  
75 trolled subsidiary, act as agent for any fire, life, casualty,  
76 liability or other insurance company authorized by the au-  
77 thorities of the state to do business in this state, by soliciting

78 and selling insurance and collecting premiums on policies  
79 issued by such company; and may receive for services so  
80 rendered all permissible fees or commissions as may be  
81 agreed upon between the bank and the insurance company for  
82 which it may act as agent: *Provided*, That no bank may in  
83 any case assume or guarantee the payment on insurance poli-  
84 cies issued through its agency by its principal: *Provided*,  
85 *however*, That the bank may not guarantee the truth of any  
86 statement made by an insured in filing his, her or its applica-  
87 tion for insurance. For purposes of this section, a “controlled  
88 subsidiary” is one in which the state-chartered banking insti-  
89 tution owns at least eighty percent of all classes of stock.  
90 This provision is intended to give state-chartered banking  
91 institutions parity with national banks operating in this state  
92 with regard to the marketing and sale of insurance, notwith-  
93 standing the prohibitions and limitations contained in article  
94 eight-c or elsewhere in this chapter and shall be construed  
95 consistently with interpretations of 12 U. S. C. §92, the regu-  
96 lations promulgated thereunder and any successor legislation  
97 or regulations.

98 (g) Any state-chartered banking institution may, through  
99 its employees or agents, market and sell, as agent, annuities  
100 either at its main office or at any of its branches. The market-  
101 ing and sale of annuities may be made by the bank, through  
102 its employees or agents, directly, or through a controlled  
103 subsidiary as defined in subsection (f) of this section. This  
104 provision is intended to give state-chartered banks parity with  
105 national banks operating in this state with regard to the sale  
106 of annuities, notwithstanding the prohibitions and limitations  
107 contained in article eight-c or elsewhere in this chapter.

108 (h) Unless waived in writing by the commissioner, a  
109 state-chartered bank may not invest or otherwise expend  
110 more of its capital and surplus calculated at the end of the

111 previous calendar year on the activities permitted by subsec-  
112 tions (f) and (g) of this section on an aggregate basis together  
113 with any of its approved financially related products and  
114 services than would be allowed for a national bank providing  
115 the same services. For purposes of this section, “approved  
116 financially related products and services” means those prod-  
117 ucts and services offered by a state-chartered bank pursuant  
118 to an approved application submitted under article eight-c of  
119 this chapter.

120 (i) The commissioner shall promulgate rules in accor-  
121 dance with chapter twenty-nine-a of this code relating to the  
122 sale of insurance or annuities, including, but not limited to,  
123 rules requiring notice of the intention to engage in such activ-  
124 ities and relating to the policies and procedures state-char-  
125 tered banking institutions should adopt in connection with  
126 these activities.

127 (j) Any state-chartered banking institution and its em-  
128 ployees or agents engaged in the sale of insurance or annu-  
129 ities permitted hereby must also comply with all applicable  
130 requirements for the sale of such products imposed by the  
131 West Virginia Commissioner of Insurance and by any state or  
132 federal securities regulator.

133 (k) No state-chartered banking institution may hereafter  
134 invest more than twenty percent of the amount of its capital  
135 and surplus in furniture and fixtures, whether the same be  
136 installed in a building owned by the banking institution, or in  
137 quarters leased by it, unless the consent in writing of the  
138 Commissioner of Banking is first secured.

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## CHAPTER 20

**(S. B. 269 — By Senators Minard, Jenkins, Barnes and Plymale)**

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[Passed March 7, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2006.]

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AN ACT to amend and reenact §31A-4-26 of the Code of West Virginia, 1931, as amended, relating to limitations on loans and extensions of credit; providing for a limitation on investments; limiting loans to executive officers and directors of banks and employees of the banking department; outlining exceptions; and creating a valuation of securities.

*Be it enacted by the Legislature of West Virginia:*

That §31A-4-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.**

**§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to executive officers and directors of banks and employees of the banking department; exceptions; valuation of securities.**

- 1       (a) (1) The total loans and extensions of credit made by a
- 2 state-chartered banking institution to any one person or com-
- 3 mon enterprise and not fully secured, as determined in a man-
- 4 ner consistent with subdivision (2) of this subsection, shall
- 5 not exceed fifteen percent of the unimpaired capital and un-
- 6 impaired surplus of that state-chartered banking institution

7 initially determined for the period such loan or extension of  
8 credit is made.

9 (2) Where the total loans and extensions of credit by a  
10 state-chartered banking institution to any one person or com-  
11 mon enterprise are fully secured by readily marketable collat-  
12 eral having a market value, as determined by reliable and  
13 continuously available price quotations, at least equal to the  
14 outstanding amount of such loans and extensions, then the  
15 bank may provide such loans or extensions of up to ten per-  
16 cent of the unimpaired capital and unimpaired surplus of that  
17 state-chartered banking institution initially determined for the  
18 period such loan or extension is made. This limitation shall  
19 be separate from and in addition to the limitation contained in  
20 subdivision (1) of this subsection.

21 (3) For the purposes of this subsection:

22 (A) The term “loans and extensions of credit” shall in-  
23 clude all direct or indirect advances of funds to a person  
24 made on the basis of any obligation of that person to repay  
25 the funds or repayable from specific property pledged by or  
26 on behalf of the person and to the extent specified by the  
27 Commissioner of Banking, such terms shall also include any  
28 liability of a state-chartered banking institution to advance  
29 funds to or on behalf of a person pursuant to a contractual  
30 commitment;

31 (B) The term “person” shall include an individual, part-  
32 nership, sole proprietorship, society, association, firm, insti-  
33 tution, company, public or private corporation, not-for-profit  
34 corporation, state, governmental agency, bureau, department,  
35 division or instrumentality, political subdivision, county  
36 commission, municipality, trust, syndicate, estate or any  
37 other legal entity whatsoever, formed, created or existing  
38 under the laws of this state or any other jurisdiction;

39 (C) The term “unimpaired capital and unimpaired sur-  
40 plus” means the amount of total equity capital outstanding as  
41 indicated in the bank’s most recent quarterly report of condi-  
42 tion and income as filed with the Commissioner of Banking  
43 pursuant to section nineteen of this article, plus the amount of  
44 the allowance for loan losses, minus the amount of goodwill  
45 or other nonmarketable intangible assets included in such  
46 quarterly report pursuant to generally accepted accounting  
47 principles. Unrealized gains and losses on the bank’s securi-  
48 ties and loan portfolios shall be included in the calculation of  
49 total equity capital to the extent required by generally ac-  
50 cepted accounting principles and applicable federal or state  
51 law, rule or regulation; and

52 (D) The term “common enterprise” includes, but is not  
53 limited to, persons and entities who are so related by business  
54 or otherwise that the expected source of repayment on the  
55 loan or extension of credit is substantially the same for each  
56 person or entity.

57 (4) The limitations contained in this subsection shall be  
58 subject to the following exceptions:

59 (A) Loans or extensions of credit arising from the dis-  
60 count of commercial or business paper evidencing an obliga-  
61 tion to the person negotiating it with recourse shall not be  
62 subject to any limitation based on capital and surplus;

63 (B) The purchase of bankers’ acceptances of the kind  
64 described in section thirteen of the Federal Reserve Act and  
65 issued by other banks shall not be subject to any limitation  
66 based on capital and surplus;

67 (C) Loans and extensions of credit having a term of ten  
68 months or less and secured by bills of lading, warehouse  
69 receipts or similar documents transferring or securing title to  
70 readily marketable staples shall be subject to a limitation of

71 twenty percent of unimpaired capital and unimpaired surplus  
72 in addition to the general limitations set forth in subdivision  
73 (1) of this subsection, provided the market value of the sta-  
74 ples securing each additional loan or extension of credit at all  
75 times equals or exceeds one hundred fifteen percent of the  
76 outstanding amount of such loan or extension of credit. The  
77 staples shall be fully covered by insurance whenever it is  
78 customary to insure such staples. If collateral values of the  
79 staples fall below the levels required herein, to the extent that  
80 the loan is no longer in conformance with its collateral re-  
81 quirements and exceeds the general fifteen percent limitation,  
82 the loan must be brought into conformance within five busi-  
83 ness days, except where judicial proceedings, regulatory  
84 actions or other extraordinary occurrences prevent the bank  
85 from taking action;

86 (D) Loans or extensions of credit secured by bonds,  
87 notes, certificates of indebtedness or Treasury bills of the  
88 United States or by other such obligations fully guaranteed as  
89 to principal and interest by the United States or by bonds,  
90 notes, certificates of indebtedness which are general obliga-  
91 tions of the State of West Virginia or by other such obliga-  
92 tions fully guaranteed as to principal and interest by the State  
93 of West Virginia shall not be subject to any limitation based  
94 on capital and surplus;

95 (E) Loans or extensions of credit to or secured by uncon-  
96 ditional takeout commitments or guarantees of any depart-  
97 ment, agency, bureau, board, commission or establishment of  
98 the United States or of the State of West Virginia or any cor-  
99 poration wholly owned directly or indirectly by the United  
100 States shall not be subject to any limitation based on capital  
101 and surplus;

102 (F) Loans or extensions of credit secured by a segregated  
103 deposit account in the lending bank shall not be subject to  
104 any limitation based on capital and surplus;

105 (G) Loans or extensions of credit to any banking institu-  
106 tion or to any receiver, conservator or other agent in charge  
107 of the business and property of such banking institution or  
108 other federally insured depository institution, when such  
109 loans or extensions of credit are approved by the Commis-  
110 sioner of Banking, shall not be subject to any limitation based  
111 on capital and surplus;

112 (H) (i) Loans and extensions of credit arising from the  
113 discount of negotiable or nonnegotiable installment consumer  
114 paper which carries a full recourse endorsement or uncondi-  
115 tional guarantee by the person or common enterprise transfer-  
116 ring the paper shall be subject under this section to a maxi-  
117 mum limitation equal to twenty-five percent of such unim-  
118 paired capital and unimpaired surplus, notwithstanding the  
119 collateral requirements set forth in subdivision (2) of this  
120 subsection;

121 (ii) If the bank's files or the knowledge of its officers of  
122 the financial condition of each maker of such consumer paper  
123 is reasonably adequate and an officer of the bank designated  
124 for that purpose by the board of directors of the bank certifies  
125 in writing that the bank is relying primarily upon the respon-  
126 sibility of each maker for payment of such loans or exten-  
127 sions of credit and not upon any full or partial recourse en-  
128 dorsement or guarantee by the transferor, the limitations of  
129 this section as to the loans or extensions of credit of each  
130 such maker shall be the sole applicable loan limitations;

131 (I) (i) Loans and extensions of credit secured by shipping  
132 documents or instruments transferring or securing title cover-  
133 ing livestock or giving a lien on livestock when the market  
134 value of the livestock securing the obligation is not at any  
135 time less than one hundred fifteen percent of the face amount  
136 of the note covered shall be subject under this section to a  
137 maximum limitation equal to twenty-five percent of such



138 unimpaired capital and unimpaired surplus, notwithstanding  
139 the collateral requirements set forth in subdivision (2) of this  
140 subsection;

141 (ii) Loans and extensions of credit which arise from the  
142 discount by dealers in livestock of paper given in payment  
143 for livestock, which paper carries a full recourse endorsement  
144 or unconditional guarantee of the seller and which are se-  
145 cured by the livestock being sold, shall be subject under this  
146 section to a limitation of twenty-five percent of such unim-  
147 paired capital and unimpaired surplus, notwithstanding the  
148 collateral requirements set forth in subdivision (2) of this  
149 subsection;

150 (iii) If collateral values of the livestock documents, in-  
151 struments or discount paper fall below the levels required  
152 herein, to the extent that the loan is no longer in conformance  
153 with its collateral requirements and exceeds the general fif-  
154 teen percent limitation, the loan must be brought into confor-  
155 mance within thirty business days, except where judicial  
156 proceedings, regulatory actions or other extraordinary occur-  
157 rences prevent the bank from taking action;

158 (J) Loans or extensions of credit to the Student Loan  
159 Marketing Association shall not be subject to any limitation  
160 based on capital and surplus; and

161 (K) Loans or extensions of credit to a corporation owning  
162 the property in which that state-chartered banking institution  
163 is located, when that state-chartered banking institution has  
164 an unimpaired capital and surplus of not less than one million  
165 dollars or when approved in writing by the Commissioner of  
166 Banking, shall not be subject to any limitation based on capi-  
167 tal and surplus.

168 (5) (A) The Commissioner of Banking may prescribe  
169 rules to administer and carry out the purposes of this subsec-

170 tion including rules to define or further define terms used in  
171 this subsection and to establish limits or requirements other  
172 than those specified in this subsection for particular classes  
173 or categories of loans or extensions of credit;

174 (B) The Commissioner of Banking may also prescribe  
175 rules to deal with loans or extensions of credit, which were  
176 not in violation of this section prior to the effective date of  
177 this article, but which will be in violation of this section upon  
178 the effective date of this article; and

179 (C) The Commissioner of Banking also shall have au-  
180 thority to determine when a loan putatively made to a person  
181 shall for purposes of this subsection be attributed to another  
182 person.

183 (b) (1) Except as hereinafter provided or otherwise per-  
184 mitted by law, nothing herein contained shall authorize the  
185 purchase by a state-chartered banking institution for its own  
186 account of any shares of stock of any corporation: *Provided,*  
187 That a state-chartered banking institution may purchase and  
188 sell securities and stock without recourse, solely upon the  
189 order and for the account of customers.

190 (2) In no event shall the total amount of investment secu-  
191 rities of any one obligor or maker held by a state-chartered  
192 banking institution for its own account exceed that percent-  
193 age of the unimpaired capital and unimpaired surplus of that  
194 state-chartered banking institution as is permitted for invest-  
195 ment by national banks or for any federally insured deposi-  
196 tory institution.

197 (3) For purposes of this subsection:

198 (A) The term “investment securities” means a marketable  
199 obligation in the form of a stock, bond, note or debenture  
200 commonly regarded as an investment security and that is

201 salable under ordinary circumstances with reasonable  
202 promptness at a fair value. “Derivative security” means a  
203 type of investment security involving a financial contract  
204 whose value depends on the values of one or more underlying  
205 assets or indexes of asset values. The term “derivative” refers  
206 inter alia to financial contracts such as collateralized mort-  
207 gage obligations (“CMOs”), forwards, futures, forward rate  
208 agreements, swaps, options and caps/floors/collars whose  
209 primary purpose is to transfer price risks associated with  
210 fluctuations in asset values;

211 (B) The term “person” shall include any individual, part-  
212 nership, sole proprietorship, society, association, firm, insti-  
213 tution, company, public or private corporation, not-for-profit  
214 corporation, state, governmental agency, bureau, department,  
215 division or instrumentality, political subdivision, county  
216 commission, municipality, trust, syndicate, estate or any  
217 other legal entity whatsoever, formed, created or existing  
218 under the laws of this state or any other jurisdiction; and

219 (C) The term “unimpaired capital and unimpaired sur-  
220 plus” shall have the same meaning as set forth in subsection  
221 (a) of this section.

222 (4) Notwithstanding any other provision of this subsec-  
223 tion, a state-chartered banking institution may invest its funds  
224 in any investment authorized for national banking associa-  
225 tions or for any other federally insured depository institution.  
226 Such investments by state-chartered banking institutions shall  
227 be on the same terms and conditions applicable to national  
228 banking associations or any other federally insured deposi-  
229 tory institution: *Provided*, That: (i) The purchase of invest-  
230 ment securities under this subdivision shall be made only  
231 when in the bank’s prudent judgment, which judgment may  
232 be based in part on estimates which it believes to be reliable,  
233 there is adequate evidence that the obligor will be able to

234 perform all it undertakes to perform in connection with the  
235 securities, including all debt service requirements, and that  
236 the securities may be sold with reasonable promptness at a  
237 price that corresponds to their fair value; and (ii) the purchase  
238 conforms to the requirement of subdivision (5) of this subsection.  
239 The Commissioner of Banking may, from time to time,  
240 provide notice to state-chartered banking institutions of authorized  
241 investments under this paragraph.

242 (5) The purchase of investment securities, including derivative  
243 securities, in which the investment characteristics are  
244 considered distinctly or predominantly speculative, or the  
245 purchase of such securities that are in default, whether as to  
246 principal or interest, is prohibited. The proper management of  
247 interest rate risk through the use of derivative or other investment  
248 securities shall not be held a speculative purpose.

249 (6) The Commissioner of Banking may prescribe rules to  
250 administer and carry out the purposes of this subsection,  
251 including rules to define or further define terms used in this  
252 subsection and to establish limits or requirements other than  
253 those specified in this subsection for particular classes or  
254 categories of investment securities.

255 (c) In the event of a material decline of unimpaired capital  
256 and unimpaired surplus of a state-chartered bank during  
257 any quarterly reporting period of more than twenty percent  
258 from that amount reported in the bank's most recent report of  
259 income and condition, or where there is a decrease of more  
260 than thirty percent in any twelve-month period, the bank shall  
261 review its outstanding loans, extensions of credit and investments  
262 and report to the Commissioner of Banking those  
263 loans, extensions and investments that exceed the limitations  
264 of this section using the bank's current reevaluated unimpaired  
265 capital and unimpaired surplus. The report shall detail  
266 the bank's position in each such loan, extension of credit and  
267 investment. The commissioner may, within his or her discre-

268 tion, require that such loans, extensions of credit and invest-  
269 ments be brought into conformity with the bank's current  
270 reevaluated legal lending and investment limitation.

271 (d) Notwithstanding any other provision of this section,  
272 in order to ensure a bank's safety and soundness, the Com-  
273 missioner of Banking retains the authority to direct any state-  
274 chartered bank to recalculate its lending and investment lim-  
275 its at more frequent intervals than otherwise provided herein  
276 and to require all outstanding loans, extensions of credit and  
277 investments be brought into conformance with the reevalu-  
278 ated limitations. In such cases, the commissioner will provide  
279 the bank a written notice explaining briefly the specific rea-  
280 sons why the determination was made to require the more  
281 frequent calculations.

282 (e) Loans to directors or executive officers are subject to  
283 the following limitations:

284 (1) A director or executive officer of any banking institu-  
285 tion may not borrow, directly or indirectly, from a banking  
286 institution with which he or she is connected any sum of  
287 money without the prior approval of a majority of the board  
288 of directors or discount committee of the banking institution,  
289 or of any duly constituted committee whose duties include  
290 those usually performed by a discount committee. Such ap-  
291 proval shall be by resolution adopted by a majority vote of  
292 such board or committee, exclusive of the director or execu-  
293 tive officer to whom the loan is made.

294 (2) If any director or executive officer of any bank owns  
295 or controls a majority of the stock of any corporation, or is a  
296 partner in any partnership, a loan to such corporation or part-  
297 nership shall constitute a loan to such director or officer.

298 (3) For purposes of this subsection, an "executive offi-  
299 cer" means:

300 (A) A person who participates or has authority to partici-  
301 pate, other than in the capacity of a director, in major policy-  
302 making functions of the company or bank, regardless of any  
303 official title, salary or other compensation. The chairman of  
304 the board, the president, every vice president, the cashier, the  
305 secretary and the treasurer of a company or bank are consid-  
306 ered executive officers unless the officer is excluded, by  
307 resolution of the board of directors or by the bylaws of the  
308 bank or company from participation, other than in the capac-  
309 ity of director, in major policy-making functions of the bank  
310 or company and the officer does not actually participate  
311 therein.

312 (B) An executive officer of a company of which the bank  
313 is a subsidiary, and any other subsidiary of that company,  
314 unless the executive officer of the subsidiary is excluded, by  
315 name or by title, from participation in major policy-making  
316 functions of the bank by resolutions of the boards of directors  
317 of both the subsidiary and the bank and does not actually  
318 participate in such major policy-making functions.

319 (f) The Commissioner of Banking and any employee of  
320 the Department of Banking may not borrow, directly or indi-  
321 rectly, any sum of money from a state-chartered banking  
322 institution which is subject to examination by the commis-  
323 sioner or the department.

324 (g) Securities purchased by a state-chartered banking  
325 institution shall be entered upon the books of the bank at  
326 actual cost. For the purpose of calculating the undivided prof-  
327 its applicable to the payment of dividends, securities shall not  
328 be valued at a valuation exceeding their present cost as deter-  
329 mined by amortization of premiums and accretion of dis-  
330 counts pursuant to generally accepted accounting principles,  
331 that is, by charging to profit and loss a sum sufficient to bring  
332 them to par at maturity: *Provided*, That securities held for  
333 trade or permissible marketable equity securities and any

334 other types of debt securities which pursuant to generally  
335 accepted accounting principles are to be carried on the bank's  
336 books at fair market value shall have the unrealized market  
337 appreciation and depreciation included in the income and  
338 capital as permitted by such generally accepted accounting  
339 principles.

340 (h) The market value of securities purchased and loans  
341 extended by a state-chartered banking institution shall be  
342 reported in all public reports and quarterly reports to the  
343 commissioner pursuant to section nineteen of this article in  
344 accordance with generally accepted accounting principles and  
345 any applicable state or federal law, rule or regulation.

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## CHAPTER 21

**(S. B. 271 — By Senators Minard, Jenkins, Barnes and Plymale)**

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[Passed March 7, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2006.]

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AN ACT to amend and reenact §31A-4-35 of the Code of West Virginia, 1931, as amended, relating to the time period for which state banks must retain records.

*Be it enacted by the Legislature of West Virginia:*

That §31A-4-35 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.**

**§31A-4-35. Reproduction of checks and other records; admissibility of copies in evidence; disposition of originals; record production generally.**

1           (a) Any bank may cause to be copied or reproduced, by  
2 any photographic, photostatic, microphotographic or by simi-  
3 lar miniature photographic process or by nonerasable optical  
4 image disks (commonly referred to as compact disks) or by  
5 other records retention technology approved by rule of the  
6 Commissioner of Banking, all or any number of its checks  
7 and all or any part of its documents, books, records, corre-  
8 spondence and all other instruments, papers and writings in  
9 any manner relating to the operation of its business, other  
10 than its notes, bonds, mortgages and other securities and  
11 investments, and may substitute such copies or reproductions  
12 either in positive or negative form for the originals thereof.  
13 Thereafter, such copy or reproduction in the form of a posi-  
14 tive print thereof shall be deemed for all purposes to be an  
15 original counterpart of and shall have the same force and  
16 effect as the original thereof and shall be admissible in evi-  
17 dence in all courts and administrative agencies in this state,  
18 to the same extent and for the same purposes as the original  
19 thereof, and the banking institution may destroy or otherwise  
20 dispose of the original, but every banking institution shall  
21 retain either the originals or such copies or reproductions of  
22 its records of final entry, including, without limiting the gen-  
23 erality of the foregoing, cards used under the card system and  
24 deposit tickets for deposits made, for a period of at least five  
25 years from the date of the last entry on such books or the date  
26 of making of such deposit tickets and card records or, in the  
27 case of a banking institution exercising trust or fiduciary  
28 powers, accounting and legal records shall be retained until  
29 the expiration of five years from the date of termination of  
30 any trust or fiduciary relationship relating to such accounting  
31 and legal records by a final accounting, release, court decree  
32 or other proper means of termination and supporting docu-  
33 mentation for fiduciary account transactions shall be retained  
34 for five years from the dates of entry of such transactions.

35           All circumstances surrounding the making or issuance of  
36 such checks, documents, books, records, correspondence and



37 other instruments, papers or writings, or the photographic,  
38 photostatic or microphotographic copies or optical disks or  
39 other permissible reproductions thereof, when the same are  
40 offered in evidence, may be shown to affect the weight but  
41 not the admissibility thereof.

42 Any device used to copy or reproduce such documents  
43 and records shall be one which correctly and accurately re-  
44 produces the original thereof in all details and any disk or  
45 film used therein shall be of durable material.

46 (b) When a subpoena duces tecum is served upon a cus-  
47 todian of records of any bank in an action or proceeding in  
48 which the bank is neither a party nor the place where any  
49 cause of action is alleged to have arisen and the subpoena  
50 requires the production of all or any part of the records of the  
51 bank relating to the conduct of its business with its custom-  
52 ers, the bank shall be entitled to a search fee not to exceed ten  
53 dollars, together with reimbursement for costs incurred in the  
54 copying or other reproduction of any such record or records  
55 which have already been reduced to written form, in an  
56 amount not to exceed seventy-five cents per page. Any and  
57 all such costs shall be borne by the party requesting the pro-  
58 duction of the record or records.

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## CHAPTER 22

**(Com. Sub. for S. B. 243 — By Senators Minard, Jenkins and McCabe)**

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[Passed March 7, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2006.]

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AN ACT to amend and reenact §31A-8-5 of the Code of West Virginia, 1931, as amended, relating to allowing banks to own shares of their own stock in certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

That §31A-8-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL REVIEW; UNLAWFUL ACTS; PENALTIES.**

**§31A-8-5. Dealing in own stock; stock purchases; limitations; exceptions.**

1       (a) No banking institution shall make any loan or dis-  
2 count any obligation on the security of the shares of its own  
3 capital stock, unless taken as a pledge to prevent loss upon a  
4 debt previously contracted lawfully and in good faith; and all  
5 shares of its stock, held in such manner, shall, within six  
6 months after the time of the pledge, be sold or disposed of at  
7 public or private sale.

8       (b) A banking institution may purchase its equity securi-  
9 ties in an amount up to ten percent of its net worth in any  
10 twelve-month period or restructure its ownership interests for  
11 a legitimate corporate purpose without the prior approval of  
12 the commissioner, so long as the bank remains well-capital-  
13 ized under federal regulatory guidelines before and after the  
14 purchase or restructuring, the bank is well-managed, the bank  
15 is not the subject of any unresolved supervisory issues and  
16 the transaction does not constitute a change in control of the  
17 banking institution that must be reported pursuant to section  
18 four of this article. The banking institution must apply for  
19 approval for the purchase of equity securities, on a form pre-  
20 scribed by the commissioner, if the gross consideration for  
21 the purchase, when aggregated with the net consideration  
22 paid by the banking institution for all such purchases during  
23 the preceding twelve months, is equal to ten percent or more  
24 of the bank's net worth. For purposes of this section, "net  
25 consideration" is the gross consideration paid by the banking

26 institution for all of its equity securities purchased during the  
27 period minus the gross consideration received for all of its  
28 equity securities sold during the period. The commissioner  
29 shall approve or deny the application after considering  
30 whether the proposed purchase would constitute an unsafe or  
31 unsound practice.

32 (c) Any banking institution and any officer thereof who  
33 violates any provision of this section shall be guilty of a mis-  
34 demeanor and subject to penalties provided in section fifteen  
35 of this article.

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## CHAPTER 23

**(H. B. 4792 — By Delegates Amores, H. White, Azinger and Moore)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §44-6-10, relating to authorizing the purchasing of certain services from a bank or trust company or an affiliate of a bank or trust company.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §44-6-10, to read as follows:

**ARTICLE 6. INVESTMENTS BY FIDUCIARIES.**

**§44-6-10. Purchase of service or product through or directly from bank or trust company or affiliate.**

1       (a) A bank or trust company acting in any fiduciary ca-  
2       pacity, including, but not limited to, the capacities described  
3       in this article, may purchase any service or product, includ-  
4       ing, but not limited to, insurance or securities: underwritten  
5       or otherwise distributed by the bank, the trust company or by  
6       an affiliate; through or directly from the bank, the trust com-  
7       pany or an affiliate; or from a syndicate or selling group that  
8       includes the bank, the trust company or an affiliate: *Provided*,  
9       That the purchase is otherwise prudent under article six-c of  
10      this chapter; the compensation for the service or product is  
11      reasonable; and the transaction is not prohibited by the instru-  
12      ment governing the fiduciary relationship. The compensation  
13      charged for the service or product may be in addition to the  
14      compensation that the bank or trust company is otherwise  
15      entitled to receive from the fiduciary account.

16      (b) A bank or trust company shall disclose at least annu-  
17      ally any purchase authorized by this section that was made by  
18      the bank or trust company during that reporting period. The  
19      disclosure shall be given, in writing or electronically, to all  
20      persons entitled to receive statements of account activity. The  
21      disclosure shall include a description of any capacities in  
22      which the bank or trust company or an affiliate acts for the  
23      issuer of the securities or the provider of the products or ser-  
24      vices and a declaration of the fact that the bank or trust com-  
25      pany or an affiliate may have an interest in the products or  
26      services.

27      (c) This section applies to the purchase of securities  
28      made at the time of the initial offering of the securities or at  
29      any time thereafter.

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## CHAPTER 24

**(H. B. 4295 — By Mr. Speaker, Mr. Kiss, and Delegates Staton, Stemple, Beane, Crosier, Michael and Beach)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-2-56a, relating to establishing a bird dog training permit; providing requirements for bird dog training; providing rule-making authority; and providing civil and criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §20-2-56a, to read as follows:

**ARTICLE 2. WILDLIFE RESOURCES.**

**§20-2-56a. Bird dog training permit.**

1       The director may issue a permit to train bird dogs on wild  
2       birds or game birds, provided:

3       (1) The fee for the permit is ten dollars.

4       (2) The training shall be on private land containing a  
5       minimum of five acres in a single tract. The permittee must  
6       own the land, lease the land or have written permission of  
7       landowner for the training.

8       (3) The birds permitted to be used for the training of dogs  
9 are quail and pigeons. The quail must be purchased from a  
10 licensed commercial game farm. Pigeons may be purchased  
11 from a licensed commercial game farm or trapped within the  
12 state at any time as long as the person conducting the trap-  
13 ping is legally licensed to do so and also holds the appropri-  
14 ate permit. Each trap must be identified by a waterproof tag  
15 attached to the trap that bears the name, address and tele-  
16 phone number of the trapper.

17       (4) The permittee must retain the receipt for two years of  
18 all birds purchased from a commercial game farm licensee.

19       (5) The location where the birds are held and all records  
20 pertaining to the purchase and dates of training may be in-  
21 spected by a conservation officer.

22       (6) No more than thirty birds may be held by the  
23 permittee at any given time. All birds must have a uniquely  
24 numbered leg band attached. The leg band must remain with  
25 the birds until consumption or until the birds are legally dis-  
26 posed.

27       (7) Birds held under this permit shall be housed and  
28 cared for in accordance with the requirements of applicable  
29 rules.

30       (8) The use of the birds held under this permit shall in-  
31 clude the release, recapture and/or the shooting of the birds in  
32 conjunction with the training of bird dogs.

33       (9) The person holding birds in captivity under the au-  
34 thority of this permit and the person training his or her bird  
35 dog must possess a bird dog training permit.

36       (10) All other laws and rules governing hunting, trap-  
37 ping, shooting and training apply.

38 (11) The director may propose rules for legislative ap-  
39 proval in accordance with article three, chapter twenty-nine-a  
40 of this code, to further restrict bird dog training.

41 (12) Any person violating any provision of this law is  
42 subject to the penalties prescribed in section nine, article  
43 seven, chapter twenty of this code.

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## CHAPTER 25

**(H. B. 4510 — By Mr. Speaker, Mr. Kiss, and Delegates Beane,  
Amores, Browning, Campbell, Ennis, Staton,  
Ashley, Azinger, Ellem and G. White)**

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[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2006.]

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AN ACT to amend and reenact §5-14-2, §5-14-3, §5-14-5 and §5-14-6 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Commission for the Deaf and Hard of Hearing generally; removing the requirement that the commission maintain a register of persons who are deaf or hard of hearing; removing the requirement that the commission conduct and maintain a census of both populations in West Virginia; clarifying the voting power of certain members of the commission; and making certain other technical changes.

*Be it enacted by the Legislature of West Virginia:*

That §5-14-2, §5-14-3, §5-14-5 and §5-14-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND  
HARD OF HEARING.**

§5-14-2. Definitions.

§5-14-3. Continuation of Commission; membership.

§5-14-5. Powers and duties of the Commission; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.

§5-14-6. Seminars and training sessions.

**§5-14-2. Definitions.**

1 As used in this article:

2 (a) “Deaf” means severe to profound impairment of the  
3 sense of hearing whereby the understanding of speech is  
4 unattainable through the ear alone with or without amplifica-  
5 tion, and visual communication is used as the primary mode  
6 of communication.

7 (b) “Hard of hearing” means significant impairment to  
8 the sense of hearing, but not to the extent that the person  
9 must rely primarily on visual communication.

10 (c) “Hearing-impaired” means persons who are either  
11 deaf or hard of hearing.

**§5-14-3. Continuation of commission; membership.**

1 (a) The West Virginia Commission for the Deaf and Hard  
2 of Hearing is continued within the Department of Health and  
3 Human Resources consisting of seventeen persons, eight of  
4 whom shall serve ex officio. The remaining members are  
5 appointed by the Governor by and with the advice and con-  
6 sent of the Senate. The commission shall meet no less than  
7 four times annually. All meetings and activities held by the  
8 commission shall be attended by at least two qualified inter-  
9 preters who shall be hired at the commission’s expense or  
10 provided free of charge by agencies, organizations or individ-  
11 uals willing to volunteer qualified interpreters.



12 (b) The members are: The Secretary of the Department of  
13 Health and Human Resources, or his or her designee; the  
14 Commissioner of the Division of Labor, or his or her  
15 designee; the Commissioner of the Bureau for Public Health,  
16 or his or her designee; the State Superintendent of Schools, or  
17 his or her designee; the Director of the Division of Rehabili-  
18 tation Services, or his or her designee; the Commissioner of  
19 the Division of Human Services, or his or her designee; the  
20 Chairman of the Advisory Council for the Education of Ex-  
21 ceptional Children, or his or her designee; and the Superin-  
22 tendent of the West Virginia School for the Deaf and Blind,  
23 or his or her designee, all of whom serve ex officio with full  
24 voting privileges.

25 (c) The Governor shall appoint nine persons, at least five  
26 of whom are deaf or hard of hearing, one of whom is the  
27 parent of a deaf child, one of whom is a certified teacher of  
28 the hearing-impaired, one audiologist and one otolaryngolo-  
29 gist. Of the five deaf people, at least three shall be selected  
30 from a list of five people recommended by the Board of the  
31 West Virginia Association of the Deaf.

**§5-14-5. Powers and duties of the commission; information clearinghouse; coordination of interpreters; outreach programs; seminars and training sessions.**

1 (a) The commission shall maintain a clearinghouse of  
2 information, the purpose of which is to aid hearing-impaired  
3 persons and others in obtaining appropriate services or infor-  
4 mation about such services, including, but not limited to,  
5 education, communication (including interpreters), group  
6 home facilities, independent living skills, recreational facili-  
7 ties, employment, vocational training, health and mental  
8 health services, substance abuse and other services necessary  
9 to assure their ability to function in society. The commission

10 shall consult existing public and private agencies and organi-  
11 zations in compiling and maintaining the clearinghouse.

12 (b) The commission shall establish, maintain and coordi-  
13 nate a statewide service to provide courts, state and local  
14 legislative bodies and others with a list of qualified and certi-  
15 fied interpreters for the deaf and a list of qualified and certi-  
16 fied teachers of American sign language.

17 (c) The Secretary of the Department of Health and Hu-  
18 man Resources shall promulgate rules pursuant to article  
19 three, chapter twenty-nine-a of this code for the state quality  
20 assurance evaluation, including the establishment of required  
21 qualifications and ethical standards for interpreters, the ap-  
22 proval of interpreters, the monitoring and investigation of  
23 interpreters and the suspension and revocation of approvals.  
24 The commission may conduct interpreter evaluations and  
25 collect and expend funds with regard thereto.

26 (d) The commission shall develop an outreach program  
27 to familiarize the public with the rights and needs of hear-  
28 ing-impaired people and of available services.

29 (e) The commission shall investigate the condition of the  
30 hearing-impaired in this state with particular attention to  
31 those who are aged, homeless, needy, victims of rubella and  
32 victims of abuse or neglect. It shall determine the means the  
33 state possesses for establishing group homes for its hearing-  
34 impaired citizens and the need for additional facilities. The  
35 commission shall also determine the advisability and neces-  
36 sity of providing services to the multihandicapped hearing-  
37 impaired.

#### **§5-14-6. Seminars and training sessions.**

1 The commission may establish one or more training ses-  
2 sions or workshops for the teaching of interpretive skills, in-  
3 service training and counseling for the deaf and hard of hear-

4 ing. Seminars and training sessions may be conducted and are  
5 encouraged to work with the existing facilities and organiza-  
6 tions established to accomplish the same goals.

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## CHAPTER 26

**(H. B. 4019 — By Mr. Speaker, Mr. Kiss, and Delegates Amores,  
Michael, Varner, Pino, Leach, Mahan, Browning,  
Hall, Carmichael and Border)**

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[Passed March 2, 2006; in effect from passage.]

[Approved by the Governor on March 13, 2006.]

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AN ACT to repeal §4-1-18 of the Code of West Virginia, 1931, as amended, relating to the preparation and distribution of a digest or summary of the budget bill.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 1. OFFICERS, MEMBERS AND EMPLOYEES; APPROPRIATIONS; INVESTIGATIONS; DISPLAY OF FLAGS; RECORDS; USE OF CAPITOL BUILDING; PREFILING OF BILLS AND RESOLUTIONS; STANDING COMMITTEES; INTERIM MEETINGS; NEXT MEETING OF THE SENATE.**

**§1. Repeal of section relating to preparation and distribution of digest or summary of budget bill.**

1 Section eighteen, article one, chapter four of the Code of  
2 West Virginia, one thousand nine hundred thirty-one, as  
3 amended, is hereby repealed.

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## CHAPTER 27

(H. B. 4679 — By Delegates H. White and Kominar)

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-13B-1, §33-13B-2, §33-13B-3, §33-13B-4, §33-13B-5 and §33-13B-6, all relating to qualified charitable gift annuities; providing definitions; declaring issuance of certain annuities not business of insurance; requiring certain notices by issuers; and providing penalties.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-13B-1, §33-13B-2, §33-13B-3, §33-13B-4, §33-13B-5 and §33-13B-6, all to read as follows:

### **ARTICLE 13B. CHARITABLE GIFT ANNUITIES.**

§33-13B-1. Definitions.

§33-13B-2. Charitable gift annuity is not insurance.

§33-13B-3. Notice to donor.

§33-13B-4. Notice to insurance commission.

§33-13B-5. Failure to provide required notice; penalties.

§33-13B-6. Unfair or deceptive trade practices act not applicable.

#### **§33-13B-1. Definitions.**

- 1 (a) “Charitable gift annuity” means a transfer of cash or
- 2 other property by a donor to a charitable organization in re-

3 turn for an annuity payable over one or two lives, under  
4 which the actuarial value of the annuity is less than the value  
5 of the cash or other property transferred and the difference in  
6 value constitutes a charitable deduction for federal tax pur-  
7 poses.

8 (b) “Charitable organization” means an entity described  
9 by:

10 (1) Section 501(c)(3), of the Internal Revenue Code of  
11 1986 (26 U.S.C. 501(c) (3)); or

12 (2) Section 170(c), of the Internal Revenue Code of 1986  
13 (26 U.S.C. 170 (c)).

14 (c) “Qualified charitable gift annuity” means a charitable  
15 gift annuity described by 501(m) (5), of the Internal Revenue  
16 Code of 1986 (26 U.S.C. 501(m) (5)), and 514(c) (5), of the  
17 Internal Revenue Code of 1986 (26 U.S.C. 514(c) (5)), that is  
18 issued by a charitable organization that on the date of the  
19 annuity agreement:

20 (1) Has a minimum of three hundred thousand dollars in  
21 unrestricted cash, cash equivalents, or publicly traded securi-  
22 ties, exclusive of the assets funding the annuity agreement;  
23 and

24 (2) Has been in continuous operation for at least three  
25 years or is a successor or affiliate of a charitable organization  
26 that has been in continuous operation for at least three years.

### **§33-13B-2. Charitable gift annuity is not insurance.**

1 Notwithstanding any other provision of this code to the  
2 contrary, the issuance of a qualified charitable gift annuity  
3 does not constitute engaging in the business of insurance in  
4 this state, and the issuance of any charitable gift annuity prior

5 to the first day of July, two thousand six, does not constitute  
6 engaging in the business of insurance in this state.

**§33-13B-3. Notice to donor.**

1 (a) When entering into an agreement for a qualified  
2 charitable gift annuity, the charitable organization shall dis-  
3 close to the donor in writing in the annuity agreement that a  
4 qualified charitable gift annuity is not insurance under the  
5 laws of this state, is not subject to regulation by the commis-  
6 sioner and is not protected by the West Virginia Life and  
7 Health Insurance Guaranty Association established in article  
8 twenty-six-a of this chapter or by any other guaranty associa-  
9 tion established by this code.

10 (b) The notice required by this section shall be in a sepa-  
11 rate paragraph in a print size no smaller than that employed  
12 in the annuity agreement generally.

**§33-13B-4. Notice to Insurance Commission.**

1 (a) A charitable organization that issues qualified charita-  
2 ble gift annuities shall notify the commissioner of such fact  
3 in writing by the later of the thirtieth day of September, two  
4 thousand six or the date on which it enters into the organiza-  
5 tion's first qualified charitable gift annuity agreement.

6 (b) The notice required by subsection (a) of this section  
7 shall identify the organization, be signed by an officer or  
8 director of the organization, and certify that the organization  
9 is a charitable organization and that the annuities issued by  
10 the organization are qualified charitable gift annuities.

**§33-13B-5. Failure to provide required notice; penalties.**

1 Any person who violates any provision of section three  
2 or four of this article may, after notice and hearing pursuant

3 to section thirteen, article two of this chapter, be fined by the  
 4 commissioner a sum not to exceed one thousand dollars per  
 5 qualified charitable gift annuity agreement issued: *Provided,*  
 6 That the failure of a charitable organization to comply with  
 7 the notice requirements imposed under section three or four  
 8 of this article does not prevent a charitable gift annuity that  
 9 otherwise meets the requirements of this article from consti-  
 10 tuting a qualified charitable gift annuity.

**§33-13B-6. Unfair or deceptive trade practices act not applica-  
 ble.**

1 The issuance of a qualified charitable gift annuity does  
 2 not constitute a violation of article eleven of this chapter.

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## CHAPTER 28

**(H. B. 4312 — By Delegates Staton, Trump, Mahan and Brown)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §48-19-105 of the Code of West Virginia, 1931, as amended, relating to increasing the compensation of child support enforcement attorneys.

*Be it enacted by the Legislature of West Virginia:*

That §48-19-105 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 19. CHILD SUPPORT ENFORCEMENT ATTORNEY.**

**§48-19-105. Compensation; expenses.**

1       The salary of a bureau for child support enforcement  
2 attorney shall be not less than forty-five thousand dollars per  
3 year, and shall be fixed by the commissioner, who shall take  
4 into consideration ability, performance of duty and experi-  
5 ence. The compensation and expenses of the employees of  
6 the office and all operating expenses incurred by the office  
7 shall be fixed by the commissioner and paid by the bureau for  
8 child support enforcement.

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## CHAPTER 29

**(S. B. 13 — By Senators Yoder, Guills, Caruth, Foster and Unger)**

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[Passed March 8, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2006.]

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AN ACT to amend and reenact §7-10-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §9-6-9 of said code; to amend said code by adding thereto a new section, designated §9-6-9a; to amend and reenact §48-27-702 of said code; to amend and reenact §49-6A-2 of said code; and to amend said code by adding thereto a new section, designated §49-6A-2b, all relating to requiring cross-reporting among child protective service workers, adult protective service workers, law-enforcement officers and humane officers of suspected child abuse or neglect, suspected abuse or neglect of incapacitated or elderly adults, suspected animal cruelty or inhumane treatment or suspected domestic violence; and providing penalties.

*Be it enacted by the Legislature of West Virginia:*



That §7-10-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §9-6-9 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §9-6-9a; that §48-27-702 of said code be amended and reenacted; that §49-6A-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §49-6A-2b, all to read as follows:

**Chapter**

- 7. County Commissions and Officers.**
- 9. Human Services.**
- 48. Domestic Relations.**
- 49. Child Welfare.**

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 10. HUMANE OFFICERS.**

**§7-10-2. Duty of humane officers; reporting requirement when abuse or neglect of individuals suspected; prohibition against interference with humane officers; penalties.**

1 (a) It is the duty of humane officers to prevent the perpetration or continuance of any act of cruelty upon any animal  
2 and to investigate and, upon probable cause, to cause the  
3 arrest and assist in the prosecution of any person engaging in  
4 such cruel and forbidden practices. Upon reasonable cause,  
5 and as provided by law, such officers have the right to access  
6 and inspection of records and property as may be reasonably  
7 necessary to any investigation.  
8

9 (b) Whenever a humane officer, pursuant to an investigation  
10 of animal cruelty, forms a reasonable suspicion that a  
11 minor child, or incapacitated or elderly person, is the victim  
12 of abuse or neglect or has a suspicion of domestic violence,  
13 he or she shall report the suspicion and the grounds therefor.  
14 In the event of suspected child abuse or neglect, the humane

15 officer shall report to the local child protective services  
16 agency of the Department of Health and Human Resources in  
17 accordance with the provisions of section five, article six-a,  
18 chapter forty-nine of this code. In the event of suspected  
19 abuse or neglect of an incapacitated or elderly person, he or  
20 she shall report to the department's local adult protective  
21 services agency in accordance with the provisions of section  
22 eleven, article six, chapter nine of this code. In the event of  
23 suspected domestic violence, he or she shall report to the  
24 State Police in accordance with the provisions of article  
25 twenty-seven, chapter forty-eight of this code.

26 (c) Any person who interferes with, obstructs or resists  
27 any humane officer in the discharge of his or her duty is  
28 guilty of a misdemeanor and, upon conviction thereof, shall  
29 be fined not less than one hundred nor more than five hun-  
30 dred dollars or confined in jail not more than thirty days, or  
31 both fined and confined. Any penalties imposed for a viola-  
32 tion of this subsection shall be imposed in addition to any  
33 penalties the person incurs for cruel or inhumane treatment of  
34 any animal.

## **CHAPTER 9. HUMAN SERVICES.**

### **ARTICLE 6. SOCIAL SERVICES FOR ADULTS.**

§9-6-9. Mandatory reporting of incidences of abuse, neglect or emergency situa-  
tion.

§9-6-9a. Mandatory reporting suspected of animal cruelty by adult protective  
service workers.

#### **§9-6-9. Mandatory reporting of incidences of abuse, neglect or emergency situation.**

1 (a) If any medical, dental or mental health professional,  
2 Christian Science practitioner, religious healer, social service  
3 worker, law-enforcement officer, humane officer, state or

4 regional ombudsman or any employee of any nursing home  
5 or other residential facility has reasonable cause to believe  
6 that an incapacitated adult or facility resident is or has been  
7 neglected, abused or placed in an emergency situation, or if  
8 such person observes an incapacitated adult or facility resi-  
9 dent being subjected to conditions that are likely to result in  
10 abuse, neglect or an emergency situation, the person shall  
11 immediately report the circumstances pursuant to the provi-  
12 sions of section eleven of this article: *Provided*, That nothing  
13 in this article is intended to prevent individuals from report-  
14 ing on their own behalf.

15 (b) In addition to those persons and officials specifically  
16 required to report situations involving suspected abuse or  
17 neglect of an incapacitated adult or facility resident or the  
18 existence of an emergency situation, any other person may  
19 make such a report.

20 (c) The secretary shall develop a form for the filing of  
21 written complaints, as provided by section eleven of this  
22 article, and provide these forms to all nursing homes or other  
23 residential facilities, hospitals, ombudsmen and adult protec-  
24 tive service agencies in this state. The forms shall be de-  
25 signed to protect the identity of the complainant, if desired,  
26 and to facilitate the prompt filing of complaints.

**§9-6-9a. Mandatory reporting suspected of animal cruelty by  
adult protective service workers.**

1 In the event an adult protective service worker, in re-  
2 sponse to a report mandated by section nine of this article,  
3 forms a reasonable suspicion that an animal is the victim of  
4 cruel or inhumane treatment, he or she shall report the suspi-  
5 cion and the basis therefor to the county humane officer pro-  
6 vided under section one, article ten, chapter seven of this  
7 code within twenty-four hours of the response to the report.

**CHAPTER 48. DOMESTIC RELATIONS.****ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.****§48-27-702. Law-enforcement officers to provide information, transportation and to report suspicions of animal cruelty.**

1       (a) Any law-enforcement officer responding to an alleged  
2 incident of domestic violence shall inform the parties of the  
3 availability of the possible remedies provided by this article  
4 and the possible applicability of the criminal laws of this  
5 state. Any law-enforcement officer investigating an alleged  
6 incident of domestic violence shall advise the victim of such  
7 violence of the availability of the family protection shelter to  
8 which such person may be admitted.

9       (b) If there is reasonable cause to believe that a person is  
10 a victim of domestic violence or is likely to be a victim of  
11 domestic violence, a law-enforcement officer responding to  
12 an alleged incident of domestic violence shall, in addition to  
13 providing the information required in subsection (a) of this  
14 section, provide transportation for or facilitate transportation  
15 of the victim, upon the request of such victim, to a shelter or  
16 an appropriate court.

17       (c) Whenever a law-enforcement officer, pursuant to a  
18 response to an alleged incident of domestic violence, forms a  
19 reasonable suspicion that an animal is a victim of cruel or  
20 inhumane treatment, he or she shall report the suspicion and  
21 the grounds therefor to the county humane officer within  
22 twenty-four hours of the response to the alleged incident of  
23 domestic violence.

**CHAPTER 49. CHILD WELFARE.****ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR NEGLECTED.**

§49-6A-2. Persons mandated to report suspected abuse and neglect.

§49-6A-2b. Mandatory reporting of suspected animal cruelty by child protective service workers.

**§49-6A-2. Persons mandated to report suspected abuse and neglect.**

1       When any medical, dental or mental health professional,  
2 Christian Science practitioner, religious healer, school  
3 teacher or other school personnel, social service worker,  
4 child care or foster care worker, emergency medical services  
5 personnel, peace officer or law-enforcement official, humane  
6 officer, member of the clergy, circuit court judge, family  
7 court judge, employee of the Division of Juvenile Services or  
8 magistrate has reasonable cause to suspect that a child is  
9 neglected or abused or observes the child being subjected to  
10 conditions that are likely to result in abuse or neglect, such  
11 person shall immediately, and not more than forty-eight  
12 hours after suspecting this abuse, report the circumstances or  
13 cause a report to be made to the Department of Health and  
14 Human Resources: *Provided*, That in any case where the  
15 reporter believes that the child suffered serious physical  
16 abuse or sexual abuse or sexual assault, the reporter shall also  
17 immediately report, or cause a report to be made, to the State  
18 Police and any law-enforcement agency having jurisdiction  
19 to investigate the complaint: *Provided, however*, That any  
20 person required to report under this article who is a member  
21 of the staff of a public or private institution, school, facility  
22 or agency shall immediately notify the person in charge of  
23 such institution, school, facility or agency, or a designated  
24 agent thereof, who shall report or cause a report to be made.  
25 However, nothing in this article is intended to prevent indi-  
26 viduals from reporting on their own behalf.

27       In addition to those persons and officials specifically  
28 required to report situations involving suspected abuse or  
29 neglect of children, any other person may make a report if

30 such person has reasonable cause to suspect that a child has  
 31 been abused or neglected in a home or institution or observes  
 32 the child being subjected to conditions or circumstances that  
 33 would reasonably result in abuse or neglect.

**§49-6A-2b. Mandatory reporting of suspected animal cruelty  
 by child protective service workers.**

1 In the event a child protective service worker, in response  
 2 to a report mandated by section two of this article, forms a  
 3 reasonable suspicion that an animal is the victim of cruel or  
 4 inhumane treatment, he or she shall report the suspicion and  
 5 the basis therefor to the county humane officer provided  
 6 under section one, article ten, chapter seven of this code  
 7 within twenty-four hours of the response to the report.



## CHAPTER 30

**(Com. Sub. for H. B. 4694 — By Delegates Amores, Moore,  
 Longstreth, Webster and Ellem)**

\_\_\_\_\_  
 [Passed March 11, 2006; in effect ninety days from passage.]  
 [Approved by the Governor on April 4, 2006.]  
 \_\_\_\_\_

AN ACT to amend and reenact §49-1-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-6-2, §49-6-3, §49-6-5 and §49-6-5b of said code, all relating to abuse and neglect of children; definition of battered parent; consideration of factors associated with a battered parent in abuse and neglect cases; petition to court; battered parent entitled to an attorney; court determination of battered parent; providing treatment and assistance for battered parent; consideration of acts or attempted acts of murder, voluntary manslaughter,

ter or unlawful or malicious wounding with serious injury by one parent against other parent in abuse and neglect cases; considering aggravating circumstances of abuse, neglect or violent acts of parent in temporary and permanent custody determinations when the acts are committed against the other parent; considering aggravating circumstances of abuse, neglect or violent acts of parent in temporary and permanent custody determinations when the acts are committed or against other children in the household or other children under the parent's care or custody; department's obligation to attempt to preserve the family when aggravating circumstances exist; and definitions.

*Be it enacted by the Legislature of West Virginia:*

That §49-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-6-2, §49-6-3, §49-6-5 and §49-6-5b of said code be amended and reenacted, all to read as follows:

#### **Article**

##### **1. Purposes; Definitions.**

##### **6. Procedure in Cases of Child Neglect or Abuse.**

#### **ARTICLE 1. PURPOSES; DEFINITIONS.**

##### **§49-1-3. Definitions relating to abuse and neglect.**

1       (a) "Abused child" means a child whose health or welfare  
2 is harmed or threatened by:

3       (1) A parent, guardian or custodian who knowingly or  
4 intentionally inflicts, attempts to inflict or knowingly allows  
5 another person to inflict, physical injury or mental or emo-  
6 tional injury, upon the child or another child in the home; or

7       (2) Sexual abuse or sexual exploitation; or

8           (3) The sale or attempted sale of a child by a parent,  
9 guardian or custodian in violation of section sixteen, article  
10 four, chapter forty-eight of this code; or

11           (4) Domestic violence as defined in section two hundred  
12 two, article twenty-seven, chapter forty-eight of this code.

13           In addition to its broader meaning, physical injury may  
14 include an injury to the child as a result of excessive corporal  
15 punishment.

16           (b) “Abusing parent” means a parent, guardian or other  
17 custodian, regardless of his or her age, whose conduct, as  
18 alleged in the petition charging child abuse or neglect, has  
19 been adjudged by the court to constitute child abuse or ne-  
20 glect.

21           (c) “Battered parent” means a parent, guardian or other  
22 custodian who has been judicially determined not to have  
23 condoned the abuse or neglect and has not been able to stop  
24 the abuse or neglect of the child or children due to being the  
25 victim of domestic violence as defined by section two hun-  
26 dred two, article twenty-seven, chapter forty-eight of this  
27 code, which domestic violence was perpetrated by the person  
28 or persons determined to have abused or neglected the child  
29 or children.

30           (d) “Child abuse and neglect” or “child abuse or neglect”  
31 means physical injury, mental or emotional injury, sexual  
32 abuse, sexual exploitation, sale or attempted sale or negligent  
33 treatment or maltreatment of a child by a parent, guardian or  
34 custodian who is responsible for the child’s welfare, under  
35 circumstances which harm or threaten the health and welfare  
36 of the child.

37           (e) “Child abuse and neglect services” means social ser-  
38 vices which are directed toward:



39           (1) Protecting and promoting the welfare of children who  
40 are abused or neglected;

41           (2) Identifying, preventing and remedying conditions  
42 which cause child abuse and neglect;

43           (3) Preventing the unnecessary removal of children from  
44 their families by identifying family problems and assisting  
45 families in resolving problems which could lead to a removal  
46 of children and a breakup of the family;

47           (4) In cases where children have been removed from their  
48 families, providing services to the children and the families  
49 so as to reunify such children with their families or some  
50 portion thereof;

51           (5) Placing children in suitable adoptive homes when  
52 reunifying the children with their families, or some portion  
53 thereof, is not possible or appropriate; and

54           (6) Assuring the adequate care of children who have been  
55 placed in the custody of the department or third parties.

56           (f) "Imminent danger to the physical well-being of the  
57 child" means an emergency situation in which the welfare or  
58 the life of the child is threatened. Such emergency situation  
59 exists when there is reasonable cause to believe that any child  
60 in the home is or has been sexually abused or sexually ex-  
61 ploited, or reasonable cause to believe that the following  
62 conditions threaten the health or life of any child in the home:

63           (1) Nonaccidental trauma inflicted by a parent, guardian,  
64 custodian, sibling or a babysitter or other caretaker;

65           (2) A combination of physical and other signs indicating  
66 a pattern of abuse which may be medically diagnosed as  
67 battered child syndrome;

- 68 (3) Nutritional deprivation;
- 69 (4) Abandonment by the parent, guardian or custodian;
- 70 (5) Inadequate treatment of serious illness or disease;
- 71 (6) Substantial emotional injury inflicted by a parent,  
72 guardian or custodian; or
- 73 (7) Sale or attempted sale of the child by the parent,  
74 guardian or custodian.

75 (g) “Legal guardianship” means the permanent relation-  
76 ship between a child and caretaker, established by order of  
77 the circuit court having jurisdiction over the child, pursuant  
78 to the provisions of chapters forty-eight and forty-nine of this  
79 code.

80 (h) “Multidisciplinary team” means a group of profes-  
81 sionals and paraprofessionals representing a variety of disci-  
82 plines who interact and coordinate their efforts to identify,  
83 diagnose and treat specific cases of child abuse and neglect.  
84 Multidisciplinary teams may include, but are not limited to,  
85 medical, educational, child care and law-enforcement person-  
86 nel, social workers, psychologists and psychiatrists. Their  
87 goal is to pool their respective skills in order to formulate  
88 accurate diagnoses and to provide comprehensive coordi-  
89 nated treatment with continuity and follow-up for both par-  
90 ents and children. “Community team” means a  
91 multidisciplinary group which addresses the general problem  
92 of child abuse and neglect in a given community and may  
93 consist of several multidisciplinary teams with different func-  
94 tions.

95 (i) (1) “Neglected child” means a child:

96 (A) Whose physical or mental health is harmed or threat-  
97 ened by a present refusal, failure or inability of the child’s

98 parent, guardian or custodian to supply the child with neces-  
99 sary food, clothing, shelter, supervision, medical care or  
100 education, when such refusal, failure or inability is not due  
101 primarily to a lack of financial means on the part of the par-  
102 ent, guardian or custodian; or

103 (B) Who is presently without necessary food, clothing,  
104 shelter, medical care, education or supervision because of the  
105 disappearance or absence of the child's parent or custodian;

106 (2) "Neglected child" does not mean a child whose edu-  
107 cation is conducted within the provisions of section one,  
108 article eight, chapter eighteen of this code.

109 (j) "Parenting skills" means a parent's competencies in  
110 providing physical care, protection, supervision and psycho-  
111 logical support appropriate to a child's age and state of devel-  
112 opment.

113 (k) "Sexual abuse" means:

114 (A) As to a child who is less than sixteen years of age,  
115 any of the following acts which a parent, guardian or custo-  
116 dian shall engage in, attempt to engage in, or knowingly pro-  
117 cure another person to engage in, with such child, notwith-  
118 standing the fact that the child may have willingly partici-  
119 pated in such conduct or the fact that the child may have  
120 suffered no apparent physical injury or mental or emotional  
121 injury as a result of such conduct:

122 (i) Sexual intercourse;

123 (ii) Sexual intrusion; or

124 (iii) Sexual contact;

125 (B) As to a child who is sixteen years of age or older, any  
126 of the following acts which a parent, guardian or custodian

127 shall engage in, attempt to engage in, or knowingly procure  
128 another person to engage in, with such child, notwithstanding  
129 the fact that the child may have consented to such conduct or  
130 the fact that the child may have suffered no apparent physical  
131 injury or mental or emotional injury as a result of such con-  
132 duct:

133 (i) Sexual intercourse;

134 (ii) Sexual intrusion; or

135 (iii) Sexual contact;

136 (C) Any conduct whereby a parent, guardian or custodian  
137 displays his or her sex organs to a child, or procures another  
138 person to display his or her sex organs to a child, for the pur-  
139 pose of gratifying the sexual desire of the parent, guardian or  
140 custodian, of the person making such display, or of the child,  
141 or for the purpose of affronting or alarming the child.

142 (l) "Sexual contact" means sexual contact as that term is  
143 defined in section one, article eight-b, chapter sixty-one of  
144 this code.

145 (m) "Sexual exploitation" means an act whereby:

146 (1) A parent, custodian or guardian, whether for financial  
147 gain or not, persuades, induces, entices or coerces a child to  
148 engage in sexually explicit conduct as that term is defined in  
149 section one, article eight-c, chapter sixty-one of this code;

150 (2) A parent, guardian or custodian persuades, induces,  
151 entices or coerces a child to display his or her sex organs for  
152 the sexual gratification of the parent, guardian, custodian or a  
153 third person, or to display his or her sex organs under circum-  
154 stances in which the parent, guardian or custodian knows  
155 such display is likely to be observed by others who would be  
156 affronted or alarmed.

157 (n) "Sexual intercourse" means sexual intercourse as that  
158 term is defined in section one, article eight-b, chapter  
159 sixty-one of this code.

160 (o) "Sexual intrusion" means sexual intrusion as that  
161 term is defined in section one, article eight-b, chapter  
162 sixty-one of this code.

163 (p) "Parental rights" means any and all rights and duties  
164 regarding a parent to a minor child, including, but not limited  
165 to, custodial rights and visitational rights and rights to partici-  
166 pate in the decisions affecting a minor child.

167 (q) "Placement" means any temporary or permanent  
168 placement of a child who is in the custody of the state in any  
169 foster home, group home or other facility or residence.

170 (r) "Serious physical abuse" means bodily injury which  
171 creates a substantial risk of death, which causes serious or  
172 prolonged disfigurement, prolonged impairment of health or  
173 prolonged loss or impairment of the function of any bodily  
174 organ.

175 (s) "Siblings" means children who have at least one bio-  
176 logical parent in common or who have been legally adopted  
177 by the same parents or parent.

178 (t) "Time-limited reunification services" means individ-  
179 ual, group, and family counseling, inpatient, residential or  
180 outpatient substance abuse treatment services, mental health  
181 services, assistance to address domestic violence, services  
182 designed to provide temporary child care and therapeutic  
183 services for families, including crisis nurseries and transpor-  
184 tation to or from any such services, provided during fifteen of  
185 the most recent twenty-two months a child has been in foster  
186 care, as determined by the earlier date of the first judicial  
187 finding that the child is subjected to abuse or neglect, or the

188 date which is sixty days after the child is removed from  
189 home.

**ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.**

§49-6-2. Petition to court when child believed neglected or abused—right to counsel; improvement period; hearing; priority of proceeding; transcript.

§49-6-3. Petition to court when child believed neglected or abused — Temporary custody.

§49-6-5. Disposition of neglected or abused children.

§49-6-5b. When efforts to terminate parental rights required.

**§49-6-2. Petition to court when child believed neglected or abused—Right to counsel; improvement period; hearing; priority of proceeding; transcript.**

1 (a) In any proceeding under the provisions of this article,  
2 the child, his or her or parents and his or her legally estab-  
3 lished custodian or other persons standing in loco parentis to  
4 him or her shall have the right to be represented by counsel at  
5 every stage of the proceedings and shall be informed by the  
6 court of their right to be so represented and that if they can-  
7 not pay for the services of counsel, that counsel will be ap-  
8 pointed. Counsel of the child shall be appointed in the initial  
9 order. If the order gives physical custody of the child to the  
10 state, the initial order shall appoint counsel for the parents or,  
11 if the parents are separated or divorced, the parents or parent  
12 or other person or persons standing in loco parentis who had  
13 physical custody of the child for the majority of the time in  
14 the period immediately preceding the petition: *Provided,*  
15 That such representation shall only continue after the first  
16 appearance if the parent or other persons standing in loco  
17 parentis cannot pay for the services of counsel. Counsel for  
18 other parties shall only be appointed upon request for ap-  
19 pointment of counsel. If the requesting parties have not re-  
20 tained counsel and cannot pay for the services of counsel, the  
21 court shall, by order entered of record, appoint an attorney or

22 attorneys to represent the other party or parties and so inform  
23 the parties. Under no circumstances may the same attorney  
24 represent both the child and the other party or parties, nor  
25 shall the same attorney represent both parents or custodians.  
26 However, one attorney may represent both parents or custodi-  
27 ans where both parents or guardians consent to this represen-  
28 tation after the attorney fully discloses to the client the possi-  
29 ble conflict and where the attorney assures the court that she  
30 or he is able to represent each client without impairing her or  
31 his professional judgment; however, if more than one child  
32 from a family is involved in the proceeding, one attorney  
33 may represent all the children. A parent who has been judi-  
34 cially determined to be battered shall be entitled to his or her  
35 own attorney. The court may allow to each attorney so ap-  
36 pointed a fee in the same amount which appointed counsel  
37 can receive in felony cases. Any attorney appointed pursuant  
38 to this section shall by the first day of July, one thousand nine  
39 hundred ninety-three, and three hours per year each year  
40 thereafter, receive a minimum of three hours of continuing  
41 legal education training on representation of children, child  
42 abuse and neglect: *Provided, however,* That where no attor-  
43 ney who has completed this training is available for such  
44 appointment, the court shall appoint a competent attorney  
45 with demonstrated knowledge of child welfare law to repre-  
46 sent the child. Any attorney appointed pursuant to this sec-  
47 tion shall perform all duties required as an attorney licensed  
48 to practice law in the State of West Virginia.

49 (b) In any proceeding brought pursuant to the provisions  
50 of this article, the court may grant any respondent an im-  
51 provement period in accord with the provisions of this article.  
52 During such period, the court may require temporary custody  
53 with a responsible person which has been found to be a fit  
54 and proper person for the temporary custody of the child or  
55 children or the state department or other agency during the  
56 improvement period. An order granting such improvement

57 period shall require the department to prepare and submit to  
58 the court a family case plan in accordance with the provisions  
59 of section three, article six-d of this chapter.

60 (c) In any proceeding pursuant to the provisions of this  
61 article, the party or parties having custodial or other parental  
62 rights or responsibilities to the child shall be afforded a  
63 meaningful opportunity to be heard, including the opportu-  
64 nity to testify and to present and cross-examine witnesses.  
65 The petition shall not be taken as confessed. A transcript or  
66 recording shall be made of all proceedings unless waived by  
67 all parties to the proceeding. The rules of evidence shall ap-  
68 ply. Where relevant, the court shall consider the efforts of the  
69 state department to remedy the alleged circumstances. At the  
70 conclusion of the hearing, the court shall make a determina-  
71 tion based upon the evidence and shall make findings of fact  
72 and conclusions of law as to whether such child is abused or  
73 neglected and, if applicable, whether the parent, guardian, or  
74 custodian is a battered parent, all of which shall be incorpo-  
75 rated into the order of the court. The findings must be based  
76 upon conditions existing at the time of the filing of the peti-  
77 tion and proven by clear and convincing proof.

78 (d) Any petition filed and any proceeding held under the  
79 provisions of this article shall, to the extent practicable, be  
80 given priority over any other civil action before the court,  
81 except proceedings under article two-a, chapter forty-eight of  
82 this code and actions in which trial is in progress. Any peti-  
83 tion filed under the provisions of this article shall be dock-  
84 eted immediately upon filing. Any hearing to be held at the  
85 end of an improvement period and any other hearing to be  
86 held during any proceedings under the provisions of this  
87 article shall be held as nearly as practicable on successive  
88 days and, with respect to said hearing to be held at the end of  
89 an improvement period, shall be held as close in time as pos-  
90 sible after the end of said improvement period and shall be



91 held within sixty days of the termination of such improve-  
92 ment period.

93 (e) Following the court's determination, it shall be in-  
94 quired of the parents or custodians whether or not appeal is  
95 desired and the response transcribed. A negative response  
96 shall not be construed as a waiver. The evidence shall be  
97 transcribed and made available to the parties or their counsel  
98 as soon as practicable, if the same is required for purposes of  
99 further proceedings. If an indigent person intends to pursue  
100 further proceedings, the court reporter shall furnish a tran-  
101 script of the hearing without cost to the indigent person if an  
102 affidavit is filed stating that he or she cannot pay therefor.

**§49-6-3. Petition to court when child believed neglected or  
abused — Temporary custody.**

1 (a) Upon the filing of a petition, the court may order that  
2 the child alleged to be an abused or neglected child be deliv-  
3 ered for not more than ten days into the custody of the state  
4 department or a responsible person found by the court to be a  
5 fit and proper person for the temporary care of the child  
6 pending a preliminary hearing, if it finds that: (1) There ex-  
7 ists imminent danger to the physical well-being of the child;  
8 and (2) there are no reasonably available alternatives to re-  
9 moval of the child, including, but not limited to, the provision  
10 of medical, psychiatric, psychological or homemaking ser-  
11 vices in the child's present custody: *Provided*, That where the  
12 alleged abusing person, if known, is a member of a house-  
13 hold, the court shall not allow placement pursuant to this  
14 section of the child or children in said home unless the al-  
15 leged abusing person is or has been precluded from visiting  
16 or residing in said home by judicial order. In a case where  
17 there is more than one child in the home, or in the temporary  
18 care, custody or control of the alleged offending parent, the  
19 petition shall so state, and notwithstanding the fact that the

20 allegations of abuse or neglect may pertain to less than all of  
21 such children, each child in the home for whom relief is  
22 sought shall be made a party to the proceeding. Even though  
23 the acts of abuse or neglect alleged in the petition were not  
24 directed against a specific child who is named in the petition,  
25 the court shall order the removal of such child, pending final  
26 disposition, if it finds that there exists imminent danger to the  
27 physical well-being of the child and a lack of reasonable  
28 available alternatives to removal. The initial order directing  
29 such custody shall contain an order appointing counsel and  
30 scheduling the preliminary hearing, and upon its service shall  
31 require the immediate transfer of custody of such child or  
32 children to the department or a responsible relative which  
33 may include any parent, guardian, or other custodian. The  
34 court order shall state: (1) That continuation in the home is  
35 contrary to the best interests of the child and why; and (2)  
36 whether or not the department made reasonable efforts to  
37 preserve the family and prevent the placement or that the  
38 emergency situation made such efforts unreasonable or im-  
39 possible. The order may also direct any party or the depart-  
40 ment to initiate or become involved in services to facilitate  
41 reunification of the family.

42 (b) Whether or not the court orders immediate transfer of  
43 custody as provided in subsection (a) of this section, if the  
44 facts alleged in the petition demonstrate to the court that  
45 there exists imminent danger to the child, the court may  
46 schedule a preliminary hearing giving the respondents at least  
47 five days' actual notice. If the court finds at the preliminary  
48 hearing that there are no alternatives less drastic than re-  
49 moval of the child and that a hearing on the petition cannot  
50 be scheduled in the interim period, the court may order that  
51 the child be delivered into the temporary custody of the de-  
52 partment or a responsible person or agency found by the  
53 court to be a fit and proper person for the temporary care of  
54 the child for a period not exceeding sixty days: *Provided,*

55 That the court order shall state: (1) That continuation in the  
56 home is contrary to the best interests of the child and set forth  
57 the reasons therefor; (2) whether or not the department made  
58 reasonable efforts to preserve the family and to prevent the  
59 child's removal from his or her home; (3) whether or not the  
60 department made reasonable efforts to preserve the family  
61 and to prevent the placement or that the emergency situation  
62 made such efforts unreasonable or impossible; and (4) what  
63 efforts should be made by the department, if any, to facilitate  
64 the child's return home: *Provided, however,* That if the court  
65 grants an improvement period as provided in section twelve  
66 of this article, the sixty-day limit upon temporary custody is  
67 waived.

68 (c) If a child or children shall, in the presence of a child  
69 protective service worker, be in an emergency situation  
70 which constitutes an imminent danger to the physical well-  
71 being of the child or children, as that phrase is defined in  
72 section three, article one of this chapter, and if such worker  
73 has probable cause to believe that the child or children will  
74 suffer additional child abuse or neglect or will be removed  
75 from the county before a petition can be filed and temporary  
76 custody can be ordered, the worker may, prior to the filing of  
77 a petition, take the child or children into his or her custody  
78 without a court order: *Provided,* That after taking custody of  
79 such child or children prior to the filing of a petition, the  
80 worker shall forthwith appear before a circuit judge or a juve-  
81 nile referee of the county wherein custody was taken, or if no  
82 such judge or referee be available, before a circuit judge or a  
83 juvenile referee of an adjoining county, and shall immedi-  
84 ately apply for an order ratifying the emergency custody of  
85 the child pending the filing of a petition. The circuit court of  
86 every county in the state shall appoint at least one of the  
87 magistrates of the county to act as a juvenile referee, who  
88 shall serve at the will and pleasure of the appointing court,  
89 and who shall perform the functions prescribed for such posi-

90 tion by the provisions of this subsection. The parents, guard-  
91 ians or custodians of the child or children may be present at  
92 the time and place of application for an order ratifying cus-  
93 tody, and if at the time the child or children are taken into  
94 custody by the worker, the worker knows which judge or  
95 referee is to receive the application, the worker shall so in-  
96 form the parents, guardians or custodians. The application for  
97 emergency custody may be on forms prescribed by the Su-  
98 preme Court of Appeals or prepared by the prosecuting attor-  
99 ney or the applicant, and shall set forth facts from which it  
100 may be determined that the probable cause described above  
101 in this subsection exists. Upon such sworn testimony or other  
102 evidence as the judge or referee deems sufficient, the judge  
103 or referee may order the emergency taking by the worker to  
104 be ratified. If appropriate under the circumstances, the order  
105 may include authorization for an examination as provided for  
106 in subsection (b), section four of this article. If a referee is-  
107 sues such an order, the referee shall by telephonic communi-  
108 cation have such order orally confirmed by a circuit judge of  
109 the circuit or an adjoining circuit who shall on the next judi-  
110 cial day enter an order of confirmation. If the emergency  
111 taking is ratified by the judge or referee, emergency custody  
112 of the child or children shall be vested in the department until  
113 the expiration of the next two judicial days, at which time  
114 any such child taken into emergency custody shall be re-  
115 turned to the custody of his or her parent or guardian or cus-  
116 todian unless a petition has been filed and custody of the  
117 child has been transferred under the provisions of section  
118 three of this article.

119 (d) For purposes of the court's consideration of tempo-  
120 rary custody pursuant to the provisions of subsection (a) or  
121 (b) of this section, the department is not required to make  
122 reasonable efforts to preserve the family if the court deter-  
123 mines:

124 (1) The parent has subjected the child, another child of  
125 the parent, or any other child residing in the same household  
126 or under the temporary or permanent custody of the parent to  
127 aggravated circumstances which include, but are not limited  
128 to, abandonment, torture, chronic abuse and sexual abuse;

129 (2) The parent has:

130 (A) Committed murder of the child's other parent, an-  
131 other child of the parent, or any other child residing in the  
132 same household or under the temporary or permanent custody  
133 of the parent;

134 (B) Committed voluntary manslaughter of the child's  
135 other parent, another child of the parent, or any other child  
136 residing in the same household or under the temporary or  
137 permanent custody of the parent;

138 (C) Attempted or conspired to commit such a murder or  
139 voluntary manslaughter or been an accessory before or after  
140 the fact to either such crime; or

141 (D) Committed unlawful or malicious wounding that  
142 results in serious bodily injury to the child, the child's other  
143 parent, to another child of the parent, or any other child resid-  
144 ing in the same household or under the temporary or perma-  
145 nent custody of the parent; or

146 (3) The parental rights of the parent to another child have  
147 been terminated involuntarily.

**§49-6-5. Disposition of neglected or abused children.**

1 (a) Following a determination pursuant to section two of  
2 this article wherein the court finds a child to be abused or  
3 neglected, the department shall file with the court a copy of  
4 the child's case plan, including the permanency plan for the

5 child. The term case plan means a written document that  
6 includes, where applicable, the requirements of the family  
7 case plan as provided for in section three, article six-d of this  
8 chapter and that also includes at least the following: A de-  
9 scription of the type of home or institution in which the child  
10 is to be placed, including a discussion of the appropriateness  
11 of the placement and how the agency which is responsible for  
12 the child plans to assure that the child receives proper care  
13 and that services are provided to the parents, child and foster  
14 parents in order to improve the conditions in the parent(s)  
15 home; facilitate return of the child to his or her own home or  
16 the permanent placement of the child; and address the needs  
17 of the child while in foster care, including a discussion of the  
18 appropriateness of the services that have been provided to the  
19 child. The term “permanency plan” refers to that part of the  
20 case plan which is designed to achieve a permanent home for  
21 the child in the least restrictive setting available. The plan  
22 must document efforts to ensure that the child is returned  
23 home within approximate time lines for reunification as set  
24 out in the plan. Reasonable efforts to place a child for adop-  
25 tion or with a legal guardian may be made at the same time  
26 reasonable efforts are made to prevent removal or to make it  
27 possible for a child to safely return home. If reunification is  
28 not the permanency plan for the child, the plan must state  
29 why reunification is not appropriate and detail the alternative  
30 placement for the child to include approximate time lines for  
31 when such placement is expected to become a permanent  
32 placement. This case plan shall serve as the family case plan  
33 for parents of abused or neglected children. Copies of the  
34 child’s case plan shall be sent to the child’s attorney and  
35 parent, guardian or custodian or their counsel at least five  
36 days prior to the dispositional hearing. The court shall forth-  
37 with proceed to disposition giving both the petitioner and  
38 respondents an opportunity to be heard. The court shall give  
39 precedence to dispositions in the following sequence:

- 40           (1) Dismiss the petition;
- 41           (2) Refer the child, the abusing parent, the battered par-  
42 ent or other family members to a community agency for  
43 needed assistance and dismiss the petition;
- 44           (3) Return the child to his or her own home under super-  
45 vision of the department;
- 46           (4) Order terms of supervision calculated to assist the  
47 child and any abusing parent or battered parent or parents or  
48 custodian which prescribe the manner of supervision and care  
49 of the child and which are within the ability of any parent or  
50 parents or custodian to perform;
- 51           (5) Upon a finding that the abusing parent or battered  
52 parent or parents are presently unwilling or unable to provide  
53 adequately for the child's needs, commit the child tempo-  
54 rarily to the custody of the state department, a licensed pri-  
55 vate child welfare agency or a suitable person who may be  
56 appointed guardian by the court. The court order shall state:  
57 (A) That continuation in the home is contrary to the best  
58 interests of the child and why; (B) whether or not the depart-  
59 ment has made reasonable efforts, with the child's health and  
60 safety being the paramount concern, to preserve the family,  
61 or some portion thereof, and to prevent or eliminate the need  
62 for removing the child from the child's home and to make it  
63 possible for the child to safely return home; (C) what efforts  
64 were made or that the emergency situation made such efforts  
65 unreasonable or impossible; and (D) the specific circum-  
66 stances of the situation which made such efforts unreasonable  
67 if services were not offered by the department. The court  
68 order shall also determine under what circumstances the  
69 child's commitment to the department shall continue. Con-  
70 siderations pertinent to the determination include whether the  
71 child should: (i) Be continued in foster care for a specified  
72 period; (ii) be considered for adoption; (iii) be considered for

73 legal guardianship; (iv) be considered for permanent place-  
74 ment with a fit and willing relative; or (v) be placed in an-  
75 other planned permanent living arrangement, but only in  
76 cases where the department has documented to the circuit  
77 court a compelling reason for determining that it would not  
78 be in the best interests of the child to follow one of the op-  
79 tions set forth in subparagraphs (i), (ii), (iii) or (iv) of this  
80 paragraph. The court may order services to meet the special  
81 needs of the child. Whenever the court transfers custody of a  
82 youth to the department, an appropriate order of financial  
83 support by the parents or guardians shall be entered in accor-  
84 dance with section five, article seven of this chapter; or

85       (6) Upon a finding that there is no reasonable likelihood  
86 that the conditions of neglect or abuse can be substantially  
87 corrected in the near future and, when necessary for the wel-  
88 fare of the child, terminate the parental, custodial and guard-  
89 ianship rights and responsibilities of the abusing parent and  
90 commit the child to the permanent sole custody of the  
91 nonabusing parent, if there be one, or, if not, to either the  
92 permanent guardianship of the department or a licensed child  
93 welfare agency. The court may award sole custody of the  
94 child to a non-abusing battered parent. If the court shall so  
95 find, then in fixing its dispositional order the court shall con-  
96 sider the following factors: (A) The child's need for continu-  
97 ity of care and caretakers; (B) the amount of time required for  
98 the child to be integrated into a stable and permanent home  
99 environment; and (C) other factors as the court considers  
100 necessary and proper. Notwithstanding any other provision of  
101 this article, the court shall give consideration to the wishes of  
102 a child fourteen years of age or older or otherwise of an age  
103 of discretion as determined by the court regarding the perma-  
104 nent termination of parental rights. No adoption of a child  
105 shall take place until all proceedings for termination of pa-  
106 rental rights under this article and appeals thereof are final. In  
107 determining whether or not parental rights should be termi-



108 nated, the court shall consider the efforts made by the depart-  
109 ment to provide remedial and reunification services to the  
110 parent. The court order shall state: (i) That continuation in the  
111 home is not in the best interest of the child and why; (ii) why  
112 reunification is not in the best interests of the child; (iii)  
113 whether or not the department made reasonable efforts, with  
114 the child's health and safety being the paramount concern, to  
115 preserve the family, or some portion thereof, and to prevent  
116 the placement or to eliminate the need for removing the child  
117 from the child's home and to make it possible for the child to  
118 safely return home, or that the emergency situation made  
119 such efforts unreasonable or impossible; and (iv) whether or  
120 not the department made reasonable efforts to preserve and  
121 reunify the family, or some portion thereof, including a de-  
122 scription of what efforts were made or that such efforts were  
123 unreasonable due to specific circumstances.

124 (7) For purposes of the court's consideration of the dis-  
125 position custody of a child pursuant to the provisions of this  
126 subsection, the department is not required to make reasonable  
127 efforts to preserve the family if the court determines:

128 (A) The parent has subjected the child, another child of  
129 the parent, or any other child residing in the same household  
130 or under the temporary or permanent custody of the parent to  
131 aggravated circumstances which include, but are not limited  
132 to, abandonment, torture, chronic abuse and sexual abuse;

133 (B) The parent has:

134 (i) Committed murder of the child's other parent, another  
135 child of the parent or any other child residing in the same  
136 household or under the temporary or permanent custody of  
137 the parent;

138 (ii) Committed voluntary manslaughter of the child's  
139 other parent, another child of the parent, or any other child

140 residing in the same household or under the temporary or  
141 permanent custody of the parent;

142 (iii) Attempted or conspired to commit such a murder or  
143 voluntary manslaughter or been an accessory before or after  
144 the fact to either such crime; or

145 (iv) Committed a felonious assault that results in serious  
146 bodily injury to the child, the child's other parent, to another  
147 child of the parent, or any other child residing in the same  
148 household or under the temporary or permanent custody of  
149 the parent; or

150 (C) The parental rights of the parent to another child have  
151 been terminated involuntarily.

152 (b) As used in this section, "no reasonable likelihood that  
153 conditions of neglect or abuse can be substantially corrected"  
154 shall mean that, based upon the evidence before the court, the  
155 abusing adult or adults have demonstrated an inadequate  
156 capacity to solve the problems of abuse or neglect on their  
157 own or with help. Such conditions shall be considered to  
158 exist in the following circumstances, which shall not be ex-  
159 clusive:

160 (1) The abusing parent or parents have habitually abused  
161 or are addicted to alcohol, controlled substances or drugs, to  
162 the extent that proper parenting skills have been seriously  
163 impaired and such person or persons have not responded to or  
164 followed through the recommended and appropriate treat-  
165 ment which could have improved the capacity for adequate  
166 parental functioning;

167 (2) The abusing parent or parents have willfully refused  
168 or are presently unwilling to cooperate in the development of  
169 a reasonable family case plan designed to lead to the child's  
170 return to their care, custody and control;

171 (3) The abusing parent or parents have not responded to  
172 or followed through with a reasonable family case plan or  
173 other rehabilitative efforts of social, medical, mental health  
174 or other rehabilitative agencies designed to reduce or prevent  
175 the abuse or neglect of the child, as evidenced by the continu-  
176 ation or insubstantial diminution of conditions which threat-  
177 ened the health, welfare or life of the child;

178 (4) The abusing parent or parents have abandoned the  
179 child;

180 (5) The abusing parent or parents have repeatedly or  
181 seriously injured the child physically or emotionally, or have  
182 sexually abused or sexually exploited the child, and the de-  
183 gree of family stress and the potential for further abuse and  
184 neglect are so great as to preclude the use of resources to  
185 mitigate or resolve family problems or assist the abusing  
186 parent or parents in fulfilling their responsibilities to the  
187 child;

188 (6) The abusing parent or parents have incurred emo-  
189 tional illness, mental illness or mental deficiency of such  
190 duration or nature as to render such parent or parents incapa-  
191 ble of exercising proper parenting skills or sufficiently im-  
192 proving the adequacy of such skills; or

193 (7) The battered parent's parenting skills have been seri-  
194 ously impaired and said person has willfully refused or is  
195 presently unwilling or unable to cooperate in the develop-  
196 ment of a reasonable treatment plan or has not adequately  
197 responded to or followed through with the recommended and  
198 appropriate treatment plan.

199 (c) The court may, as an alternative disposition, allow the  
200 parents or custodians an improvement period not to exceed  
201 six months. During this period the court shall require the  
202 parent to rectify the conditions upon which the determination

203 was based. The court may order the child to be placed with  
204 the parents, or any person found to be a fit and proper person,  
205 for the temporary care of the child during the period. At the  
206 end of the period, the court shall hold a hearing to determine  
207 whether the conditions have been adequately improved and at  
208 the conclusion of the hearing shall make a further  
209 dispositional order in accordance with this section.

**§49-6-5b. When efforts to terminate parental rights required.**

1 (a) Except as provided in subsection (b) of this section,  
2 the department shall file or join in a petition or otherwise  
3 seek a ruling in any pending proceeding to terminate parental  
4 rights:

5 (1) If a child has been in foster care for fifteen of the  
6 most recent twenty-two months as determined by the earlier  
7 of the date of the first judicial finding that the child is sub-  
8 jected to abuse or neglect or the date which is sixty days after  
9 the child is removed from the home;

10 (2) If a court has determined the child is abandoned; or

11 (3) If a court has determined the parent has committed  
12 murder or voluntary manslaughter of another of his or her  
13 children or the other parent of his or her children; has at-  
14 tempted or conspired to commit such murder or voluntary  
15 manslaughter or has been an accessory before or after the fact  
16 of either crime; has committed unlawful or malicious wound-  
17 ing resulting in serious bodily injury to the child or to another  
18 of his or her children or to the other parent of his or her chil-  
19 dren; or the parental rights of the parent to a sibling have  
20 been terminated involuntarily.

21 (b) The department may determine not to file a petition to  
22 terminate parental rights when:

23 (1) At the option of the department, the child has been  
24 placed with a relative;

25 (2) The department has documented in the case plan  
26 made available for court review a compelling reason, includ-  
27 ing, but not limited to, the child's age and preference regard-  
28 ing termination or the child's placement in custody of the  
29 department based on any proceedings initiated under article  
30 five of this chapter, that filing the petition would not be in the  
31 best interests of the child; or

32 (3) The department has not provided, when reasonable  
33 efforts to return a child to the family are required, the ser-  
34 vices to the child's family as the department deems necessary  
35 for the safe return of the child to the home.

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## CHAPTER 31

**(Com. Sub. for H. B. 4790 — By Delegate Hatfield)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to repeal §49-2B-17 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-2B-1, §49-2B-2, §49-2B-3, §49-2B-4, §49-2B-5, §49-2B-6, §49-2B-7, §49-2B-8, §49-2B-9, §49-2B-10, §49-2B-11, §49-2B-12, §49-2B-13, §49-2B-14, §49-2B-15 and §49-2B-16 of said code, all relating to prescribing and modifying the duties of the Secretary of the Department of Health and Human Resources in child welfare placement; relating to authority to promulgate emergency rules providing for voluntary registration of relative family child care homes and informal family child care homes; defining

terms; updating statutory language; providing for a time study by the Department of Health and Human Resources; modifying requirements related to child care placement in certain homes or facilities; and repealing the section of the code concerning the establishment of pilot day care programs.

*Be it enacted by the Legislature of West Virginia:*

That §49-2B-17 of the Code of West Virginia, 1931, as amended be repealed; and that §49-2B-1, §49-2B-2, §49-2B-3, §49-2B-4, §49-2B-5, §49-2B-6, §49-2B-7, §49-2B-8, §49-2B-9, §49-2B-10, §49-2B-11, §49-2B-12, §49-2B-13, §49-2B-14, §49-2B-15 and §49-2B-16 of said code be amended and reenacted, all to read as follows:

**ARTICLE 2B. DUTIES OF SECRETARY OF HEALTH AND HUMAN RESOURCES FOR CHILD WELFARE.**

- §49-2B-1. Policy and purpose.
- §49-2B-2. Definitions.
- §49-2B-3. Licensure, certification, approval and registration requirements.
- §49-2B-4. Rules.
- §49-2B-5. Penalties; injunctions.
- §49-2B-6. Conditions of licensure, approval and registration.
- §49-2B-7. Waivers and variances to rules.
- §49-2B-8. Application for license or approval.
- §49-2B-9. Supervision and consultation required.
- §49-2B-10. Investigative authority.
- §49-2B-11. Revocation; provisional licensure and approval.
- §49-2B-12. Closing of facilities by the secretary; placement of children.
- §49-2B-13. Administrative and judicial review.
- §49-2B-14. Annual reports; directory; licensing reports and recommendations.
- §49-2B-15. Education of the public.
- §49-2B-16. Implementation of the Integrated Pest Management Program.

**§49-2B-1. Policy and purpose.**

- 1 (a) It is the policy of the state to assist a child and the
- 2 child's family as the basic unit of society through efforts to
- 3 strengthen and preserve the family unit. In the event of a

4 temporary or permanent absence of parents or the separation  
5 of a child from the family unit for care or treatment purposes,  
6 it is the policy of the state to assure that a child receives care  
7 and nurturing as close as possible to society's expectations of  
8 a family's care and nurturing of its child. The state has a duty  
9 to assure that proper and appropriate care is given and main-  
10 tained.

11 (b) It is also the policy of this state to ensure that those  
12 persons and entities offering quality child care are not over-  
13 encumbered by licensure and registration requirements and  
14 that the extent of regulation of child care facilities and child  
15 placing agencies be moderately proportionate to the size of  
16 the facility.

17 (c) Through licensure, approval, and registration of child  
18 care, the state exercises its benevolent police power to protect  
19 the user of a service from risks against which he or she would  
20 have little or no competence for self protection. Licensure,  
21 approval, and registration processes shall, therefore, continu-  
22 ally balance the child's rights and need for protection with  
23 the interests, rights and responsibility of the service provid-  
24 ers.

25 (d) In order to carry out the above policy, the Legislature  
26 enacts this article to protect and prevent harm to children  
27 separated from their families and to enhance their continued  
28 growth and well-being while in care.

29 (e) The purposes of this article are:

30 (1) To protect the health, safety and well-being of chil-  
31 dren in substitute care by preventing improper and harmful  
32 care;

33 (2) To establish statewide rules for regulating programs  
34 as defined in this article;

35 (3) To encourage and assist in the improvement of child  
36 care programs;

37 (4) To ensure that persons and entities offering child care  
38 are not unduly burdened by licensure and registration re-  
39 quirements; and

40 (5) To ensure that all child care programs be safe, reli-  
41 able and geared to the ages and needs of the children they  
42 serve, meet basic health and safety standards, and employ  
43 people who have the training and experience needed to work  
44 with children.

45 (f) In order to carry out these purposes, the powers of the  
46 child welfare licensing board created by chapter nineteen,  
47 Acts of the Legislature, one thousand nine hundred forty-five,  
48 are hereby transferred to the commissioner of human ser-  
49 vices, along with the other powers granted by this article.

**§49-2B-2. Definitions.**

1 As used in this article, unless the context otherwise re-  
2 quires:

3 (a) "Approval" means a finding by the secretary that a  
4 facility operated by the state has met the requirements set forth  
5 in the rules promulgated pursuant to this article.

6 (b) "Certificate of approval" means a statement of the  
7 secretary that a facility operated by the state has met the re-  
8 quirements set forth in the rules promulgated pursuant to this  
9 article.

10 (c) "Certificate of license" means a statement issued by  
11 the secretary authorizing an individual, corporation, partner-  
12 ship, voluntary association, municipality or county, or any  
13 agency thereof, to provide specified services for a limited  
14 period of time in accordance with the terms of the certificate.



15 (d) "Certificate of registration" means a statement issued  
16 by the secretary to a family child care home, informal family  
17 child care home or relative family child care home, upon  
18 receipt of a self-certification statement of compliance with  
19 the rules promulgated pursuant to the provisions of this arti-  
20 cle.

21 (e) "Child" for the purpose of residential services under  
22 this article means any person under eighteen years of age or  
23 is a transitioning adult.

24 (f) "Child" for the purpose of child care services means  
25 an individual who meets one of the following conditions:

26 (1) Is under thirteen years of age.

27 (2) Is thirteen to eighteen years of age and under court  
28 supervision.

29 (3) Is thirteen to eighteen years of age and presenting a  
30 significant delay of at least twenty-five percent in one or  
31 more areas of development, or a six (6) month delay in two  
32 or more areas as determined by an early intervention pro-  
33 gram, special education program or other multi-disciplinary  
34 team.

35 (g) "Child care" means responsibilities assumed and  
36 services performed in relation to a child's physical, emo-  
37 tional, psychological, social and personal needs and the con-  
38 sideration of the child's rights and entitlements, but does not  
39 include secure detention or incarceration under the jurisdic-  
40 tion of the Division of Juvenile Services, created under sec-  
41 tion two, article five-e of this chapter. It includes the provi-  
42 sion of child care services or residential services.

43 (h) "Child care center" means a facility maintained by  
44 the state or any county or municipality thereof, or any agency  
45 or facility maintained by an individual, firm, corporation,

46 association or organization, public or private for the care of  
47 thirteen or more children for child care services in any set-  
48 ting, if the facility is open for more than 30 days per year per  
49 child.

50 (i) “Child care services” means direct care and protection  
51 of children during a portion of a twenty-four (24) hour day  
52 outside of the child’s own home which provides experiences  
53 to children that foster their healthy development and educa-  
54 tion.

55 (j) “Child placing agency” means a child welfare agency  
56 organized for the purpose of placing children in private fam-  
57 ily homes for foster care or for adoption. The function of a  
58 child-placing agency may include the investigation and cer-  
59 tification of foster family homes and foster family group  
60 homes as provided in this chapter. The function of a child  
61 placing agency may also include the supervision of children  
62 who are sixteen or seventeen years old and living unlicensed  
63 residences.

64 (k) “Child welfare agency” means any agency or facility  
65 maintained by the state or any county or municipality thereof,  
66 or any agency or facility maintained by an individual, firm,  
67 corporation, association or organization, public or private, to  
68 receive children for care and maintenance or for placement in  
69 residential care facilities, including, without limitation, pri-  
70 vate homes, or any facility that provides care for unmarried  
71 mothers and their children: *Provided*, That the term does not  
72 include juvenile detention facilities or juvenile correctional  
73 facilities operated by or under contract with the Division of  
74 Juvenile Services, created under section two, article five-e of  
75 this chapter, nor any other facility operated by that division  
76 for the secure housing or holding of juveniles committed to  
77 its custody.

78 (l) “Department” means the Department of Health and  
79 Human Resources.

80 (m) "Facility" means a place or residence, including  
81 personnel, structures, grounds and equipment, used for the  
82 care of a child or children on a residential or other basis for  
83 any number of hours a day in any shelter or structure main-  
84 tained for that purpose: *Provided*, That the term does not  
85 include any juvenile detention facility or juvenile correc-  
86 tional facility operated by or under contract with the Division  
87 of Juvenile Services, created pursuant to section two, article  
88 five-e of this chapter, for the secure housing or holding of  
89 juveniles committed to its custody.

90 (n) "Family child care home" means a facility which is  
91 used to provide nonresidential child care services for com-  
92 pensation in a provider's residence. The provider may care  
93 for four to six children, at one time including children who  
94 are living in the household, who are under six years of age.  
95 No more than two of the total number of children may be  
96 under twenty-four months of age.

97 (o) "Family child care facility" means any facility which  
98 is used to provide nonresidential child care services for com-  
99 pensation for seven to twelve children, including children  
100 who are living in the household, who are under six years of  
101 age. No more than four of the total number of children may  
102 be under twenty-four months of age. A facility may be in a  
103 provider's residence or a separate building.

104 (p) "Foster family home" means a private residence  
105 which is used for the care on a residential basis of no more  
106 than five children who are unrelated by blood, marriage or  
107 adoption to any adult member of the household.

108 (q) "Informal family child care" means a home that is  
109 used to provide nonresidential child care services for com-  
110 pensation for three (3) or fewer children, including children  
111 who are living in the household, who are under six years of

112 age. Care is given in the provider's own home to at least one  
113 (1) child who is not related to the caregiver.

114 (r) "License" means the grant of official permission to a  
115 facility to engage in an activity which would otherwise be  
116 prohibited.

117 (s) "Out of school time" means a child care service which  
118 offers activities to children before and after school, on school  
119 holidays, when school is closed due to emergencies, and on  
120 school calendar days set aside for teacher activities.

121 (t) "Registration" means the process by which a family  
122 child care home, informal family child care home or a rela-  
123 tive family child care home self-certifies compliance with the  
124 rules promulgated pursuant to this article.

125 (u) "Residential services" means child care which in-  
126 cludes the provision of nighttime shelter and the personal  
127 discipline and supervision of a child by guardians, custodians  
128 or other persons or entities on a continuing or temporary  
129 basis. It may include care and or treatment for transitioning  
130 adults: *Provided*, That the term does not include or apply to  
131 any juvenile detention facility or juvenile correctional facility  
132 operated by the Division of Juvenile Services, created pursu-  
133 ant to section two, article five-e of this chapter, for the secure  
134 housing or holding of juveniles committed to its custody.

135 (v) "Relative family child care" means a home that pro-  
136 vides nonresidential child care services only to children re-  
137 lated to the caregiver. The caregiver is a grandparent, great  
138 grandparent, aunt, uncle, great-aunt, great-uncle or adult  
139 sibling of the child(ren) receiving care. Care is given in the  
140 provider's home.

141 (w) "Rule" means a statement issued by the secretary of  
142 the standard to be applied in the various areas of child care.

143 (x) “Transitioning adult” means an individual with a  
144 transfer plan to move to an adult setting who meets one of the  
145 following conditions:

146 (1) Is eighteen years of age but under twenty-one years of  
147 age, was in departmental custody upon reaching eighteen  
148 years of age and committed an act of delinquency before  
149 reaching eighteen years of age, remains under the jurisdiction  
150 of the juvenile court, and requires supervision and care to  
151 complete an education and or treatment program which was  
152 initiated prior to the eighteenth birthday.

153 (2) Is eighteen years of age but under twenty-one years  
154 of age, was adjudicated abused, neglected, or in departmental  
155 custody upon reaching eighteen years of age and enters into a  
156 contract with the department to continue in an educational,  
157 training, or treatment program which was initiated prior to  
158 the eighteenth birthday.

159 (y) “Secretary” means the Secretary of the Department  
160 of Health and Human Resources.

161 (z) “Variance” means a declaration that a rule may be  
162 accomplished in a manner different from the manner set forth  
163 in the rule.

164 (aa) “Waiver” means a declaration that a certain rule is  
165 inapplicable in a particular circumstance.

**§49-2B-3. Licensure, certification, approval and registration requirements.**

1 (a) Any person, corporation or child welfare agency,  
2 other than a state agency, which operates a residential child  
3 care facility, a child-placing agency or a day care center shall  
4 obtain a license from the department.

5 (b) Any residential child care facility, day care center or  
6 any child-placing agency operated by the state shall obtain  
7 approval of its operations from the secretary: *Provided*, That  
8 this requirement does not apply to any juvenile detention  
9 facility or juvenile correctional facility operated by or under  
10 contract with the Division of Juvenile Services, created pur-  
11 suant to section two, article five-e of this chapter, for the  
12 secure housing or holding of juveniles committed to its cus-  
13 tody. The facilities and placing agencies shall maintain the  
14 same standards of care applicable to licensed facilities, cen-  
15 ters or placing agencies of the same category.

16 (c) Any family day care facility which operates in this  
17 state, including family day care facilities approved by the  
18 department for receipt of funding, shall obtain a statement of  
19 certification from the department.

20 (d) Every family day care home which operates in this  
21 state, including family day care homes approved by the de-  
22 partment for receipt of funding, shall obtain a certificate of  
23 registration from the department.

24 (e) This section does not apply to:

25 (1) A kindergarten, preschool or school education pro-  
26 gram which is operated by a public school or which is ac-  
27 credited by the state Department of Education, or any other  
28 kindergarten, preschool or school programs which operate  
29 with sessions not exceeding four hours per day for any child;

30 (2) An individual or facility which offers occasional care  
31 of children for brief periods while parents are shopping, en-  
32 gaging in recreational activities, attending religious services  
33 or engaging in other business or personal affairs;

34 (3) Summer recreation camps operated for children at-  
35 tending sessions for periods not exceeding thirty days;

36       (4) Hospitals or other medical facilities which are primar-  
37 ily used for temporary residential care of children for treat-  
38 ment, convalescence or testing;

39       (5) Persons providing family day care solely for children  
40 related to them; or

41       (6) Any juvenile detention facility or juvenile correc-  
42 tional facility operated by or under contract with the Division  
43 of Juvenile Services, created pursuant to section two, article  
44 five-e of this chapter, for the secure housing or holding of  
45 juveniles committed to its custody.

46       (f) The secretary is hereby authorized to issue an emer-  
47 gency rule relating to conducting a survey of existing facili-  
48 ties in this state in which children reside on a temporary basis  
49 in order to ascertain whether they should be subject to licens-  
50 ing under this article or applicable licensing provisions relat-  
51 ing to behavioral health treatment providers.

52       (g) Any informal family child care home or relative fam-  
53 ily child care home may voluntarily register and obtain a  
54 certificate of registration from the department.

**§49-2B-4. Rules.**

1       (a) The secretary shall promulgate rules in accordance  
2 with the provisions of chapter twenty-nine-a of this code  
3 regarding the licensure, approval, certification and registra-  
4 tion of child care facilities and the implementation of the  
5 provisions of this article. The rules shall provide at a mini-  
6 mum the requirement that every residential child care facility  
7 shall be subject to an annual time study regarding the quanti-  
8 fication of staff supervision time at each facility. Every resi-  
9 dential child care facility shall participate in the time study at  
10 the request of the department.

11 (b) The secretary shall review the rules promulgated  
12 pursuant to the provisions of this article at least once every  
13 five years, making revisions when necessary or convenient:  
14 *Provided*, That on or before the first day of September, two  
15 thousand six, the department shall promulgate emergency  
16 rules pursuant to the provisions of article three, chapter  
17 twenty-nine-a of this code that amends and replaces licensing  
18 requirements for group residential programs for children, 78  
19 CSR 3, and child placing agencies for children, 78 CSR 2:  
20 *Provided, however*, That on or before the first day of July,  
21 two thousand six, the department shall promulgate emer-  
22 gency rules pursuant to the provisions of article three, chapter  
23 twenty-nine-a of this code that creates requirements for infor-  
24 mal family child care homes and relative family child care  
25 homes that voluntarily register with the department. All indi-  
26 viduals, facilities, entities, programs, agencies or family child  
27 care homes subject to said emergency rules shall have one  
28 hundred eighty days to come into compliance after promulga-  
29 tion of such rules.

**§49-2B-5. Penalties; injunctions.**

1 (a) Any individual or corporation which operates a child  
2 welfare agency, residential facility or child care center with-  
3 out a license when a license is required is guilty of a misde-  
4 meanor and, upon conviction thereof, shall be punished by  
5 imprisonment in jail not exceeding one year, or a fine of not  
6 more than five hundred dollars, or both fined and imprisoned.

7 (b) Any family child care facility which operates without  
8 a license when a license is required is guilty of a misde-  
9 meanor and, upon conviction thereof, shall be punished by a  
10 fine of not more than five hundred dollars.

11 (c) Where a violation of this article or a rule promulgated  
12 by the secretary may result in serious harm to children under  
13 care, the secretary may seek injunctive relief against any



14 person, corporation, child welfare agency, child placing  
15 agency, child care center, family child care facility, family  
16 child care home or governmental official through proceed-  
17 ings instituted by the attorney general, or the appropriate  
18 county prosecuting attorney, in the circuit court of Kanawha  
19 County or in the circuit court of any county where the chil-  
20 dren are residing or may be found.

**§49-2B-6. Conditions of licensure, approval and registration.**

1 (a) A license or approval is effective for a period up to  
2 two years from the date of issuance, unless revoked or modi-  
3 fied to provisional status based on evidence of a failure to  
4 comply with the provisions of this article or any rules pro-  
5 mulgated pursuant to this article. The license or approval  
6 shall be reinstated upon application to the secretary and a  
7 determination of compliance.

8 (b) An initial six-month license or approval shall be is-  
9 sued to an applicant establishing a new service found to be in  
10 compliance on initial review with regard to policy, proce-  
11 dure, organization, risk management, human resources, ser-  
12 vice environment and record keeping regulations.

13 (c) A provisional license or approval may be issued when  
14 a licensee is not in compliance with this rule but does not  
15 pose a significant risk to the rights, well-being, health and  
16 safety of a consumer. It shall expire not more than six months  
17 from date of issuance, and not be consecutively reissued  
18 unless the provisional recommendation is that of the State  
19 Fire Marshal.

20 (d) A renewal license or approval may be issued of any  
21 duration up to two years at the discretion of the secretary. In  
22 the event a renewal license is not issued, the facility must  
23 make discharge plans for residents and cease operation  
24 within 30 days of the expiration of the license.

25 (e) A certificate of registration is effective for a period up  
26 to two years from the date of issuance, unless revoked based  
27 on evidence of a failure to comply with the provisions of this  
28 article or any rules promulgated pursuant to this article. The  
29 certificate of registration shall be reinstated upon application  
30 to the secretary, including a statement of assurance of contin-  
31 ued compliance with the rules promulgated pursuant to this  
32 article.

33 (f) The license, approval or registration issued under this  
34 article is not transferable and applies only to the facility and  
35 its location stated in the application. The license, registration  
36 or approval shall be publicly displayed: *Provided*, That foster  
37 and adoptive family homes, informal family child care homes  
38 and relative family child care homes shall be required to  
39 display registration certificates of registration or approval  
40 upon request rather than by posting.

41 (g) Provisional certificates of registration may be issued  
42 to family child care homes.

43 (h) The secretary, as a condition of issuing a license,  
44 registration or approval, may:

45 (1) Limit the age, sex or type of problems of children  
46 allowed admission to a particular facility;

47 (2) Prohibit intake of any children; or

48 (3) Reduce the number of children which the agency,  
49 facility or home operated by the agency is licensed, ap-  
50 proved, certified or registered to receive.

#### **§49-2B-7. Waivers and variances to rules.**

1 Waivers or variances of rules may be granted by the  
2 secretary if the health, safety or well-being of a child would

3 not be endangered thereby. The secretary shall promulgate by  
4 rule criteria and procedures for the granting of waivers or  
5 variances so that uniform practices may be maintained  
6 throughout the state.

**§49-2B-8. Application for license or approval.**

1 (a) Any person or corporation or any governmental  
2 agency intending to act as a child welfare agency shall apply  
3 for a license, approval or registration certificate to operate  
4 child care facilities regulated by this article. Applications for  
5 licensure, approval or registration shall be made separately  
6 for each child care facility to be licensed, approved, certified  
7 or registered.

8 (b) The secretary shall prescribe forms and reasonable  
9 application procedures including, but not limited to, finger-  
10 printing of applicants and other persons responsible for the  
11 care of children for submission to the state police and, if  
12 necessary, to the Federal Bureau of Investigation for criminal  
13 history record checks.

14 (c) Before issuing a license, or approval, the secretary  
15 shall investigate the facility, program and persons responsible  
16 for the care of children. The investigation shall include, but  
17 not be limited to, review of resource need, reputation, charac-  
18 ter and purposes of applicants, a check of personnel criminal  
19 records, if any, and personnel medical records, the financial  
20 records of applicants and consideration of the proposed plan  
21 for child care from intake to discharge.

22 (d) Before a home registration is granted, the secretary  
23 shall make inquiry as to the facility, program and persons  
24 responsible for the care of children. The inquiry shall include  
25 self-certification by the prospective home of compliance with  
26 standards including, but not limited to:

- 27 (1) Physical and mental health of persons present in the  
28 home while children are in care;
- 29 (2) Criminal and child abuse or neglect history of persons  
30 present in the home while children are in care;
- 31 (3) Discipline;
- 32 (4) Fire and environmental safety;
- 33 (5) Equipment and program for the children in care;
- 34 (6) Health, sanitation and nutrition.
- 35 (e) Further inquiry and investigation may be made as the  
36 secretary may direct.
- 37 (f) The secretary shall make a decision on each applica-  
38 tion within sixty days of its receipt and shall provide to un-  
39 successful applicants written reasons for the decision.

**§49-2B-9. Supervision and consultation required.**

- 1 (a) The secretary shall provide supervision to ascertain  
2 compliance with the rules promulgated pursuant to this arti-  
3 cle through regular monitoring, visits to facilities, documen-  
4 tation, evaluation and reporting. The secretary shall be re-  
5 sponsible for training and education, within fiscal limitations,  
6 specifically for the improvement of care in family child care  
7 homes and facilities. The secretary shall consult with appli-  
8 cants, the personnel of child welfare agencies, and children  
9 under care to assure the highest quality child care possible.
- 10 (b) The Director of the Department of Health and the  
11 State Fire Marshal shall cooperate with the secretary in the  
12 administration of the provisions of this article by providing  
13 such reports and assistance as may be requested by the secre-  
14 tary.

**§49-2B-10. Investigative authority.**

1 (a) The secretary shall enforce the provisions of this arti-  
2 cle.

3 (b) An on-site evaluation of every facility regulated pur-  
4 suant to this article, except registered family child care  
5 homes, informal family child care and relative family child  
6 care homes shall be conducted no less than once per year by  
7 announced or unannounced visits.

8 (c) A random sample of not less than five percent of the  
9 total number of registered family child care homes, informal  
10 family child care homes and relative family child care homes  
11 shall be monitored annually through on-site evaluations.

12 (d) The secretary shall have access to the premises, per-  
13 sonnel, children in care and records of each facility subject to  
14 inspection, including, but not limited to, case records, corpo-  
15 rate and financial records and board minutes. Applicants for  
16 licenses, approvals, and certificates of registration shall con-  
17 sent to reasonable on-site administrative inspections, made  
18 with or without prior notice, as a condition of licensing, ap-  
19 proval, or registration.

20 (e) When a complaint is received by the secretary alleg-  
21 ing violations of licensure, approval, or registration require-  
22 ments, the secretary shall investigate the allegations. The  
23 secretary may notify the facility's director before or after a  
24 complaint is investigated and shall cause a written report of  
25 the results of the investigation to be made.

26 (f) The secretary may enter any unlicensed, unregistered  
27 or unapproved child care facility or personal residence for  
28 which there is probable cause to believe that the facility or  
29 residence is operating in violation of this article. Such entries  
30 shall be made with a law-enforcement officer present. The

31 secretary may enter upon the premises of any unregistered  
32 residence only after two attempts by the secretary to bring  
33 this facility into compliance.

**§49-2B-11. Revocation; provisional licensure and approval.**

1 (a) The secretary may revoke or make provisional the  
2 licensure registration of any home facility or child welfare  
3 agency regulated pursuant to this article if a facility materi-  
4 ally violates any provision of this article, or any terms or  
5 conditions of the license, registration or approval issued, or  
6 fails to maintain established requirements of child care: *Pro-*  
7 *vided*, That the provisions of this section shall not apply to  
8 family child care homes.

9 (b) The secretary may revoke the certificate of registra-  
10 tion of any family child care home if a facility materially  
11 violates any provision of this article, or any terms or condi-  
12 tions of the registration certificate issued, or fails to maintain  
13 established requirements of child care.

**§49-2B-12. Closing of facilities by the secretary; placement of children.**

1 When the secretary finds that the operation of a facility  
2 constitutes an immediate danger of serious harm to children  
3 served by the facility, the secretary shall issue an order of  
4 closure terminating operation of the facility. When necessary,  
5 the secretary shall place or direct the placement of the chil-  
6 dren in a residential facility which has been closed into ap-  
7 propriate facilities. A facility closed by the secretary may not  
8 operate pending administrative or judicial review without  
9 court order.

**§49-2B-13. Administrative and judicial review.**

1 Any person, corporation, governmental official or child  
2 welfare agency, aggrieved by a decision of the secretary

3 made pursuant to the provisions of this article may contest  
4 the decision upon making a request for a hearing by the sec-  
5 retary within thirty days of receipt of notice of the decision.  
6 Administrative and judicial review shall be made in accor-  
7 dance with the provisions of article five, chapter twenty-nine-  
8 a of this code. Any decision issued by the secretary may be  
9 made effective from the date of issuance. Immediate relief  
10 therefrom may be obtained upon a showing of good cause  
11 made by verified petition to the circuit court of Kanawha  
12 County or the circuit court of any county where the affected  
13 facility or child welfare agency may be located. The depend-  
14 ency of administrative or judicial review shall not prevent the  
15 secretary from obtaining injunctive relief pursuant to section  
16 five of this article.

**§49-2B-14. Annual reports; directory; licensing reports and  
recommendations.**

1 (a) The secretary shall submit on or before the first day  
2 of January of each year a report to the Governor, and upon  
3 request to members of the Legislature, concerning the regula-  
4 tion of child welfare agencies, child placing agencies, child  
5 care centers, family child care facilities, family child care  
6 homes, informal family child care homes, relative family  
7 child care homes and child care facilities during the year. The  
8 report shall include, but not be limited to, data on the number  
9 of children and staff at each facility (except family child care,  
10 informal family child care homes and relative family child  
11 care, applications received, types of licenses, approvals and  
12 registrations granted, denied, made provisional or revoked  
13 and any injunctions obtained or facility closures ordered.

14 (b) The secretary also shall compile annually a directory  
15 of licensed, certified and approved child care providers in-  
16 cluding a brief description of their program and facilities, the  
17 program's capacity and a general profile of children served.

18 A listing of family child care homes shall also be compiled  
19 annually.

20 (c) Licensing reports and recommendations for licensure  
21 which are a part of the yearly review of each licensed facility  
22 shall be sent to the facility director. Copies shall be available  
23 to the public upon written request to the secretary.

#### **§49-2B-15. Education of the public.**

1 The secretary shall provide ongoing education of the  
2 public in regard to the requirements of this article through the  
3 use of mass media and other methods as are deemed appro-  
4 priate and within fiscal limitations.

#### **§49-2B-16. Implementation of the Integrated Pest Management Program.**

1 By the fifteenth day of August, one thousand nine hun-  
2 dred ninety-five, the secretary shall implement the Integrated  
3 Pest Management Program promulgated under rules by the  
4 Department of Agriculture under authority of section four,  
5 article sixteen-a, chapter nineteen of this code.

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## CHAPTER 32

(Com. Sub. for S. B. 114 — By Senators Kessler, Hunter and Foster)

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[Passed March 7, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 14, 2006.]

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AN ACT to amend and reenact §49-5-13d of the Code of West Virginia, 1931, as amended, relating to teen court programs;



and allowing county commissions and city councils to assess fees of up to five dollars on persons convicted of felonies, misdemeanors or municipal ordinances to fund teen courts.

*Be it enacted by the Legislature of West Virginia:*

That §49-5-13d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. JUVENILE PROCEEDINGS.**

**§49-5-13d. Teen court program.**

1 (a) Notwithstanding any provision of this article to the  
2 contrary, in any county that chooses to institute a teen court  
3 program in accordance with the provisions of this section,  
4 any juvenile who is alleged to have committed a status of-  
5 fense or an act of delinquency which would be a misde-  
6 meanor if committed by an adult and who is otherwise sub-  
7 ject to the provisions of this article may be given the option  
8 of proceeding in the teen court program as an alternative to  
9 the filing of a formal petition under section seven of this  
10 article or proceeding to a disposition as provided by section  
11 eleven-a or thirteen of this article, as the case may be. The  
12 decision to extend the option to enter the teen court program  
13 as an alternative procedure shall be made by the circuit court  
14 if the court finds that the offender is a suitable candidate for  
15 the program. No juvenile may enter the teen court program  
16 unless he or she and his or her parent or guardian consent.  
17 Any juvenile who does not successfully cooperate in and  
18 complete the teen court program and any disposition imposed  
19 therein shall be returned to the circuit court for further dispo-  
20 sition as provided by section eleven-a or thirteen of this arti-  
21 cle, as the case may be.

22 (b) The following provisions apply to all teen court pro-  
23 grams:

24 (1) The judge for each teen court proceeding shall be an  
25 acting or retired circuit court judge or an active member of  
26 the West Virginia State Bar, who serves on a voluntary basis.

27 (2) Any juvenile who selects the teen court program as an  
28 alternative disposition shall agree to serve thereafter on at  
29 least two occasions as a teen court juror.

30 (3) Volunteer students from grades seven through twelve  
31 of the schools within the county shall be selected to serve as  
32 defense attorney, prosecuting attorney, court clerk, bailiff and  
33 jurors for each proceeding.

34 (4) Disposition in a teen court proceeding shall consist of  
35 requiring the juvenile to perform sixteen to forty hours of  
36 community service, the duration and type of which shall be  
37 determined by the teen court jury from a standard list of  
38 available community service programs provided by the  
39 county juvenile probation system and a standard list of alter-  
40 native consequences that are consistent with the purposes of  
41 this article. The performance of the juvenile shall be moni-  
42 tored by the county juvenile probation system. The juvenile  
43 shall also perform at least two sessions of teen court jury  
44 service and, if considered appropriate by the circuit court  
45 judge, participate in an education program. Nothing in this  
46 section may be construed so as to deny availability of the  
47 services provided under section eleven-a of this article to  
48 juveniles who are otherwise eligible therefor.

49 (c) The rules for administration, procedure and admission  
50 of evidence shall be determined by the chief circuit judge, but  
51 in no case may the court require a juvenile to admit the alle-  
52 gation against him or her as a prerequisite to participation in  
53 the teen court program. A copy of these rules shall be pro-  
54 vided to every teen court participant.

55 (d) Each county that operates, or wishes to operate, a teen  
56 court program as provided in this section is hereby authorized

57 to adopt a mandatory fee of up to five dollars to be assessed  
58 as provided in this subsection. Municipal courts may assess a  
59 fee pursuant to the provisions of this section upon authoriza-  
60 tion by the city council of said municipality. Assessments  
61 collected by the clerk of the court pursuant to this subsection  
62 shall be deposited into an account specifically for the opera-  
63 tion and administration of a teen court program. The clerk of  
64 the court of conviction shall collect the fees established in  
65 this subsection and shall remit the fees to the teen court pro-  
66 gram.

67 Any mandatory fee established by a county commission  
68 or city council in accordance with the provisions of this sub-  
69 section shall be paid by the defendant on a judgment of guilty  
70 or a plea of nolo contendere for each violation committed in  
71 the county or municipality of any felony, misdemeanor or  
72 any local ordinance, including traffic violations and moving  
73 violations but excluding municipal parking ordinances.

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## CHAPTER 33

**(H. B. 4494 — By Delegates H. White, Proudfoot,  
Cann, Susman, Evans and Hall)**

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[Passed March 9, 2006; in effect from passage.]

[Approved by the Governor on April 3, 2006.]

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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:*



|    |  |               |
|----|--|---------------|
| 28 | (1) Elk Funeral Home . . . . .                                 | \$ 5,000.00   |
| 29 | (2) Schoonover-Stemple Funeral Chapel . . . .                  | \$ 1,250.00   |
| 30 | (3) Shanklin Funeral Home Inc. . . . .                         | \$ 3,750.00   |
| 31 | (4) Young Funeral Home Inc. . . . .                            | \$ 1,250.00   |
| 32 | <i>(b) Claims against the Division of Corrections:</i>         |               |
| 33 | (TO BE PAID FROM GENERAL REVENUE FUND)                         |               |
| 34 | (1) Beckley Appalachian Regional Hospital . .                  | \$ 1,093.00   |
| 35 | (2) Charleston Area Medical Center Inc. . .                    | \$ 324,395.70 |
| 36 | (3) Correctional Medical Services Inc. . . . .                 | \$ 406,028.09 |
| 37 | (4) Davis Memorial Hospital . . . . .                          | \$ 196.35     |
| 38 | (5) Grafton City Hospital . . . . .                            | \$ 12,548.27  |
| 39 | (6) Integrated Healthcare Providers . . . . .                  | \$ 10,028.39  |
| 40 | (7) Monongalia General Hospital . . . . .                      | \$ 17,967.10  |
| 41 | (8) Montgomery General Hospital . . . . .                      | \$ 264,517.47 |
| 42 | (9) Tygart Valley Total Care Clinic . . . . .                  | \$ 3,069.03   |
| 43 | (10) West Virginia University Hospitals Inc.                   | \$159,638.66  |
| 44 | <i>(c) Claim against the Division of Environmental Protec-</i> |               |
| 45 | <i>tion:</i>   |               |
| 46 | (TO BE PAID FROM SPECIAL REVENUE FUND)                         |               |
| 47 | (1) Citizens Telecommunications Co. of WV dba                  |               |
| 48 | Frontier Communications of WV . . . . .                        | \$ 28.09      |

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## CHAPTER 34

(S. B. 516 — By Senators Love, Sharpe, Edgell and Minear)

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[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on March 31, 2006.]

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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 Concord University; Division of Corrections; Division of Environmental Protection; Division of Highways; Division of Labor; Division of Natural Resources; Division of Rehabilitation Services; Office of Emergency Services; Public Service Commission; Regional Jail and Correctional Facility Authority; West Virginia Division of Banking and West Virginia University to be moral obligations of the state and directing payment thereof.**

1       The Legislature has considered the findings of fact and  
2 recommendations reported to it by the Court of Claims con-  
3 cerning various claims against the state and agencies thereof  
4 and in respect to each of the following claims, the Legislature  
5 adopts those findings of fact as its own and in respect of cer-  
6 tain claims herein, the Legislature has independently made  
7 findings of fact and determinations of award and hereby de-

8 clares it to be the moral obligation of the state to pay each  
9 such claim in the amount specified below and directs the  
10 Auditor to issue warrants for the payment thereof out of any  
11 fund appropriated and available for the purpose.

12 (a) *Claim against Concord University:*

13 (TO BE PAID FROM SPECIAL REVENUE FUND)

14 (1) Aramark Facility Services Inc. . . . . \$ 557,037.52

15 (b) *Claims against the Division of Corrections:*

16 (TO BE PAID FROM GENERAL REVENUE FUND)

17 (1) Barbour County Commission . . . . . \$ 21,750.00

18 (2) James Samples . . . . . \$ 750.00

19 (c) *Claim against the Division of Environmental Protec-*  
20 *tion:*

21 (TO BE PAID FROM SPECIAL REVENUE FUND)

22 (1) Leonard D. Wells . . . . . 1,900.00

23 (d) *Claims against the Division of Highways:*

24 (TO BE PAID FROM STATE ROAD FUND)

25 (1) Paul A. Akers . . . . . \$ 500.00

26 (2) Orville W. Bell, Jr. . . . . \$ 219.67

27 (3) Irene M. Betler . . . . . \$ 250.00

28 (4) Donald J. Birmingham . . . . . \$ 100.00

29 (5) Susan Board . . . . . \$ 770.82

30 (6) Michael J. and Lisa Bonanno . . . . . \$ 100.00

31 (7) Anthony Bongiovanni . . . . . \$ 196.65

32 (8) Michael Buckbee . . . . . \$ 248.04

|    |  |             |
|----|--|-------------|
| 33 | (9) Melissa Burnett . . . . .                  | \$ 616.15   |
| 34 | (10) Joseph M. and Terri L. Bush . . . . .     | \$ 500.00   |
| 35 | (11) Laura Callahan . . . . .                  | \$ 900.00   |
| 36 | (12) Pamela L. Campbell . . . . .              | \$ 226.73   |
| 37 | (13) Teela Carson . . . . .                    | \$ 340.47   |
| 38 | (14) David R. Carter . . . . .                 | \$ 500.00   |
| 39 | (15) Thomas G. Coberly . . . . .               | \$ 150.00   |
| 40 | (16) Stacy and Brian Collins . . . . .         | \$ 580.73   |
| 41 | (17) Joshua James Cook . . . . .               | \$ 403.78   |
| 42 | (18) Lonnie R. and Rosa Lynn Crites . . . . .  | \$ 250.00   |
| 43 | (19) Tom Daddysman . . . . .                   | \$ 250.00   |
| 44 | (20) Robert L. Dalrymple . . . . .             | \$ 48.35    |
| 45 | (21) Sandra S. Dietz . . . . .                 | \$ 216.24   |
| 46 | (22) Joann Dodd . . . . .                      | \$ 249.10   |
| 47 | (23) Kenneth W. Doddrill . . . . .             | \$ 500.00   |
| 48 | (24) Jessica Donaldson . . . . .               | \$ 135.18   |
| 49 | (25) Ronald J. Duke . . . . .                  | \$ 250.00   |
| 50 | (26) Richard Dunham . . . . .                  | \$ 114.65   |
| 51 | (27) Betty and Nelson Edwards . . . . .        | \$ 250.00   |
| 52 | (28) Gary and Rebecca Eisenman . . . . .       | \$ 1,000.00 |
| 53 | (29) Bryan A. Elkins . . . . .                 | \$ 250.00   |
| 54 | (30) Maria Farley . . . . .                    | \$ 500.00   |
| 55 | (31) Jaime and Brent Foster . . . . .          | \$ 319.86   |
| 56 | (32) Carrie L. Franklin . . . . .              | \$ 205.39   |
| 57 | (33) Ralph E. and Phyllis J. Givens . . . . .  | \$ 250.00   |
| 58 | (34) Elizabeth Gore . . . . .                  | \$ 3,426.61 |
| 59 | (35) Betsy F. and Eric T. Greathouse . . . . . | \$ 500.00   |
| 60 | (36) Kenny W. Gregg . . . . .                  | \$ 127.19   |
| 61 | (37) Sharon Harmon . . . . .                   | \$ 500.00   |
| 62 | (38) Michelle L. Harrington . . . . .          | \$ 77.60    |
| 63 | (39) David M. Haynes . . . . .                 | \$ 405.08   |
| 64 | (40) John Hoffman . . . . .                    | \$ 284.85   |
| 65 | (41) Colosia A. Huff . . . . .                 | \$ 342.29   |
| 66 | (42) Debra K. Huff . . . . .                   | \$ 500.00   |
| 67 | (43) Heather Huffman . . . . .                 | \$ 250.00   |



|     |  |               |
|-----|--|---------------|
| 68  | (44) James Klein . . . . .                       | \$ 100.00     |
| 69  | (45) Judith M. Koehler . . . . .                 | \$ 172.61     |
| 70  | (46) George F. Landers . . . . .                 | \$ 500.00     |
| 71  | (47) Lisa Roat Lavender . . . . .                | \$ 500.00     |
| 72  | (48) Charles R. Long . . . . .                   | \$ 194.23     |
| 73  | (49) Teresa A. Lucas . . . . .                   | \$ 2,694.34   |
| 74  | (50) Rocky L. Martin . . . . .                   | \$ 101.22     |
| 75  | (51) Shannon G. Masters . . . . .                | \$ 101.67     |
| 76  | (52) Karon McGrew . . . . .                      | \$ 101.74     |
| 77  | (53) Dee L. Mooney . . . . .                     | \$ 100.00     |
| 78  | (54) Tiffany Moore . . . . .                     | \$ 118.72     |
| 79  | (55) Nixon D. Nelson . . . . .                   | \$ 204.93     |
| 80  | (56) Frank Offutt . . . . .                      | \$ 150.00     |
| 81  | (57) Lisa Page . . . . .                         | \$ 233.31     |
| 82  | (58) Lenard Anthony Panrell . . . . .            | \$ 100,975.00 |
| 83  | (59) Randy Parker . . . . .                      | \$ 314.36     |
| 84  | (60) Robert G. Phillips . . . . .                | \$ 250.00     |
| 85  | (61) Velma C. and James C. Pomeroy . . . . .     | \$ 500.00     |
| 86  | (62) Terri A. Radcliff . . . . .                 | \$ 45.58      |
| 87  | (63) Brandy M. Richmond . . . . .                | \$ 230.94     |
| 88  | (64) Melissa A. Richmond . . . . .               | \$ 239.88     |
| 89  | (65) Ronald L. Riley . . . . .                   | \$ 3,734.47   |
| 90  | (66) Connie Roese . . . . .                      | \$ 450.00     |
| 91  | (67) Carla R. Rose . . . . .                     | \$ 500.00     |
| 92  | (68) Susan A. Samples . . . . .                  | \$ 315.60     |
| 93  | (69) Judith A. See . . . . .                     | \$ 250.00     |
| 94  | (70) Robert D. Shirk . . . . .                   | \$ 2,194.98   |
| 95  | (71) Richard M. and Sandra Lynn Sliger . . . . . | \$ 221.92     |
| 96  | (72) Tammie R. Stephens . . . . .                | \$ 391.37     |
| 97  | (73) Wesley S. Swain . . . . .                   | \$ 163.54     |
| 98  | (74) David Nicholas Thornton . . . . .           | \$ 100.00     |
| 99  | (75) Judy Tonkin . . . . .                       | \$ 333.85     |
| 100 | (76) Jan Triplett . . . . .                      | \$ 180.00     |
| 101 | (77) W.R. Mollohan Inc. . . . .                  | \$ 8,340.47   |
| 102 | (78) Patricia A. Welling . . . . .               | \$ 250.00     |

|     |  |              |
|-----|--|--------------|
| 398 | CLAIMS   | [Ch. 34      |
| 103 | (79) Andrew W. Whipkey . . . . .                             | \$ 465.30    |
| 104 | (80) Kitty Wolfe . . . . .                                   | \$ 83.07     |
| 105 | (81) Joyce and Nick F. Zervos, Jr. . . . .                   | \$ 500.00    |
| 106 | <i>(e) Claims against the Division of Labor:</i>             |              |
| 107 | (TO BE PAID FROM GENERAL REVENUE FUND)                       |              |
| 108 | (1) SGS North America . . . . .                              | \$ 18,040.00 |
| 109 | (2) West Virginia Truck and Trailer Inc. . .                 | \$ 2,424.17  |
| 110 | <i>(f) Claims against the Division of Natural Resources:</i> |              |
| 111 | (TO BE PAID FROM SPECIAL REVENUE FUND)                       |              |
| 112 | (1) Fabricut Contract . . . . .                              | \$ 17,156.00 |
| 113 | (2) Madison Coal &   |              |
| 114 | Supply Company Inc. . . . .                                  | \$ 41,864.90 |
| 115 | (3) Tom's Collision Repair . . . . .                         | \$ 856.30    |
| 116 | <i>(g) Claim against the Division of Rehabilitation Ser-</i> |              |
| 117 | <i>vices:</i>  |              |
| 118 | (TO BE PAID FROM SPECIAL REVENUE FUND)                       |              |
| 119 | (1) Sami M. Ghareeb DDS . . . . .                            | \$ 894.00    |
| 120 | <i>(h) Claim against the Office of Emergency Services:</i>   |              |
| 121 | (TO BE PAID FROM GENERAL REVENUE FUND)                       |              |
| 122 | (1) RCS Communications . . . . .                             | \$ 3,814.13  |
| 123 | <i>(i) Claims against the Public Service Commission:</i>     |              |
| 124 | (TO BE PAID FROM SPECIAL REVENUE FUND)                       |              |
| 125 | (1) Fred A. McComas . . . . .                                | \$ 47.30     |

126 (2) Arnold W. Ryan II . . . . . \$ 35.88

127 (j) *Claims against the Regional Jail and Correctional*  
128 *Facility Authority:*

129 (TO BE PAID FROM SPECIAL REVENUE FUND)

130 (1) Ralph Blankenship . . . . . \$ 873.95

131 (2) Charles Haynes . . . . . \$ 65.00

132 (3) Daniel R. Turner . . . . . \$ 85.00

133 (k) *Claim against the West Virginia Division of Banking:*

134 (TO BE PAID FROM SPECIAL REVENUE FUND)

135 (1) Equifax Information Services LLC . . . . \$ 989.01

136 (l) *Claim against West Virginia University:*

137 (TO BE PAID FROM SPECIAL REVENUE FUND)

138 Nicole Elizabeth Novak . . . . . \$ 62.54

139 The Legislature finds that the above moral obligations  
140 and the appropriations made in satisfaction thereof shall be  
141 the full compensation for all claimants and that prior to the  
142 payments to any claimant provided in this bill, the Court of  
143 Claims shall receive a release from said claimant releasing  
144 any and all claims for moral obligations arising from the mat-  
145 ters considered by the Legislature in the finding of the moral  
146 obligations and the making of the appropriations for said  
147 claimant. The Court of Claims shall deliver all releases ob-  
148 tained from claimants to the department against which the  
149 claim was allowed.

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## CHAPTER 35

**(S. B. 693— By Senator Tomblin, Mr. President)**

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[Passed March 10, 2006; in effect from passage.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to amend and reenact §14-2-18, §14-2-19 and §14-2-20 of the Code of West Virginia, 1931, as amended, all relating to the Court of Claims; and requiring direction of the Joint Committee on Government and Finance in certain circumstances.

*Be it enacted by the Legislature of West Virginia:*

That §14-2-18, §14-2-19 and §14-2-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### **ARTICLE 2. CLAIMS AGAINST THE STATE.**

§14-2-18. Advisory determination procedure.

§14-2-19. Claims under existing appropriations.

§14-2-20. Claims under special appropriations.

#### **§14-2-18. Advisory determination procedure.**

1       The Governor or the head of a state agency may refer to  
 2       the court for an advisory determination the question of the  
 3       legal or equitable status, or both, of a claim against the state  
 4       or a state agency. This procedure shall apply only to such  
 5       claims as are within the jurisdiction of the court. The proce-  
 6       dure shall be substantially as follows:

7       1. There shall be filed with the clerk the record of the  
 8       claim, including a full statement of the facts, the contentions

9 of the claimant and such other materials as the rules of the  
10 court may require. The record shall submit specific questions  
11 for the court's consideration.

12 2. The clerk shall examine the record submitted. If he or  
13 she finds that it is adequate under the rules, he or she shall  
14 give a copy of all materials submitted to the Joint Committee  
15 on Government and Finance. If the Joint Committee on Gov-  
16 ernment and Finance shall so direct, the clerk shall place the  
17 claim on a special docket. If the clerk finds the record inade-  
18 quate, he or she shall refer it back to the officer submitting it  
19 with the request that the necessary additions or changes be  
20 made.

21 3. When a claim is reached on the special docket, the  
22 court shall prepare a brief opinion for the information and  
23 guidance of the officer. The claim shall be considered infor-  
24 mally and without hearing. A claimant shall not be entitled to  
25 appear in connection with the consideration of the claim.

26 4. The opinion shall be filed with the clerk. A copy shall  
27 be transmitted to the officer who referred the claim.

28 An advisory determination shall not bar the subsequent  
29 consideration of the same claim if properly submitted by, or  
30 on behalf of, the claimant. Such subsequent consideration, if  
31 undertaken, shall be de novo.

#### **§14-2-19. Claims under existing appropriations.**

1 A claim arising under an appropriation made by the Leg-  
2 islature during the fiscal year to which the appropriation  
3 applies, and falling within the jurisdiction of the court, may  
4 be submitted by:

5 1. A claimant whose claim has been rejected by the state  
6 agency concerned or by the State Auditor.

7        2. The head of the state agency concerned in order to  
8 obtain a determination of the matters in issue.

9        3. The State Auditor in order to obtain a full hearing and  
10 consideration of the merits.

11        When such submittal is made, the clerk shall give a copy  
12 of the submittal to the Joint Committee on Government and  
13 Finance. If the Joint Committee on Government and Finance  
14 shall so direct, the clerk shall place such claim on its docket.  
15 Upon its placement on the docket, the regular procedure, so  
16 far as applicable, shall govern the consideration of the claim  
17 by the court. If the court finds that the claimant should be  
18 paid, it shall certify the approved claim and award to the head  
19 of the appropriate state agency, the State Auditor and to the  
20 Governor. The Governor may thereupon instruct the Auditor  
21 to issue his or her warrant in payment of the award and to  
22 charge the amount thereof to the proper appropriation. The  
23 Auditor shall forthwith notify the state agency that the claim  
24 has been paid. Such an expenditure shall not be subject to  
25 further review by the Auditor upon any matter determined  
26 and certified by the court.

**§14-2-20. Claims under special appropriations.**

1        Whenever the Legislature makes an appropriation for the  
2 payment of claims against the state, then accrued or arising  
3 during the ensuing fiscal year, the determination of claims  
4 and the payment thereof may be made in accordance with this  
5 section. However, this section shall apply only if the Legisla-  
6 ture in making its appropriation specifically so provides and  
7 only after specific direction to hear the claim is given by the  
8 Joint Committee on Government and Finance.

9        The claim shall be considered and determined by the  
10 regular or shortened procedure, as the case may be, and the

11 amount of the award shall be fixed by the court. The clerk  
12 shall certify each approved claim and award, and requisition  
13 relating thereto, to the Auditor. The Auditor thereupon shall  
14 issue his or her warrant to the Treasurer in favor of the claim-  
15 ant. The Auditor shall issue his or her warrant without further  
16 examination or review of the claim except for the question of  
17 a sufficient unexpended balance in the appropriation.



## CHAPTER 36

**(S. B. 497 — By Senator Kessler)**

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[Passed March 9, 2006; in effect from passage.]  
[Approved by the Governor on April 5, 2006]

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AN ACT to repeal §59-2-2 of the Code of West Virginia, 1931, as amended, relating to requiring nonresidents to post security for court costs.

*Be it enacted by the Legislature of West Virginia:*

### **ARTICLE 2. COSTS GENERALLY.**

#### **§1. Repeal of section relating to requiring nonresidents to post security for court costs.**

1 Section two, article two, chapter fifty-nine of the Code of  
2 West Virginia, 1931, as amended, is hereby repealed.

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## CHAPTER 37

**(Com. Sub. for S. B. 728 — By Senator Chafin)**

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[Passed March 11, 2006; in effect July 1, 2006.]

[Approved by the Governor on April 5, 2006.]

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AN ACT to amend and reenact §7-1-3cc of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-6-2, §24-6-5 and §24-6-6b of said code, all relating to the regulation of voice communication services; redefining “in-state subscriber” to include voice over internet protocol subscribers; authorizing Public Service Commission to issue and enforce orders dealing with matters concerning imposition of fees on voice over internet protocol service subscribers; amending definition of “commercial mobile radio service provider” to include prepaid and post-paid services; requiring directors of emergency dispatch centers to undergo background checks; precluding convicted felons from serving as emergency directors of emergency dispatch centers; effective date; authorizing Public Service Commission to regulate enhanced 911 service fees from in-state two-way subscribers; authorizing Public Service Commission to define in-state two-way subscriber; enhanced emergency telephone system requirements; requiring an investigation on character and criminal background to be conducted by and at the expense of the State Police on certain persons to be employed in an emergency dispatch center; prohibiting persons with felony convictions from holding certain positions; and assignment of a portion of the wireless enhanced 911 fee moneys received by Public Service Commission to the Division of Homeland Security and Emergency Management.



*Be it enacted by the Legislature of West Virginia:*

That §7-1-3cc of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-6-2, §24-6-5 and §24-6-6b of said code be amended and reenacted, all to read as follows:

**Chapter**

**7. County Commissions and Officers.**

**24. Public Service Commission.**

**CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.**

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-3cc. Authority of county commissions to establish enhanced emergency telephone systems, technical and operational standards for emergency communications centers and standards for education and training of emergency communications systems personnel; standards for alarm systems; fee upon consumers of telephone service for the systems and for roadway conversion systems; authority to contract with the telephone companies for billing of fee.**

1 (a) In addition to possessing the authority to establish an  
2 emergency telephone system pursuant to section four, article  
3 six, chapter twenty-four of this code, a county commission or  
4 the county commissions of two or more counties may, in-  
5 stead, establish an enhanced emergency telephone system or  
6 convert an existing system to an enhanced emergency sys-  
7 tem. The establishment of such a system shall be subject to  
8 the provisions of article six of said chapter. The county com-  
9 mission may adopt rules after receiving recommendations  
10 from the West Virginia Enhanced 911 Council concerning  
11 the operation of all county emergency communications cen-  
12 ters or emergency telephone systems centers in the state,  
13 including, but not limited to, recommendations for:

14 (1) Minimum standards for emergency telephone systems  
15 and emergency communications centers;

16 (2) Minimum standards for equipment used in any center  
17 receiving telephone calls of an emergency nature and dis-  
18 patching emergency service providers in response to that call  
19 and which receives 911 moneys or has basic 911 service  
20 funded through its county commission; and

21 (3) Minimum standards for education and training of all  
22 personnel in emergency communications centers.

23 (b) A county commission may impose a fee upon con-  
24 sumers of local exchange service within that county for an  
25 enhanced emergency telephone system and associated elec-  
26 tronic equipment and for the conversion of all rural routes to  
27 city-type addressing as provided in section three of this arti-  
28 cle. The fee revenues may only be used solely and directly  
29 for the capital, installation, administration, operation and  
30 maintenance costs of the enhanced emergency telephone  
31 system and of the conversion to city-type addressing and  
32 including the reasonable costs associated with establishing,  
33 equipping, furnishing, operating or maintaining a county  
34 answering point. Effective on the first day of July, two thou-  
35 sand six, all county enhanced emergency telephone system  
36 fees that are in effect as of the first day of July, two thousand  
37 six, and as such may later be modified by action of a county  
38 commission, shall be imposed upon in-state subscribers to  
39 voice over internet protocol (VoIP) service, as VoIP service  
40 is defined by the Federal Communications Commission of  
41 the United States. A nonbusiness VoIP service subscriber  
42 shall be considered in-state if the primary residence of the  
43 subscriber is located within West Virginia. A business sub-  
44 scriber shall be considered in-state if the site at which the  
45 service is primarily used is located within West Virginia. The  
46 Public Service Commission may, as it deems appropriate and

47 in accordance with the requirements of due process, issue and  
48 enforce orders, as well as adopt and enforce rules, dealing  
49 with matters concerning the imposition of county enhanced  
50 emergency telephone system fees upon VoIP service sub-  
51 scribers.

52 (c) A county commission may contract with the tele-  
53 phone company or companies providing local exchange ser-  
54 vice within the county for the telephone company or compa-  
55 nies to act as the billing agent or agents of the county com-  
56 mission for the billing of the fee imposed pursuant to subsec-  
57 tion (b) of this section. The cost for the billing agent services  
58 may be included as a recurring maintenance cost of the en-  
59 hanced emergency telephone system.

60 Where a county commission has contracted with a tele-  
61 phone company to act as its billing agent for enhanced emer-  
62 gency telephone system fees, all competing local exchange  
63 telephone companies with customers in that county shall bill  
64 the enhanced emergency telephone system fees to its respec-  
65 tive customers located in that county and shall remit the fee.  
66 It may deduct its respective costs for billing in the same man-  
67 ner as the acting billing agent for the enhanced emergency  
68 telephone system fee.

69 (d) A county commission of any county with an emer-  
70 gency communications center or emergency telephone sys-  
71 tem may establish standards for alarm systems, including  
72 security, fire and medical alarms.

73 (e) The books and records of all county answering points  
74 that benefit from the imposition of the local exchange service  
75 fees shall be subject to annual examination by the state audi-  
76 tor's office.

## **CHAPTER 24. PUBLIC SERVICE COMMISSION.**

**ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.**

§24-6-2. Definitions.

§24-6-5. Enhanced emergency telephone system requirements.

§24-6-6b. Wireless enhanced 911 fee.

**§24-6-2. Definitions.**

1 As used in this article, unless the context clearly requires  
2 a different meaning:

3 (1) “Commercial mobile radio service provider” or  
4 “CMRS provider” means cellular licensees, broadband per-  
5 sonal communications services (PCS) licensees and special-  
6 ized mobile radio (SMR) providers, as those terms are de-  
7 fined by the Federal Communications Commission, which  
8 offer on a post-paid or prepaid basis or via a combination of  
9 those two methods, real-time, two-way switched voice ser-  
10 vice that is interconnected with the public switched network  
11 and includes resellers of any commercial mobile radio ser-  
12 vice.

13 (2) “County answering point” means a facility to which  
14 enhanced emergency telephone system calls for a county are  
15 initially routed for response and where county personnel  
16 respond to specific requests for emergency service by di-  
17 rectly dispatching the appropriate emergency service pro-  
18 vider, relaying a message to the appropriate provider or trans-  
19 ferring the call to the appropriate provider.

20 (3) “Emergency services organization” means the organi-  
21 zation established under article five, chapter fifteen of this  
22 code.

23 (4) “Emergency service provider” means any emergency  
24 services organization or public safety unit.

25 (5) “Emergency telephone system” means a telephone  
26 system which through normal telephone service facilities

27 automatically connects a person dialing the primary emer-  
28 gency telephone number to an established public agency  
29 answering point, but does not include an enhanced emer-  
30 gency telephone system.

31 (6) "Enhanced emergency telephone system" means a  
32 telephone system which automatically connects the person  
33 dialing the primary emergency number to the county answer-  
34 ing point and in which the telephone network system auto-  
35 matically provides to personnel receiving the call, immedi-  
36 ately on answering the call, information on the location and  
37 the telephone number from which the call is being made and,  
38 upon direction from the personnel receiving the call, routes  
39 or dispatches the call by telephone, radio or any other appro-  
40 priate means of communication to emergency service provid-  
41 ers that serve the location from which the call is made.

42 (7) "Public agency" means the state and any municipal-  
43 ity, county, public district or public authority which provides  
44 or has authority to provide fire-fighting, police, ambulance,  
45 medical, rescue or other emergency services.

46 (8) "Public safety unit" means a functional division of a  
47 public agency which provides fire-fighting, police, medical,  
48 rescue or other emergency services.

49 (9) "Telephone company" means any public utility and  
50 any CMRS provider which is engaged in the provision of  
51 telephone service whether primarily by means of wire or  
52 wireless facilities.

53 (10) "Comprehensive plan" means a plan pertaining to  
54 the installing, modifying or replacing of telephone switching  
55 equipment; a telephone utility's response in a timely manner  
56 to requests for emergency telephone service by a public  
57 agency; a telephone utility's responsibility to report to the  
58 public service commission; charges and tariffs for the ser-

59 vices and facilities provided by a telephone utility; and access  
60 to an emergency telephone system by emergency service  
61 organizations.

62 (11) “Technical and operational standards” means those  
63 standards of telephone equipment and processes necessary  
64 for the implementation of the comprehensive plan as defined  
65 in subdivision (10) of this subsection.

**§24-6-5. Enhanced emergency telephone system requirements.**

1 (a) An enhanced emergency telephone system, at a mini-  
2 mum, shall provide that:

3 (1) All the territory in the county, including every munic-  
4 ipal corporation in the county, which is served by telephone  
5 company central office equipment that will permit such a  
6 system to be established shall be included in the system:  
7 *Provided*, That if a portion of the county or a portion of a  
8 municipal corporation within the county is already being  
9 served by an enhanced emergency telephone system, that  
10 portion of the county or municipality may be excluded from  
11 the county enhanced emergency telephone system;

12 (2) Every emergency service provider that provides  
13 emergency service within the territory of a county participate  
14 in the system;

15 (3) Each county answering point be operated constantly;

16 (4) Each emergency service provider participating in the  
17 system maintain a telephone number in addition to the one  
18 provided for in the system; and

19 (5) If the county answering point personnel reasonably  
20 determine that a call is not an emergency, the personnel pro-  
21 vide the caller with the number of the appropriate emergency  
22 service provider.

23 (b) To the extent possible, enhanced emergency tele-  
24 phone systems shall be centralized.

25 (c) In developing an enhanced emergency telephone  
26 system, the county commission or the West Virginia State  
27 Police shall seek the advice of both the telephone companies  
28 providing local exchange service within the county and the  
29 local emergency providers.

30 (d) As a condition of employment, any person employed  
31 to act as the director of an emergency dispatch center who  
32 dispatches emergency calls or supervises the dispatching of  
33 emergency call takers shall be subject to an investigation of  
34 their character and background. This investigation shall in-  
35 clude, at a minimum, a criminal background check conducted  
36 by the State Police at its expense. A felony conviction shall  
37 preclude such person from holding any of these positions.  
38 This requirement applies prospectively. The requirement  
39 takes effect on the first day of July, two thousand six.

40 (e) As a condition of continued employment, persons  
41 employed to dispatch emergency calls shall successfully  
42 complete a forty-hour nationally recognized training course  
43 for dispatchers within one year of the date of their employ-  
44 ment; except that persons employed to dispatch emergency  
45 calls prior to the effective date of this subsection, as a condi-  
46 tion of continuing employment, shall successfully complete  
47 such a course not later than the first day of July, one thousand  
48 nine hundred ninety-five.

49 (f) Each county or municipality shall appoint for each  
50 answering point an enhanced emergency telephone system  
51 advisory board consisting of at least six members to monitor  
52 the operation of the system. The board shall be appointed by  
53 the county or municipality and shall include at least one  
54 member from affected fire service providers,  
55 law-enforcement providers, emergency medical providers

56 and emergency services providers participating in the system  
57 and at least one member from the county or municipality.  
58 The board may make recommendations to the county or mu-  
59 nicipality concerning the operation of the system.

60 In addition, the director of the county or municipal en-  
61 hanced telephone system shall serve as an ex officio member  
62 of the advisory board. The initial advisory board shall serve  
63 staggered terms of one, two and three years. The initial terms  
64 of these appointees shall commence on the first day of July,  
65 one thousand nine hundred ninety-four. All future appoint-  
66 ments shall be for terms of three years, except that an ap-  
67 pointment to fill a vacancy shall be for the unexpired term.  
68 All members shall serve without compensation. The board  
69 shall adopt such policies, rules and regulations as are neces-  
70 sary for its own guidance. The board shall meet monthly on  
71 the day of each month which the board may designate. The  
72 board may make recommendations to the county or munici-  
73 pality concerning the operation of the system.

74 (g) Any advisory board established prior to the first day  
75 of January, one thousand nine hundred ninety-four, shall have  
76 three years to meet the criteria of subsection (e) of this sec-  
77 tion.

78 (h) Nothing herein contained shall be construed to pro-  
79 hibit or discourage in any way the establishment of  
80 multijurisdictional or regional systems, or multijurisdictional  
81 or regional agreements for the establishment of enhanced  
82 emergency telephone systems, and any system established  
83 pursuant to this article may include the territory of more than  
84 one public agency, or may include only a portion of the terri-  
85 tory of a public agency.

**§24-6-6b. Wireless enhanced 911 fee.**

1 (a) Beginning on the first day of July, two thousand six,  
2 all CMRS providers as defined in section two of this article



3 shall, on a monthly basis or otherwise for good cause and as  
4 directed by order of the Public Service Commission, collect  
5 from each of their in-state two-way service subscribers a  
6 wireless enhanced 911 fee. As used in this section “in-state  
7 two-way service subscriber” shall have the same meaning as  
8 that set forth in the rules of the Public Service Commission.  
9 No later than the first day of June, two thousand six, the Pub-  
10 lic Service Commission shall, after the receipt of comments  
11 and the consideration of evidence presented at a hearing,  
12 issue an updated order which directs the CMRS providers  
13 regarding all relevant details of wireless enhanced 911 fee  
14 collection, including the determination of who is considered  
15 an in-state two-way service subscriber and which shall spec-  
16 ify how the CMRS providers shall deal with fee collection  
17 shortfalls caused by uncollectible accounts. The Public Ser-  
18 vice Commission shall solicit the views of the wireless tele-  
19 communications utilities prior to issuing the order.

20 (b) The wireless enhanced 911 fee is three dollars per  
21 month for each valid retail commercial mobile radio service  
22 subscription, as that term is defined by the Public Service  
23 Commission in its order issued under subsection (a) of this  
24 section: *Provided*, That beginning on the first day of July,  
25 two thousand five, the wireless enhanced 911 fee shall in-  
26 clude ten cents to be distributed to the West Virginia State  
27 Police to be used for equipment upgrades for improving and  
28 integrating their communication efforts with those of the  
29 enhanced 911 systems: *Provided, however*, That for the fiscal  
30 year beginning on the first day of July, two thousand five,  
31 and for every fiscal year thereafter, one million dollars of the  
32 wireless enhanced 911 fee shall be distributed by the Public  
33 Service Commission to subsidize the construction of towers.  
34 The moneys shall be deposited in a fund administered by the  
35 West Virginia Public Service Commission, entitled Enhanced  
36 911 Wireless Tower Access Assistance Fund, and shall be  
37 expended in accordance with an enhanced 911 wireless tower

38 access matching grant order adopted by the Public Service  
39 Commission. The commission order shall contain terms and  
40 conditions designed to provide financial assistance loans or  
41 grants to state agencies, political subdivisions of the state and  
42 wireless telephone carriers for the acquisition, equipping and  
43 construction of new wireless towers, which would provide  
44 enhanced 911 service coverage and which would not be  
45 available otherwise due to marginal financial viability of the  
46 applicable tower coverage area: *Provided further*, That the  
47 grants shall be allocated among potential sites based on appli-  
48 cation from county commissions demonstrating the need for  
49 enhanced 911 wireless coverage in specific areas of this state.  
50 Any tower constructed with assistance from the fund created  
51 by this subdivision shall be available for use by emergency  
52 services, fire departments and law-enforcement agencies  
53 communication equipment, so long as that use does not inter-  
54 fere with the carrier's wireless signal: *And provided further*,  
55 That the Public Service Commission shall promulgate rules  
56 in accordance with article three, chapter twenty-nine-a of this  
57 code to effectuate the provisions of this subsection. The Pub-  
58 lic Service Commission is specifically authorized to promul-  
59 gate emergency rules: *And provided further*, That for the  
60 fiscal year beginning on the first day of July, two thousand  
61 six, and for every fiscal year thereafter, five percent of the  
62 wireless enhanced 911 fee money received by the Public  
63 Service Commission shall be deposited in a special fund  
64 established by the Division of Homeland Security and Emer-  
65 gency Management to be used solely for the construction,  
66 maintenance and upgrades of the West Virginia Interoperable  
67 Radio Project and any other costs associated with establish-  
68 ing and maintaining the infrastructure of the system. Any  
69 funds remaining in this fund at the end of the fiscal year shall  
70 automatically be reappropriated for the following year.

71 (c) Beginning in the year one thousand nine hundred  
72 ninety-seven, and every two years thereafter, the Public Ser-

73 vice Commission shall conduct an audit of the wireless en-  
74 hanced 911 fee and shall recalculate the fee so that it is the  
75 weighted average rounded to the nearest penny, as of the first  
76 day of March of the respecification year, of all of the en-  
77 hanced 911 fees imposed by the counties which have adopted  
78 an enhanced 911 ordinance: *Provided*, That the wireless en-  
79 hanced 911 fee may never be increased by more than twenty-  
80 five percent of its value at the beginning of the  
81 respecification year: *Provided, however*, That the fee may  
82 never be less than the amount set in subsection (b) of this  
83 section: *Provided further*, That beginning on the first day of  
84 July, two thousand five, the wireless enhanced 911 fee shall  
85 include ten cents to be distributed to the West Virginia State  
86 Police to be used for equipment upgrades for improving and  
87 integrating their communication efforts with those of the  
88 enhanced 911 systems: *And provided further*, That beginning  
89 on the first day of July, two thousand five, one million dollars  
90 of the wireless enhanced 911 fee shall be distributed by the  
91 Public Service Commission to subsidize the construction of  
92 wireless towers as specified in subsection (b) of this section.

93 (d) The CMRS providers shall, after retaining a three-  
94 percent billing fee, send the wireless enhanced 911 fee mon-  
95 eys collected, on a monthly basis, to the Public Service Com-  
96 mission. The Public Service Commission shall, on a quarterly  
97 and approximately evenly staggered basis, disburse the fee  
98 revenue in the following manner:

99 (1) Each county that does not have a 911 ordinance in  
100 effect as of the original effective date of this section in the  
101 year one thousand nine hundred ninety-seven or has enacted  
102 a 911 ordinance within the five years prior to the original  
103 effective date of this section in the year one thousand nine  
104 hundred ninety-seven shall receive eight and one half tenths  
105 of one percent of the fee revenues received by the Public  
106 Service Commission: *Provided*, That after the effective date

107 of this section, in the year two thousand five, when two or  
108 more counties consolidate into one county to provide govern-  
109 ment services, the consolidated county shall receive one per-  
110 cent of the fee revenues received by the Public Service Com-  
111 mission for itself and for each county merged into the consol-  
112 idated county. Each county shall receive eight and one half  
113 tenths of one percent of the remainder of the fee revenues  
114 received by the Public Service Commission: *Provided, how-*  
115 *ever,* That after the effective date of this section, in the year  
116 two thousand five, when two or more counties consolidate  
117 into one county to provide government services, the consoli-  
118 dated county shall receive one percent of the fee revenues  
119 received by the Public Service Commission for itself and for  
120 each county merged into the consolidated county. Then, from  
121 any moneys remaining, each county shall receive a pro rata  
122 portion of that remainder based on that county's population  
123 as determined in the most recent decennial census as a per-  
124 centage of the state total population. The Public Service  
125 Commission shall recalculate the county disbursement per-  
126 centages on a yearly basis, with the changes effective on the  
127 first day of July, and using data as of the preceding first day  
128 of March. The public utilities which normally provide local  
129 exchange telecommunications service by means of lines,  
130 wires, cables, optical fibers or by other means extended to  
131 subscriber premises shall supply the data to the Public Ser-  
132 vice Commission on a county specific basis no later than the  
133 first day of June of each year;

134 (2) Counties which have an enhanced 911 ordinance in  
135 effect shall receive their share of the wireless enhanced 911  
136 fee revenue for use in the same manner as the enhanced 911  
137 fee revenues received by those counties pursuant to their  
138 enhanced 911 ordinances;

139 (3) The Public Service Commission shall deposit the  
140 wireless enhanced 911 fee revenue for each county which

141 does not have an enhanced 911 ordinance in effect into an  
142 escrow account which it has established for that county. Any  
143 county with an escrow account may, immediately upon  
144 adopting an enhanced 911 ordinance, receive the moneys  
145 which have accumulated in the escrow account for use as  
146 specified in subdivision (2), subsection (d) of this section:  
147 *Provided*, That a county that adopts a 911 ordinance after the  
148 original effective date of this section in the year one thousand  
149 nine hundred ninety-seven or has adopted a 911 ordinance  
150 within five years of the original effective date of this section  
151 in the year one thousand nine hundred ninety-seven shall  
152 continue to receive one percent of the total 911 fee revenue  
153 for a period of five years following the adoption of the ordi-  
154 nance. Thereafter, each county shall receive that county's  
155 eight and one half tenths of one percent of the remaining fee  
156 revenue, plus that county's additional pro rata portion of the  
157 fee revenues then remaining, based on that county's popula-  
158 tion as determined in the most recent decennial census as a  
159 percentage of the state total population: *Provided, however*,  
160 That every five years from the year one thousand nine hun-  
161 dred ninety-seven, all fee revenue residing in escrow ac-  
162 counts shall be disbursed on the pro rata basis specified in  
163 subdivision (1) of this subsection, except that data for coun-  
164 ties without enhanced 911 ordinances in effect shall be omit-  
165 ted from the calculation and all escrow accounts shall begin  
166 again with a zero balance.

167 (e) CMRS providers have the same rights and responsi-  
168 bilities as other telephone service suppliers in dealing with  
169 the failure by a subscriber of a CMRS provider to timely pay  
170 the wireless enhanced 911 fee.

171 (f) Notwithstanding the provisions of section one-a of  
172 this article, for the purposes of this section, the term "county"  
173 means one of the counties provided in section one, article  
174 one, chapter one of this code.

175 (g) From any funds distributed to a county pursuant to  
176 this section, a total of three percent shall be set aside in a  
177 special fund to be used exclusively for the purchase of equip-  
178 ment that will provide information regarding the x and y  
179 coordinates of persons who call an emergency telephone  
180 system through a commercial mobile radio service: *Provided,*  
181 That upon purchase of the necessary equipment, the special  
182 fund shall be dissolved and any surplus shall be used for  
183 general operation of the emergency telephone system as may  
184 otherwise be provided by law.

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## CHAPTER 38

**(S. B. 778 —By Senators Kessler, Dempsey, Fanning, Foster,  
Hunter, Jenkins, Minard, Oliverio, White, Barnes, Caruth,  
Deem, Lanham, McKenzie and Weeks)**

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[Passed March 11, 2006; in effect ninety days from passage.]  
[Approved by the Governor on April 5, 2006.]

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AN ACT to repeal §19-21A-4a, §19-21A-13a, §19-21A-13b and §19-21A-13c of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-21A-2, §19-21A-3, §19-21A-4, §19-21A-5 §19-21A-6, §19-21A-7, §19-21A-8, §19-21A-9, §19-21A-10, §19-21A-11, §19-21A-12, §19-21A-13 and §19-21A-14, all relating to the State Conservation Committee and conservation districts generally; allowing ex officio members of state committee to designate representative; allowing certain persons to enter private property and waters of the state to remove flood debris; providing for continuation of conservation committee and districts; providing for election of supervisors; providing method for filling supervisor vacancies; requiring conservation districts follow county lines; providing for per

diem for supervisors; clarifying status of dam monitors; providing for discontinuance of districts; providing for reformation of districts; providing for distribution of assets and liabilities upon discontinuance of districts; removing antiquated provisions; and making technical and conforming amendments throughout.

*Be it enacted by the Legislature of West Virginia:*

That §19-21A-4a, §19-21A-13a, §19-21A-13b and §19-21A-13c of the Code of West Virginia, 1931, as amended, be repealed; and that §19-21A-2, §19-21A-3, §19-21A-4, §19-21A-5, §19-21A-6, §19-21A-7, §19-21A-8, §19-21A-9, §19-21A-10, §19-21A-11, §19-21A-12, §19-21A-13 and §19-21A-14 of said code be amended and reenacted, all to read as follows:

**ARTICLE 21A. CONSERVATION DISTRICTS.**

- §19-21A-2. Legislative determinations and declaration of policy.
- §19-21A-3. Definitions.
- §19-21A-4. State Conservation Committee; continuation.
- §19-21A-5. Continuation of conservation districts.
- §19-21A-6. Election of supervisors for each district; filling vacancies.
- §19-21A-7. Supervisors to constitute governing body of district; qualifications and terms of supervisors; powers and duties.
- §19-21A-8. Powers of districts; additional powers of supervisors.
- §19-21A-9. Cooperation between districts.
- §19-21A-10. Cooperation between state agencies and districts.
- §19-21A-11. Authority of governmental divisions to expend money for works of improvement; levy.
- §19-21A-12. Assurances of cooperation by governmental division.
- §19-21A-13. Contracts with district for construction of flood control projects; power to borrow money; levy.
- §19-21A-14. Discontinuing and reforming districts.

**§19-21A-2. Legislative determinations and declaration of policy.**

- 1 It is hereby declared, as a matter of legislative determina-
- 2 tion:

3       (a) That the farm and grazing lands of the State of West  
4 Virginia are among the basic assets of the state and that the  
5 preservation of these lands is necessary to protect and pro-  
6 mote the health, safety and general welfare of its people; that  
7 improper land-use practices have caused and have contrib-  
8 uted to, and are now causing and contributing to, a progres-  
9 sively more serious erosion of the farm and grazing lands of  
10 this state by water; that the breaking of natural grass, plant  
11 and forest cover has interfered with the natural factors of soil  
12 stabilization, causing loosening of soil and exhaustion of  
13 humus and developing a soil condition that favors erosion;  
14 that the topsoil is being washed out of fields and pastures;  
15 that there has been an accelerated washing of sloping fields;  
16 that these processes of erosion by water and flooding is in-  
17 creased with removal of absorptive topsoil, causing exposure  
18 of less absorptive and less protective but more erosive sub-  
19 soil; that failure by any landowner to conserve the soil and  
20 control erosion upon his lands causes a washing of soil and  
21 water from his or her lands onto other lands and makes the  
22 conservation of soil and control of erosion of such other  
23 lands difficult or impossible and increases the potential dam-  
24 ages from flooding.

25       (b) That the consequences of such soil erosion in the  
26 form of soil washing are the silting and sedimentation of  
27 stream channels, reservoirs, dams, ditches and harbors; the  
28 piling up of soil on lower slopes and its deposit over alluvial  
29 plains; the reduction in productivity or outright ruin of rich  
30 bottom lands by overwash of poor subsoil material, sand and  
31 gravel swept out of the hills; deterioration of soil and its fer-  
32 tility, deterioration of crops grown thereon and declining acre  
33 yields despite development of scientific processes for in-  
34 creasing such yields; loss of soil and water which causes  
35 destruction of food and cover for wildlife; the washing of soil  
36 into streams which silts over spawning beds and destroys  
37 water plants, diminishing the food supply of fish; a diminish-



38 ing of the underground water reserve which causes water  
39 shortages, intensifies periods of drought and causes crop  
40 failures; an increase in the speed and volume of rainfall run-  
41 off, causing more severe and more numerous floods which  
42 bring suffering, disease and death; impoverishment of fami-  
43 lies attempting to farm eroding and eroded lands; damage to  
44 roads, highways, railways, farm buildings and other property  
45 from floods; and losses in navigation, hydroelectric power,  
46 municipal water supply, irrigation developments, farming,  
47 grazing and reduction of suitable land available for homes  
48 and businesses.

49 (c) That to conserve soil resources and control and pre-  
50 vent soil erosion and prevent floodwater and sediment dam-  
51 age and further the conservation, development, utilization  
52 and disposal of water, it is necessary that land-use practices  
53 contributing to soil wastage and soil erosion be discouraged  
54 and discontinued and appropriate soil-conserving land-use  
55 practices and works of improvement for flood prevention or  
56 the conservation, development, utilization and disposal of  
57 water be adopted and carried out; that among the procedures  
58 necessary for widespread adoption are engineering operations  
59 such as the construction of terraces, terrace outlets, dams,  
60 desilting basins, floodwater retarding structures, channel  
61 improvements, floodways, dikes, ponds, ditches and the like;  
62 the utilization of strip cropping, lister furrowing, contour  
63 cultivating and contour furrowing; land drainage; land irriga-  
64 tion; seeding and planting of waste, sloping, abandoned or  
65 eroded lands with water-conserving and erosion-preventing  
66 plants, trees and grasses; forestation and reforestation; rota-  
67 tion of crops; soil stabilization with trees, grasses, legumes  
68 and other thick-growing, soil-holding crops; retardation of  
69 runoff by increasing absorption of rainfall; and retirement  
70 from cultivation of steep, highly erosive areas and areas now  
71 badly gullied or otherwise eroded.

72 (d) It is hereby declared to be the policy of the Legisla-  
73 ture to provide for the conservation of the soil and soil re-  
74 sources of this state, for the control and prevention of soil  
75 erosion, for the prevention of floodwater and sediment dam-  
76 age and for furthering the conservation, development, utiliza-  
77 tion and disposal of water, and thereby to preserve natural  
78 resources, control floods, prevent impairment of dams and  
79 reservoirs, assist in maintaining the navigability of rivers and  
80 harbors, preserve wildlife, protect the tax base, protect public  
81 lands and protect and promote the health, safety and general  
82 welfare of the people of this state.

83 (e) This article contemplates that the incidental cost of  
84 organizing conservation districts will be borne by the state,  
85 while the expense of operating the districts so organized will  
86 be provided by donations, gifts, contributions, grants and  
87 appropriations, in money, services, materials or otherwise,  
88 from the United States or any of its agencies, from the State  
89 of West Virginia or from other sources, with the understand-  
90 ing that the owners or occupiers will contribute funds, labor,  
91 materials and equipment to aid in carrying out erosion control  
92 measures on their lands.

### §19-21A-3. Definitions.

1 Wherever used or referred to in this article, unless a dif-  
2 ferent meaning clearly appears from the context:

3 (1) "Agency of this state" means the government of this  
4 state and any subdivision, agency or instrumentality, corpo-  
5 rate or otherwise, of the government of this state.

6 (2) "Committee" or "State Conservation Committee"  
7 means the agency created in section four of this article.

8 (3) "District" or "conservation district" means a subdivi-  
9 sion of this state, organized in accordance with the provisions

10 of this article, for the purposes, with the powers and subject  
11 to the restrictions hereinafter set forth.

12 (4) "Governing body" means the supervisors of any con-  
13 servation district, town or city, council, city commission,  
14 county court or body acting in lieu of a county court, in this  
15 state, and the term "governmental division" means any con-  
16 servation district, town, city or county in this state.

17 (5) "Land occupier" or "occupier of land" means any  
18 person, firm or corporation who shall hold title to, or shall be  
19 in possession of, any lands lying within a district organized  
20 under the provisions of this article, whether as owner, lessee,  
21 renter or tenant.

22 (6) "Landowners" or "owners of land" means any person  
23 or persons, firm or corporation who holds title to any lands  
24 lying within a district organized under the provisions of this  
25 article.

26 (7) "Notice" means notice published as a Class II legal  
27 advertisement in compliance with the provisions of article  
28 three, chapter fifty-nine of this code and the publication area  
29 for such publication shall be the county in which is located  
30 the appropriate area. At any hearing held pursuant to such  
31 notice at the time and place designated in such notice, ad-  
32 journment may be made, from time to time, without the ne-  
33 cessity of renewing such notice for such adjournment dates.

34 (8) "Petition" means a petition filed under the provisions  
35 of subsection (a), section five of this article for the creation  
36 of a district.

37 (9) "Soil conservation", "erosion control" or "erosion  
38 prevention projects" means those projects that have been  
39 established by federal agencies in cooperation with state  
40 agencies for the purpose of demonstrating soil erosion con-  
41 trol and water conservation practices.

42 (10) "State" means the State of West Virginia.

43 (11) "Supervisor" means one of the members of the gov-  
44 erning body of a district, elected or appointed in accordance  
45 with the provisions of this article.

46 (12) "United States" or "agencies of the United States"  
47 means the United States of America, Natural Resources Con-  
48 servation Service of the United States Department of Agri-  
49 culture and any other agency or instrumentality, corporate or  
50 otherwise, of the United States of America.

51 (13) "Works of improvement" means such structures as  
52 may be necessary or convenient for flood prevention or the  
53 conservation, development, utilization or disposal of water.

**§19-21A-4. State Conservation Committee; continuation.**

1 (a) The State Conservation Committee is continued. It  
2 serves as an agency of the state and is to perform the func-  
3 tions conferred upon it in this article. The committee consists  
4 of the following ten members:

5 (1) Four citizen members;

6 (2) The following ex officio members or his or her  
7 designee:

8 (A) The Director of the State Cooperative Extension  
9 Service;

10 (B) The Director of the State Agricultural and Forestry  
11 Experiment Station;

12 (C) The Secretary of the Department of Environmental  
13 Protection;

14 (D) The State Commissioner of Agriculture, who is the  
15 chairperson of the committee;

16 (E) The Director of the Division of Forestry; and

17 (F) The President of the West Virginia Association of  
18 Conservation Districts.

19 (b) The Governor shall appoint, by and with the consent  
20 of the Senate, the four citizen members. Members shall be  
21 appointed for four-year terms, which are staggered in accor-  
22 dance with the initial appointments under prior enactment of  
23 this section. In the event of a vacancy, the appointment is for  
24 the unexpired term.

25 (c) The committee may invite the Secretary of Agricul-  
26 ture of the United States of America to appoint one person to  
27 serve with the committee as an advisory member.

28 (d) The committee shall keep a record of its official ac-  
29 tions, shall adopt a seal, which shall be judicially noticed, and  
30 may perform those acts, hold public hearings and adopt or  
31 propose for legislative approval rules necessary for the exe-  
32 cution of its functions under this article.

33 (e) The State Conservation Committee may employ an  
34 administrative officer, technical experts and other agents and  
35 employees, permanent and temporary, as it requires. The  
36 administrative officer and support staff shall be known as the  
37 West Virginia Conservation Agency. The committee shall  
38 determine their qualifications, duties and compensation. The  
39 committee may call upon the Attorney General of the state  
40 for legal services it requires. It may delegate to its chairper-  
41 son, to one or more of its members, or to one or more agents  
42 or employees powers and duties it considers proper. The  
43 committee may secure necessary and suitable office accom-  
44 modations and the necessary supplies and equipment. Upon  
45 request of the committee, for the purpose of carrying out any  
46 of its functions, the supervising officer of any state agency or  
47 of any state institution of learning shall, insofar as may be

48 possible, under available appropriations and having due re-  
49 gard to the needs of the agency to which the request is di-  
50 rected, assign or detail to the committee, members of the staff  
51 or personnel of the agency or institution of learning and make  
52 special reports, surveys or studies required by the committee.

53 (f) A member of the committee holds office so long as he  
54 or she retains the office by virtue of which he or she is serv-  
55 ing on the committee. A majority of the committee is a quo-  
56 rum and the concurrence of a majority in any matter within  
57 their duties is required for its determination. The chairperson  
58 and members of the committee may receive no compensation  
59 for their services on the committee, but are entitled to reim-  
60 bursement of expenses, including traveling expenses neces-  
61 sarily incurred in the discharge of their duties on the commit-  
62 tee. The committee shall:

63 (1) Require the execution of surety bonds for all employ-  
64 ees and officers who are entrusted with funds or property;

65 (2) Provide for the keeping of a full and accurate public  
66 record of all proceedings and of all resolutions, rules and  
67 orders issued or adopted; and

68 (3) Provide for an annual audit of the accounts of receipts  
69 and disbursements.

70 (g) In addition to other duties and powers conferred upon  
71 the State Conservation Committee, it may:

72 (1) Offer appropriate assistance to the supervisors of  
73 conservation districts, organized as provided in this article, in  
74 the carrying out of any of their powers and programs;

75 (2) Keep the supervisors of each of the several districts,  
76 organized under the provisions of this article, informed of the  
77 activities and experience of all other districts organized under

78 this article and facilitate an interchange of advice and experi-  
79 ence between the districts and cooperation between them;

80 (3) Coordinate the programs of the several conservation  
81 districts so far as this may be done by advice and consulta-  
82 tion;

83 (4) Secure the cooperation and assistance of the United  
84 States and any of its agencies and of agencies of this state in  
85 the work of the districts;

86 (5) Disseminate information throughout the state con-  
87 cerning the activities and programs of the conservation dis-  
88 tricts and encourage the formation of the districts in areas  
89 where their organization is desirable;

90 (6) Accept and receive donations, gifts, contributions,  
91 grants and appropriations in money, services, materials or  
92 otherwise from the United States or any of its agencies, from  
93 the State of West Virginia or from other sources and use or  
94 expend the money, services, materials or other contributions  
95 in carrying out the policy and provisions of this article, in-  
96 cluding the right to allocate the money, services or materials  
97 in part to the various conservation districts created by this  
98 article in order to assist them in carrying on their operations;  
99 and

100 (7) Obtain options upon and acquire by purchase, ex-  
101 change, lease, gift, grant, bequest, devise or otherwise any  
102 property, real or personal, or rights or interests in the prop-  
103 erty; maintain, administer, operate and improve any proper-  
104 ties acquired; receive and retain income from the property  
105 and to expend the income as required for operation, mainte-  
106 nance, administration or improvement of the properties or in  
107 otherwise carrying out the purposes and provisions of this  
108 article; and sell, lease or otherwise dispose of any of its prop-  
109 erty or interests in the property in furtherance of the purposes

110 and the provisions of this article. Money received from the  
111 sale of land acquired in the small watershed program shall be  
112 deposited in the special account of the State Conservation  
113 Committee and expended as provided in this article.

114 (8) To promulgate emergency and legislative rules to  
115 effectuate the provisions of this article as amended and reen-  
116 acted by the Legislature during the regular session of the  
117 Legislature in the year two thousand five.

118 (9) Upon a Governor's proclamation declaring a state of  
119 emergency or federal disaster declaration, the state commit-  
120 tee, its employees or agents may enter any water of the state  
121 for the purpose of removing debris and other obstruction  
122 which impede water flow and present additional flood haz-  
123 ards. The agency shall make reasonable efforts to secure the  
124 permission of the landowner before entering any private  
125 property in connection with these removal activities. The  
126 exercise of this limited authority does not constitute taking of  
127 private property or trespass. This authority shall continue for  
128 the duration of the Governor's proclamation or the federal  
129 disaster declaration.

130 (10) The State Conservation Committee is continued  
131 until the first day of July, two thousand twelve, pursuant to  
132 the provisions of article four, chapter ten of the Code of West  
133 Virginia, unless sooner terminated, continued or reestab-  
134 lished pursuant to the provisions of that article.

**§19-21A-5. Continuation of conservation districts.**

1 The conservation districts formed throughout the state  
2 under the prior enactments of this section are continued and  
3 shall remain in effect until reformed or reorganized as pro-  
4 vided in section fourteen of this article.



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

1 (a) Beginning with the two thousand eight general elec-  
2 tion, each county in a district shall elect, two nonpartisan  
3 supervisors: *Provided*, That any county with a population of  
4 one hundred thousand based on the most recent decennial  
5 census shall elect one additional supervisor and any county  
6 with a population over one hundred thousand based on the  
7 most recent decennial census shall elect one additional super-  
8 visor for each fifty thousand residents over one hundred thou-  
9 sand.

10 (b) A candidate for supervisor shall own land in the dis-  
11 trict and have the education, training or experience necessary  
12 to carry out the duties required by this article and rules pro-  
13 mulgated thereunder. A candidate shall file with the commit-  
14 tee a sworn written statement specifying that he or she meets  
15 the requirements of office. A candidate may not be placed on  
16 the ballot or be seated as a supervisor unless he or she meets  
17 the requirements.

18 (c) The committee shall provide a list of qualified candi-  
19 dates to the Secretary of State no less than ninety days prior  
20 to any election for supervisor in the manner specified by the  
21 Secretary.

22 (d) No nominating petition may be accepted by the com-  
23 mittee unless it is subscribed by twenty-five or more owners  
24 of lands lying within the boundaries of the district and within  
25 the boundaries of the county in which the candidate resides.  
26 Landowners in the district may sign more than one nominat-  
27 ing petition to nominate more than one candidate for supervi-  
28 sor.

29 (e) All registered voters in the district are eligible to vote  
30 in the election for candidates from the county within the

31 boundaries of the district in which the voter resides. The  
32 candidates in each county who receive the largest number of  
33 votes cast in the election shall be elected supervisors for that  
34 county.

35 (f) Supervisors shall be elected in the general election to  
36 be conducted in the year two thousand eight as nonpartisan  
37 candidates. Thereafter, supervisors shall be elected in the  
38 primary election. The term of office for the candidate for  
39 supervisor receiving the highest number of votes in the gen-  
40 eral election of two thousand eight shall be for four years; the  
41 candidate for supervisor receiving the second highest number  
42 of votes in the general election of two thousand eight shall be  
43 for two years. In counties where more than two supervisors  
44 are elected in the general election of two thousand eight the  
45 two supervisors receiving the highest number of votes shall  
46 serve for four years and the remaining supervisor or supervi-  
47 sors shall serve for two years. Subsequent terms of office for  
48 supervisors elected thereafter shall be for four years. The  
49 provisions of chapter three of this code shall apply to election  
50 of supervisors.

51 (g) Persons currently holding the position of supervisor  
52 shall, regardless of the expiration of the currently designated  
53 term of office, continue to serve until the election and qualifi-  
54 cation of his or her successor.

55 (h) Any vacancy occurring in the office of supervisor  
56 shall be filled by the committee by appointment of a person  
57 from the county in which the vacancy occurs. Within fifteen  
58 days after the vacancy occurs, the district shall submit a list  
59 of names of persons qualified to be a supervisor. If the unex-  
60 pired term is for less than two years and two months, the  
61 appointed person shall hold office until the expiration of the  
62 term. If the unexpired term is for more than two years and  
63 two months, the appointed person shall hold the office until a

64 successor is elected in the next primary or general election  
65 and qualified.

**§19-21A-7. Supervisors to constitute governing body of district;  
qualifications and terms of supervisors; powers  
and duties.**

1 (a) The governing body of the district consists of the  
2 supervisors, appointed or elected, as provided in this article.  
3 The supervisors shall be persons who are by training and  
4 experience qualified to perform the specialized skilled ser-  
5 vices which are required of them in the performance of their  
6 duties under this section and shall be legal residents and land-  
7 owners in the district. .

8 (b) The supervisors shall designate a chairperson and  
9 may, from time to time, change the designation. On and after  
10 the election of supervisors in two thousand eight, the term of  
11 office of each elected supervisor is four years. A supervisor  
12 holds office until his or her successor has been elected or  
13 appointed. In case a new county is added to a district, the  
14 committee may appoint two supervisors to represent the  
15 county until the next regular election of supervisors for the  
16 district takes place.

17 (c) A supervisor is entitled to reasonable and necessary  
18 expenses and a per diem of not more than one hundred fifty  
19 dollars nor less than thirty dollars when engaged in the per-  
20 formance of his or her duties. The expense and per diem rate  
21 shall be established by the state committee based on avail-  
22 ability of funds.

23 (d) The supervisors may, with the approval of the State  
24 Conservation Committee, employ a secretary, dam monitors,  
25 technical experts and any other officers, agents and employ-  
26 ees, permanent and temporary, either with or without com-  
27 pensation, as they may require and shall determine their qual-

28 ifications, duties and compensation, if any. Dam monitors, as  
29 specified in any emergency action plan or monitoring plan  
30 approved by the Department of Environmental Protection  
31 pursuant to its dam safety rules, pertaining to a flood control  
32 structure operated or maintained by a soil conservation dis-  
33 trict and any other employees, agents or officers employed  
34 pursuant to this section are “employees” of the district within  
35 the meaning of subsection (a), section three, article twelve-a,  
36 chapter twenty-nine of this code.

37 (e) The supervisors may delegate to their chairperson, to  
38 one or more supervisors or to one or more agents, or employ-  
39 ees, those administrative powers and duties they consider  
40 proper. The supervisors shall furnish to the State Conserva-  
41 tion Committee, upon request, copies of the ordinances,  
42 rules, orders, contracts, forms and other documents they  
43 adopt or employ and any other information concerning their  
44 activities required in the performance of State Conservation  
45 Committee’s duties under this article.

46 (f) The supervisors shall:

47 (1) Require the execution of surety bonds for all employ-  
48 ees and officers who are entrusted with funds or property;

49 (2) Provide for the keeping of a full and accurate record  
50 of all proceedings and of all resolutions, rules and orders  
51 issued or adopted; and

52 (3) Provide for an annual audit of the accounts of receipts  
53 and disbursements.

54 (g) Any supervisor may be removed by the State Conser-  
55 vation Committee upon notice and hearing for neglect of duty  
56 or malfeasance in office, but for no other reason.

57 (h) The supervisors may invite the legislative body of any  
58 municipality or county located near the territory comprised

59 within the district to designate a representative to advise and  
60 consult with the supervisors of a district on all questions of  
61 program and policy which may affect the property, water  
62 supply or other interests of the municipality or county.

**§19-21A-8. Powers of districts; additional powers of supervisors.**

1 A conservation district organized under the provisions of  
2 this article and the supervisors thereof shall have the follow-  
3 ing powers, in addition to others granted in other sections of  
4 this article:

5 (1) To conduct surveys, investigations and research relat-  
6 ing to the character of soil erosion and floodwater and sedi-  
7 ment damage and to the conservation, development, utiliza-  
8 tion and disposal of water and the preventive and control  
9 measures needed to publish the results of such surveys, in-  
10 vestigations or research and to disseminate information con-  
11 cerning such preventive and control measures and works of  
12 improvement: *Provided*, That in order to avoid duplication of  
13 research activities, no district shall initiate any research pro-  
14 gram or publish the results except with the approval of the  
15 state committee and in cooperation with the government of  
16 this state or any of its agencies, or with the United States or  
17 any of its agencies;

18 (2) To conduct demonstrational projects within the dis-  
19 trict on lands owned or controlled by this state or any of its  
20 agencies, with the consent and cooperation of the agency  
21 administering and having jurisdiction thereof, and on any  
22 other lands within the district upon obtaining the consent of  
23 the owner and occupier of the lands or the necessary rights or  
24 interests in the lands in order to demonstrate by example the  
25 means, methods and measures by which soil and soil re-  
26 sources may be conserved and soil erosion in the form of soil

27 washing may be prevented and controlled and works of im-  
28 provement may be carried out;

29 (3) To carry out preventive and control measures and  
30 works of improvement within the district, including, but not  
31 limited to, engineering operations, methods of cultivation, the  
32 growing of vegetation, changes in use of land and the mea-  
33 sures listed in subsection (c), section two of this article on  
34 lands owned or controlled by this state or any of its agencies  
35 with the consent and cooperation of the agency administering  
36 and having jurisdiction thereof and on any other lands within  
37 the district upon obtaining the consent of the owner and occu-  
38 pier of such lands or the necessary rights or interests in such  
39 lands;

40 (4) To cooperate, or enter into agreements with, and  
41 within the limits of appropriations duly made available to it  
42 by law, to furnish financial or other aid to any agency, gov-  
43 ernmental or otherwise, or any occupier of lands within the  
44 district in the carrying on of erosion-control and prevention  
45 operations and works of improvement within the district,  
46 subject to such conditions as the supervisors may deem nec-  
47 essary to advance the purposes of this article;

48 (5) To obtain options upon and to acquire, by purchase,  
49 exchange, lease, gift, grant, bequest, devise or otherwise, any  
50 property, real or personal, or rights or interests therein; to  
51 institute condemnation proceedings to acquire any property,  
52 real or personal, or rights or interests therein, whether or not  
53 located in the district, required for works of improvement; to  
54 maintain, administer and improve any properties acquired, to  
55 receive income from such properties and to expend such  
56 income in carrying out the purposes and provisions of this  
57 article; and to sell, lease or otherwise dispose of any of its  
58 property or interests therein in furtherance of the purposes  
59 and the provisions of this article;

60       (6) To make available, on such terms as it shall prescribe,  
61 to land occupiers within the district agricultural and engineer-  
62 ing machinery and equipment, fertilizer, seeds and seedlings  
63 and such other material or equipment as will assist such land  
64 occupiers to carry on operations upon their lands for the con-  
65 servation of soil resources and for the prevention and control  
66 of soil erosion and for flood prevention or the conservation,  
67 development, utilization and disposal of water;

68       (7) To construct, improve, operate and maintain such  
69 structures as may be necessary or convenient for the perfor-  
70 mance of any of the operations authorized in this article;

71       (8) To develop with the approval of the state committee  
72 comprehensive plans for the conservation of soil resources  
73 and for the control and prevention of soil erosion and for  
74 flood prevention or the conservation, development, utiliza-  
75 tion and disposal of water within the district. The plans shall  
76 specify, in as much detail as may be possible, the acts, proce-  
77 dures, performances and avoidances which are necessary or  
78 desirable for the effectuation of such plans, including the  
79 specification of engineering operations, methods of cultiva-  
80 tion, the growing of vegetation, cropping programs, tillage  
81 practices and changes in use of land; and to publish such  
82 plans and information and bring them to the attention of oc-  
83 cupiers of lands within the district;

84       (9) To take over, by purchase, lease or otherwise, and to  
85 administer any soil-conservation, flood-prevention, drainage,  
86 irrigation, water-management, erosion-control or erosion-  
87 prevention project, or combinations thereof, located within its  
88 boundaries, undertaken by the United States or any of its  
89 agencies, or by this state or any of its agencies; to manage, as  
90 agent of the United States or any of its agencies, or of this  
91 state or any of its agencies, any soil-conservation, flood-pre-  
92 vention, drainage, irrigation, water-management, erosion-  
93 control or erosion-prevention project, or combinations

94 thereof, within its boundaries; to act as agent for the United  
95 States or any of its agencies, or for this state or any of its  
96 agencies, in connection with the acquisition, construction,  
97 operation, or administration of any soil-conservation, flood-  
98 prevention, drainage, irrigation, water-management, erosion-  
99 control or erosion-prevention project, or combinations  
100 thereof, within its boundaries; to accept donations, gifts,  
101 contributions and grants in money, services, materials or  
102 otherwise, from the United States or any of its agencies, or  
103 from this state or any of its agencies, or from any other  
104 source and to use or expend such money, services, materials  
105 or other contributions in carrying on its operations;

106 (10) To sue and be sued in the name of the district; to  
107 have a seal, which shall be judicially noticed; to have perpet-  
108 ual succession unless terminated as hereinafter provided; to  
109 make and execute contracts and other instruments, necessary  
110 or convenient to the exercise of its powers; to make and,  
111 from time to time, amend and repeal rules and regulations not  
112 inconsistent with this article to carry into effect its purposes  
113 and powers;

114 (11) As a condition to this extending of any benefits  
115 under this article to, or the performance of work upon, any  
116 lands, the supervisors may require contributions in money,  
117 services, materials or otherwise to any operations conferring  
118 such benefits and may require land occupiers to enter into  
119 and perform such agreements or covenants as to the perma-  
120 nent use of such lands as will tend to prevent or control ero-  
121 sion and prevent floodwater and sediment damage thereon;

122 (12) No provisions with respect to the acquisition, opera-  
123 tion or disposition of property by other public bodies shall be  
124 applicable to a district organized hereunder in its acquisition,  
125 operation and disposition of property unless the Legislature  
126 shall specifically so state;



127       (13) To enter into contracts and other arrangements with  
128 agencies of the United States, with persons, firms or corpora-  
129 tions, including public corporations, with the state govern-  
130 ment of this state or other states, or any department or agency  
131 thereof, with governmental divisions, with soil conservation,  
132 drainage, flood control, soil erosion or other improvement  
133 districts in this state or other states, for cooperation or assis-  
134 tance in constructing, improving, operating or maintaining  
135 works of improvement within the district, or in preventing  
136 floods, or in conserving, developing, utilizing and disposing  
137 of water in the district, or for making surveys, investigations  
138 or reports thereof; and to obtain options upon and acquire  
139 property, real or personal, or rights or interests therein, in  
140 other districts or states required for flood prevention or the  
141 conservation, development, utilization and disposal of water  
142 within the district and to construct, improve, operate or main-  
143 tain thereon or therewith works of improvement.

**§19-21A-9. Cooperation between districts.**

1       The supervisors of any two or more districts organized  
2 under the provisions of this article may cooperate with one  
3 another in the exercise of any or all powers conferred in this  
4 article.

**§19-21A-10. Cooperation between state agencies and districts.**

1       Agencies of this state which have jurisdiction over or be  
2 charged with the administration of any state-owned lands,  
3 and of any county, or other governmental subdivision of the  
4 state, which have jurisdiction over or be charged with the  
5 administration of any county-owned or other publicly owned  
6 lands lying within the boundaries of any district organized  
7 hereunder may cooperate with the supervisors of the districts  
8 in the effectuation of programs and operations undertaken by  
9 the supervisors under the provisions of this article. When  
10 such cooperation is undertaken, the supervisors of the dis-

11 tricts shall be given free access to enter and perform work  
12 upon the publicly owned lands.

**§19-21A-11. Authority of governmental divisions to expend money for works of improvement; levy.**

1 The governing body of any governmental division which  
2 may reasonably be expected to receive a benefit from the  
3 construction, improvement, operation or maintenance of any  
4 works of improvement may expend money for such construc-  
5 tion, improvement, operation or maintenance if this expecta-  
6 tion exists as to any part of the governmental division and  
7 even though such works of improvement are not located  
8 within the corporate limits of the governmental division or  
9 are not within this state: *Provided*, That if the expenditure is  
10 not made directly by the governmental division for such pur-  
11 pose, it shall be made only through a conservation district or  
12 watershed improvement district organized under the laws of  
13 this state, but it shall not be necessary that any part of the  
14 governmental division be within the limits of the district  
15 through which the expenditure is made. The governing bod-  
16 ies or governmental divisions may set up in their respective  
17 budgets funds to be spent for such purposes and municipali-  
18 ties and counties may levy and collect taxes for such pur-  
19 poses in the manner provided by law: *Provided, however*,  
20 That in case sufficient funds cannot be raised by ordinary  
21 levies, additional funds may be raised by municipalities and  
22 counties as provided by section sixteen, article eight, chapter  
23 eleven of this code.

**§19-21A-12. Assurances of cooperation by governmental division.**

1 (a) By vote of the governing body, any governmental  
2 division authorized to expend money on works of improve-  
3 ment by section eleven of this article may alone, or in combi-  
4 nation with any other governmental division or divisions

5 authorized to expend money on works of improvement, give  
6 assurances, by contract or otherwise, satisfactory to agencies  
7 of the United States, congressional committees or other  
8 proper federal authority and to conservation districts or wa-  
9 tershed improvement districts organized under the laws of  
10 this state that the governmental division or divisions will  
11 construct, improve, operate or maintain works of improve-  
12 ment or will appropriate a sum or sums of money and expend  
13 it for such purposes as provided in section eleven of this  
14 article.

15 (b) The assurances, whether by contract or otherwise,  
16 shall be reduced to writing and before final approval of the  
17 governing bodies involved shall be submitted to the Attorney  
18 General for approval. After approval by the Attorney General  
19 and by the governing body or bodies concerned, certified  
20 copies of the assurances shall be filed in the office of the  
21 county clerk of the county or counties in which the govern-  
22 mental division is located and in the office of the State Tax  
23 Commissioner.

24 (c) Any assurance hereunder may be valid and binding  
25 for a period of time not to exceed fifty years.

**§19-21A-13. Contracts with district for construction of flood  
control projects; power to borrow money; levy.**

1 The county commission of each county and the govern-  
2 ing body of each municipality in the state are hereby autho-  
3 rized and empowered to enter into a contract or agreement  
4 with the conservation district or districts for the purpose of  
5 constructing flood control projects within their respective  
6 counties or municipalities or adjacent thereto and to use the  
7 projects as recreational areas or public parks. For the purpose  
8 of defraying the cost of any such project or projects, the  
9 county commission or the governing body of any municipal-  
10 ity is hereby authorized to borrow from the federal govern-

11 ment or from any federal agency having money to loan, a  
12 sum sufficient to cover the cost of such project or projects.  
13 For the purpose of retiring any indebtedness incurred under  
14 the provisions of this section, notwithstanding any other pro-  
15 visions of law, the county commission or the governing body  
16 of any municipality is hereby authorized to lay and impose a  
17 county or citywide levy as the case might be.

**§19-21A-14. Discontinuing and reforming districts.**

1 (a) At any time after five years following the organiza-  
2 tion of a district under the provisions of this article, any  
3 twenty-five owners of land lying within the boundaries of a  
4 district may file a petition with the State Conservation Com-  
5 mittee praying that the district be discontinued and the county  
6 or counties of the district be added to another district or dis-  
7 tricts.

8 (b) The committee shall conduct one or more public  
9 meetings or public hearings upon the petition in the affected  
10 county or counties including the district or districts which  
11 may accept one or more counties from the district being dis-  
12 continued. After the public meetings or hearings have been  
13 held by the committee, it shall notify the Secretary of State  
14 that a referendum question is to be added to the ballot of the  
15 next primary or general election to be held in the county or  
16 counties of the affected districts.

17 (c) The questions shall be submitted by ballots or elec-  
18 tronic voting system upon which the words “For discontinu-  
19 ing the \_\_\_\_\_ (name of the con-  
20 servation district to be here inserted) and adding  
21 \_\_\_\_\_(county or counties) to \_\_\_\_\_ (district or  
22 districts) (If one or more counties in a district are to be com-  
23 bined with one or more other districts, each combination  
24 must be specified.)” and “Against discontinuing the  
25 \_\_\_\_\_ (name of the conservation

26 district to be here inserted)” shall appear, with a square be-  
27 fore each proposition and a direction to mark the square be-  
28 fore one or the other of the propositions as the voter may  
29 favor or oppose discontinuance of the district. All registered  
30 voters lying within the boundaries of the district to be discon-  
31 tinued and the district or districts to which all or part of the  
32 district being discontinued may be added are eligible to vote  
33 on the referendum.

34 (d) If a majority of the votes cast in the referendum are in  
35 favor of discontinuing the district, the supervisors shall pro-  
36 ceed to terminate the affairs of the district. The supervisors of  
37 the district being discontinued shall file an application to  
38 discontinue the district with the Secretary of State. The appli-  
39 cation shall recite the process undertaken in discontinuing the  
40 district and the distribution of the property, assets, liabilities,  
41 contracts, duties and responsibilities and transfer of territory  
42 to one or more districts.

43 (e) The Secretary of State shall issue to the supervisors a  
44 certificate of discontinuance and shall record the certificate in  
45 an appropriate book of record in his or her office.

46 (f) The supervisors of the district or districts gaining all  
47 or part of the discontinued district shall file an application  
48 with the Secretary of State adding the additional territory to  
49 such district or districts.

50 (g) The property, assets, liabilities, contracts, duties and  
51 responsibilities of the district shall be assigned in accordance  
52 with the division of the district.

53 (h) All contracts entered into by the district being discon-  
54 tinued or its supervisors are parties shall remain in force and  
55 effect for the period provided in the contract. The reformed  
56 district receiving the assets, liabilities, duties and responsibil-  
57 ities related to the contract shall be substituted for the district

58 or supervisors as party to such contracts. The reformed dis-  
 59 trict shall be entitled to all benefits and subject to all liabili-  
 60 ties under such contract and have the same right and liability  
 61 to perform, to require performance, to sue and be sued thereon  
 62 and to modify or terminate such contracts by mutual consent  
 63 or otherwise, as the supervisor or district would have had.

64 (i) The State Conservation Committee shall not entertain  
 65 petitions for the discontinuance of any district nor conduct  
 66 referenda upon such petitions nor make determinations pur-  
 67 suant to such petitions in accordance with the provisions of  
 68 this article more often than once in three years.

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## CHAPTER 39

**(Com. Sub. for S. B. 245 — By Senators Bowman, Jenkins,  
 McCabe, Minard, Plymale, Lanham, Foster, Unger and Oliverio)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to repeal §8-8-1, §8-8-2, §8-8-3, §8-8-4, §8-8-5, §8-8-6,  
 §8-8-7, §8-8-8, §8-8-9, §8-8-10, §8-8-11, §8-8-12, §8-8-13,  
 §8-8-14, §8-8-15, §8-8-16, §8-8-17 and §8-8-18 of the Code of  
 West Virginia, 1931, as amended; and to amend said code by  
 adding thereto a new chapter, designated §7A-1-1, §7A-1-2,  
 §7A-1-3, §7A-1-4, §7A-2-1, §7A-2-2, §7A-2-3, §7A-2-4,  
 §7A-3-1, §7A-3-2, §7A-3-3, §7A-3-4, §7A-3-5, §7A-3-6,  
 §7A-3-7, §7A-4-1, §7A-4-2, §7A-4-3, §7A-5-1, §7A-5-2,  
 §7A-5-3, §7A-5-4, §7A-5-5, §7A-5-6, §7A-5-7, §7A-5-8,  
 §7A-6-1, §7A-6-2, §7A-6-3, §7A-6-4, §7A-6-5, §7A-6-6,  
 §7A-6-7, §7A-7-1, §7A-7-2, §7A-7-3, §7A-7-4, §7A-7-5,

§7A-7-6, §7A-7-7, §7A-7-8 and §7A-8-1, all relating to creating the Consolidated Local Government Act; stating legislative findings and definitions; authorizing municipal consolidation, county consolidation and metro consolidation; setting forth powers of consolidated governments; establishing powers to be construed broadly; stating local consolidated government to be treated like municipality in municipal consolidation, county in county consolidation and municipality and county in metro consolidation; limiting taxing authority in metro consolidation; addressing jurisdiction and limitations of consolidated local governments; commencing consolidation by petition from voters or resolution by governing bodies; creating charter review committees; stating powers and duties of charter review committees; allowing reimbursement of expenses for committee members; submitting charter review committee budget to governing bodies; studying consolidation; addressing territory, fiscal impact, name, seat, representation, governing body, effective date, transition of service and dissolution in charter; drafting proposed charter; providing multiple public hearings; providing for notice of hearing; approving proposed charter and submitting proposed charter to governing bodies to hold elections; providing election by fifty-five percent of the votes cast in each affected local government for municipal consolidation and county consolidation; providing election by fifty-five percent of the votes cast in the principal city and fifty-five percent of the votes cast in the county, excluding the principal city, for metro consolidation; providing for notice of election and ballot; allocating payment for cost of elections; permitting reconsideration of second proposed charter if first is defeated; leaving municipalities incorporated in metro consolidation; disallowing new consolidation effort for two years after defeat; allowing subsequent joining of local governments to consolidated local government after one year of consolidation; and permitting charter to be amended.

*Be it enacted by the Legislature of West Virginia:*

That §8-8-1, §8-8-2, §8-8-3, §8-8-4, §8-8-5, §8-8-6, §8-8-7, §8-8-8, §8-8-9, §8-8-10, §8-8-11, §8-8-12, §8-8-13, §8-8-14, §8-8-15, §8-8-16, §8-8-17 and §8-8-18 of the Code of West Virginia, 1931, as amended, be repealed; and that said code be amended by adding thereto a new chapter, designated §7A-1-1, §7A-1-2, §7A-1-3, §7A-1-4, §7A-2-1, §7A-2-2, §7A-2-3, §7A-2-4, §7A-3-1, §7A-3-2, §7A-3-3, §7A-3-4, §7A-3-5, §7A-3-6, §7A-3-7, §7A-4-1, §7A-4-2, §7A-4-3, §7A-5-1, §7A-5-2, §7A-5-3, §7A-5-4, §7A-5-5, §7A-5-6, §7A-5-7, §7A-5-8, §7A-6-1, §7A-6-2, §7A-6-3, §7A-6-4, §7A-6-5, §7A-6-6, §7A-6-7, §7A-7-1, §7A-7-2, §7A-7-3, §7A-7-4, §7A-7-5, §7A-7-6, §7A-7-7, §7A-7-8 and §7A-8-1, all to read as follows:

## **CHAPTER 7A. CONSOLIDATED LOCAL GOVERNMENT.**

### **Article**

- 1. General Provisions.**
- 2. Powers and Limitations.**
- 3. Initiating Consolidation and Establishing Charter Review Committee.**
- 4. Charter Review Committee.**
- 5. Municipal Consolidation Election.**
- 6. Elections on County Consolidation.**
- 7. Elections on Metro Government.**
- 8. Charter Amendment.**

### **ARTICLE 1. GENERAL PROVISIONS.**

- §7A-1-1. Short title.  
 §7A-1-2. Legislative findings.  
 §7A-1-3. Definitions.  
 §7A-1-4. Authority to consolidate.

#### **§7A-1-1. Short title.**

- 1 This chapter may be known and cited as the Consolidated
- 2 Local Government Act.

#### **§7A-1-2. Legislative findings.**



1 (a) The Legislature finds that:

2 (1) The fiscal viability of municipal and county govern-  
3 ments is challenged by changing demographics and tax bases;

4 (2) With many local governments there is significant  
5 duplicity of services;

6 (3) Certain local governments are at their taxable limits  
7 and yet are facing fee increases to remain financially viable;  
8 and

9 (4) Local governments should perform at the highest  
10 level of efficiency and economy while providing the highest  
11 standards of governmental services to their citizens.

12 (b) The Legislature finds that consolidation of local gov-  
13 ernments:

14 (1) Is in the public interest;

15 (2) Would help promote economic growth and develop-  
16 ment;

17 (3) Would help local governments provide more efficient  
18 local services and more effective public administration; and

19 (4) Would keep local governments viable and provide  
20 more governing flexibility.

21 (c) Therefore, in order to attain high standards of effi-  
22 ciency, economy, service and flexibility and to assure the  
23 ongoing improvement in the quality of life of all citizens of  
24 the state, the Legislature hereby encourages and permits all  
25 local governments to consolidate part or all of their govern-  
26 mental and corporate functions.

**§7A-1-3. Definitions.**

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

3 (1) “Affected municipality”, “affected county”, “affected  
4 metro government” or “affected area”, or the plural, mean  
5 municipalities, counties or metro governments in the territory  
6 encompassed by the proposed charter of a consolidated local  
7 government.

8 (2) “Consolidated local government”, or the plural,  
9 means a type of government that encompasses municipal  
10 consolidation, county consolidation and metro consolidation.

11 (3) “County consolidation” and “consolidated county”  
12 mean the consolidation of two or more counties as defined by  
13 the charter.

14 (4) “Governing body”, or the plural, means the body  
15 charged with the responsibility of enacting laws and deter-  
16 mining public policy of a municipal or county government or  
17 local consolidated government.

18 (5) “Metro consolidation” and “metro government” mean  
19 the consolidation of one or more counties and a principal city  
20 as defined by the charter.

21 (6) “Municipal consolidation” and “consolidated munici-  
22 pality” mean the consolidation of two or more municipalities,  
23 including cities, towns and villages, as defined by the charter.

24 (7) “Principal city” means the municipality with the larg-  
25 est population in the territory encompassed by the proposed  
26 charter of the consolidated local government.

#### **§7A-1-4. Authority to consolidate.**

1 A municipality, county or metro government in this state  
2 is authorized to form a consolidated local government with

- 3 another municipality, county or metro government upon ap-
- 4 proval by the voters of the affected areas.

**ARTICLE 2. POWERS AND LIMITATIONS.**

§7A-2-1. Powers and privileges of consolidated local government.

§7A-2-2. Jurisdiction.

§7A-2-3. Continued existence of laws.

§7A-2-4. Limitations of a consolidated local government.

**§7A-2-1. Powers and privileges of consolidated local government.**

1 (a) A consolidated local government has, but is not lim-  
2 ited to, all powers and privileges of a municipality for munic-  
3 ipal consolidation, a county for county consolidation and  
4 both a municipality and a county for metro consolidation  
5 under the Constitution and general laws of West Virginia:  
6 *Provided*, That in a metro consolidation, the governing body  
7 of the principal city shall have only the taxing authority  
8 granted to a municipality and the governing body of the af-  
9 fected county shall have only the taxing authority granted to  
10 a county.

11 (b) These powers may include the authority to:

12 (1) Levy and collect taxes on all property taxable for  
13 state purposes within the territory of the consolidated local  
14 government not exempt by law from taxation and at a rate not  
15 in excess of that allowed by law;

16 (2) License, tax, charge fees and regulate privileges,  
17 occupations, trades and professions as authorized by law;

18 (3) Make appropriations for the support of the consoli-  
19 dated local government and provide for the payment of all  
20 debts and expenses of the consolidated local government and  
21 the debts and expenses of the local governments of which it  
22 is the successor;

23 (4) Issue or cause to be issued bonds and other debt in-  
24 struments or enter into all other financial transactions as may  
25 be permitted by law;

26 (5) Purchase, lease, construct, maintain or otherwise  
27 acquire, hold, use and operate any property, real, personal or  
28 mixed, for any public purpose and sell, lease or otherwise  
29 dispose of any property, real, personal or mixed, belonging to  
30 a consolidated local government;

31 (6) Exercise the power of eminent domain for any public  
32 purpose subject to the limitations and exceptions prescribed  
33 by the Constitution and the general laws of West Virginia;

34 (7) Accept federal or state funds and other sources of  
35 revenue that are applicable to counties and municipalities;

36 (8) Pass and enforce by fines and penalties, if necessary,  
37 all ordinances, not inconsistent with law, as are expedient in  
38 maintaining the peace, safety, good government, health and  
39 welfare of the residents of the consolidated local government;

40 (9) Enforce land-use regulations; and

41 (10) Enter into contracts and agreements with other gov-  
42 ernmental entities and with private persons, firms and corpo-  
43 rations and address cooperative compacts in existence at the  
44 time of consolidation.

45 (c) Consolidated local governments created under this  
46 chapter are entitled to all state and federal monetary assis-  
47 tance to the same extent a municipality or county is entitled  
48 to such assistance. A metro government has the status of a  
49 municipality and county for purposes of receiving state, fed-  
50 eral and any other monetary assistance and the population of  
51 the territory encompassed by its charter shall be used for all  
52 calculations and distributions.

53 (d) The powers of the consolidated local government  
54 shall be construed broadly in its favor. The specific reference,  
55 or failure to do so, of particular powers in this section does  
56 not limit the general or specific powers of a consolidated  
57 local government.

58 (e) A consolidated local government acquires and suc-  
59 ceeds to all rights, obligations, duties and privileges of the  
60 governments of which it is a successor in accordance with the  
61 terms of the charter.

62 (f) Without the necessity or formality of deed, bill of sale  
63 or other instrument of transfer, the consolidated local govern-  
64 ment becomes the owner of all property, assets, contracts and  
65 franchises within the territory encompassed by the charter  
66 previously belonging to the governments of which it is a  
67 successor.

68 (g) The intent of this chapter is to promote consolidation  
69 and the provisions of this chapter shall be construed broadly  
70 to permit consolidation.

#### **§7A-2-2. Jurisdiction.**

1 A consolidated local government has the power and juris-  
2 diction specified in its charter and otherwise provided by law.

#### **§7A-2-3. Continued existence of laws.**

1 Rules, ordinances, resolutions and other effects of law in  
2 force within an affected municipality, county or metro gov-  
3 ernment at the time of consolidation that do not conflict with  
4 the charter remain in effect until superceded by specific ac-  
5 tion of the new governing body of the consolidated local  
6 government.

#### **§7A-2-4. Limitations of a consolidated local government.**

1 (a) Public school districts, library districts, fire districts,  
2 special taxing districts and public service districts are not  
3 affected by consolidation under this chapter.

4 (b) The adoption of a charter does not alter any right or  
5 liability of an affected municipality, county or metro govern-  
6 ment in effect at the time the charter becomes effective. Ordi-  
7 nances and resolutions relating to public improvements to be  
8 paid for, in whole or in part, by special assessments remain in  
9 effect until paid in full.

### **ARTICLE 3. INITIATING CONSOLIDATION AND ESTABLISHING CHARTER REVIEW COMMITTEE.**

§7A-3-1. Initiating consolidation.

§7A-3-2. Municipal charter review committee.

§7A-3-3. County charter review committee.

§7A-3-4. Metro charter review committee.

§7A-3-5. Duties and powers of charter review committee.

§7A-3-6. Expenses of charter review committee.

§7A-3-7. Budget of charter review committee.

#### **§7A-3-1. Initiating consolidation.**

1 (a) Consolidation may be initiated by:

2 (1) A petition signed by at least twenty-five percent of  
3 the qualified voters of each affected municipality for a mu-  
4 nicipal consolidation, each affected county for a county con-  
5 solidation or each affected principal city and of the entire  
6 county excluding the principal city for a metro consolidation;  
7 or

8 (2) A resolution by the governing body of each affected  
9 municipality for a municipal consolidation, each affected  
10 county for a county consolidation or each affected principal  
11 city and county for a metro consolidation.

12 (b) The petition or resolution shall be submitted to the  
13 county commission of the affected county for all types of  
14 consolidation.

15 (c) Upon receipt, the county commission shall, within  
16 thirty days, verify the petition or resolution and either over-  
17 see the establishment of a charter review committee as pro-  
18 vided in this chapter or reject the petition or resolution for  
19 insufficiency.

20 (d) If the county commission rejects the petition or reso-  
21 lution, the rejection shall be in writing stating how the insuf-  
22 ficiency may be corrected and that the petition or resolution  
23 may be resubmitted within ninety days.

**§7A-3-2. Municipal charter review committee.**

1 (a) A municipal charter review committee shall be estab-  
2 lished within thirty days of the county commission verifying  
3 the petition or resolution proposing consolidation.

4 (b) A municipal charter review committee consists of the  
5 following members:

6 (1) Two government officials or their designees from  
7 each affected municipality appointed by their respective gov-  
8 erning bodies;

9 (2) One county commissioner or his or her designee ap-  
10 pointed by the county commission from each county where  
11 the affected municipalities are located; and .

12 (3) Two or three public members elected during execu-  
13 tive session by the other members to make the number of  
14 charter review committee members an odd number.

15 (c) A municipal charter review committee continues to  
16 exist until it is dissolved pursuant to the charter or the final  
17 disapproval of the charter.

**§7A-3-3. County charter review committee.**

1 (a) A county charter review committee shall be estab-  
2 lished within thirty days of the county commissions verifying  
3 the petition or resolution proposing consolidation.

4 (b) A county charter review committee consists of the  
5 following members:

6 (1) Two county commissioners or their designees from  
7 each affected county appointed by their respective county  
8 commissions; and

9 (2) Three public members, including one from an unin-  
10 corporated area, elected during executive session by the other  
11 charter review committee members.

12 (c) A county charter review committee continues to exist  
13 until it is dissolved pursuant to the charter or the final disap-  
14 proval of the charter.

**§7A-3-4. Metro charter review committee.**

1 (a) A metro charter review committee shall be estab-  
2 lished within thirty days of the county commission verifying  
3 the petition or resolution proposing consolidation.

4 (b) A metro charter review committee consists of the  
5 following members:

6 (1) Two government officials or their designees from the  
7 principal city appointed by the governing body of the princi-  
8 pal city;



9 (2) Two county commissioners or their designees from  
10 each affected county appointed by their respective county  
11 commissions;

12 (3) If the principal city is located in two counties and one  
13 is not participating in consolidation, then one county com-  
14 missioner or his or her designee from the county not partici-  
15 pating in consolidation appointed by the county commission;  
16 and

17 (4) Two or three public members, including one from an  
18 unincorporated area, elected by the other members to make  
19 the number of charter review committee members an odd  
20 number.

21 (c) A metro charter review committee continues to exist  
22 until it is dissolved pursuant to the charter or the final disap-  
23 proval of the charter.

**§7A-3-5. Duties and powers of charter review committee.**

1 (a) A charter review committee shall study consolidation  
2 and the feasibility of consolidation.

3 (b) A charter review committee shall:

4 (1) Elect officers from committee members;

5 (2) Adopt rules;

6 (3) Prepare a budget; and

7 (4) Conduct public hearings;

8 (c) A charter review committee may:

9 (1) Create subcommittees and working groups to include  
10 other government officials and diverse public representatives;

- 11 (2) Prepare a written charter;
- 12 (3) Employ staff;
- 13 (4) Contract with consultants;
- 14 (5) Work with agencies of affected local governments;
- 15 and
- 16 (6) Engage in other activities necessary to facilitate the
- 17 intent of this chapter.
- 18 (d) A majority of committee members is a quorum for
- 19 transaction of business and adopting the charter.
- 20 (e) Vacancies on the charter review committees shall be
- 21 filled in the same manner as provided for in this article.

**§7A-3-6. Expenses of charter review committee.**

1 Members of a charter review committee serve without  
2 compensation, but are entitled to reimbursement by the char-  
3 ter review committee for necessary expenses incurred by  
4 them in the performance of their official duties.

**§7A-3-7. Budget of charter review committee.**

1 (a) A charter review committee shall submit a budget to  
2 the governing bodies of each affected municipality for a mu-  
3 nicipal consolidation, each affected county for a county con-  
4 solidation and each affected principal city and county for a  
5 metro consolidation. A charter review committee shall pursue  
6 public and private funds to augment its budget. The budget  
7 shall state in writing the amount each governing body shall  
8 pay, which shall be proportionately based on population.

9 (b) Within thirty days of receiving the charter review  
10 committee's budget, the governing body of each affected

11 municipality, county and metro government shall either ap-  
12 prove the budget or recommend written amendments to the  
13 budget.

14 (c) If amendments are recommended, then the charter  
15 review committee shall reconsider the budget and resubmit  
16 the budget to the governing bodies for approval within thirty  
17 days.

18 (d) The governing body of each affected municipality,  
19 county and metro government shall assist the charter review  
20 committee and provide office space if needed.

#### **ARTICLE 4. CHARTER REVIEW COMMITTEE.**

§7A-4-1. Study by charter review committee and draft of proposed charter.

§7A-4-2. Public hearings.

§7A-4-3. Approval of proposed charter and submission to governing bodies.

#### **§7A-4-1. Study by charter review committee and draft of proposed charter.**

1 (a) The charter review committee shall study matters  
2 relating to the feasibility of consolidation.

3 (b) The charter review committee shall further address in  
4 the charter the powers and authority of the proposed consoli-  
5 dated local government, including, but not limited to:

6 (1) The territory encompassed by the consolidated local  
7 government, including all affected municipalities, counties  
8 and metro governments, or parts thereof, to be included in the  
9 boundaries of the consolidated local government;

10 (2) The fiscal impact of the proposed consolidation on  
11 the affected municipalities, counties and metro governments  
12 including:

13 (A) The cost of providing services by the consolidated  
14 local government;

15 (B) Projected revenues available to the consolidated local  
16 government based upon proposed classifications and tax  
17 structures; and

18 (C) Projected economies of scale resulting from consoli-  
19 dation;

20 (3) The name of the proposed consolidated local govern-  
21 ment;

22 (4) The seat of the proposed consolidated local govern-  
23 ment;

24 (5) The representation plan based upon population for the  
25 territory encompassed by the consolidation consistent with  
26 state and federal law to include consideration of under repre-  
27 sented areas and minorities;

28 (6) The creation of the governing body of the proposed  
29 consolidated local government, including an odd number of  
30 governing officers of not less than five, their qualifications  
31 for holding office, titles, powers, duties, terms of office, man-  
32 ner of election, compensation, method of removal, role of  
33 constitutional officers in new government and other pertinent  
34 matters consistent with state and federal law;

35 (7) The effective date of the charter once consolidation is  
36 approved by the electorate;

37 (8) A procedure for the efficient and timely transition of  
38 specified services, functions and responsibilities from each  
39 affected municipality, county and metro government and its  
40 respective departments and agencies to the consolidated local  
41 government to occur within two years from the date the char-  
42 ter becomes effective; and

43 (9) The method by which a consolidated local govern-  
44 ment may dissolve after existing for a minimum of six years.

45 (c) The charter review committee shall complete its study  
46 and draft a proposed charter within one year from the date of  
47 its organizational meeting.

**§7A-4-2. Public hearings.**

1 (a) The charter review committee shall hold a public  
2 hearing within three months of the organizational meeting or  
3 reconvening, a public hearing within six months of its organi-  
4 zational meeting or reconvening and a public hearing within  
5 eleven months of its organizational meeting or reconvening  
6 prior to finalizing its draft of the proposed charter. The com-  
7 mittee is authorized to hold additional public hearings.

8 (b) The date, time, place and agenda of the public hearing  
9 shall be published as a Class II legal advertisement in a news-  
10 paper of general circulation in the affected areas.

**§7A-4-3. Approval of proposed charter and submission to gov-  
erning bodies.**

1 (a) Following its final public hearing, the charter review  
2 committee shall vote on the proposed charter.

3 (b) Once approved by a majority vote of the charter re-  
4 view committee, the proposed charter shall be submitted  
5 within ten days to the governing bodies of the affected mu-  
6 nicipalities, counties and metro governments to be voted  
7 upon by the electorate.

**ARTICLE 5. MUNICIPAL CONSOLIDATION ELECTION.**

§7A-5-1. Expenses for election.

§7A-5-2. Notice for election.

§7A-5-3. Election and ballots for municipal consolidation.

§7A-5-4. Approval of municipal consolidation and charter.

§7A-5-5. Rejection of charter and reconsideration process.

§7A-5-6. Filing charter.

§7A-5-7. Constitutional consideration.

§7A-5-8. Subsequent joining of municipality to consolidated municipality.

### **§7A-5-1. Expenses for election.**

1       The governing body of each affected municipality is  
2 responsible for the expenses of holding an election on the  
3 question of municipal consolidation.

### **§7A-5-2. Notice for election.**

1       (a) At least sixty days prior to the election on the ques-  
2 tion of municipal consolidation, the governing body of each  
3 affected municipality shall make copies of the proposed char-  
4 ter available to the public.

5       (b) At least fourteen days prior to the election on the  
6 question of municipal consolidation, the governing bodies of  
7 the affected municipalities shall publish the proposed charter  
8 and provide notice of the election, as a Class II legal adver-  
9 tisement, in a newspaper of general circulation in the affected  
10 areas. The affected municipalities may share the expense of  
11 publication.

### **§7A-5-3. Election and ballots for municipal consolidation.**

1       (a) After receiving the proposed charter from the municipi-  
2 pal charter review committee, the governing bodies of the  
3 affected municipalities shall hold an election on the question  
4 of consolidation at the next primary or general election in  
5 accordance with applicable election laws and section two of  
6 this article.

7       (b) The ballots for the election on consolidation shall be  
8 as follows:

9           [ ] For (name of consolidated municipality)

10           [ ] Against (name of consolidated municipality)

**§7A-5-4. Approval of municipal consolidation and charter.**

1           If at least fifty-five percent of the legal votes cast by the  
2 qualified voters of each of the affected municipalities ap-  
3 prove consolidation, then consolidation becomes effective  
4 pursuant to the charter.

**§7A-5-5. Rejection of charter and reconsideration process.**

1           (a) If less than fifty-five percent of the legal votes cast by  
2 the qualified voters of any of the affected municipalities ap-  
3 prove consolidation, then consolidation is defeated. The char-  
4 ter review committee may reconvene for up to one year to  
5 adopt a second proposed charter.

6           (b) When the second proposed charter is adopted by the  
7 municipal charter review committee, then the governing  
8 bodies of the affected municipalities shall hold another elec-  
9 tion on the second proposed charter at the next primary or  
10 general election in accordance with applicable election laws  
11 and section two of this article.

12           (c) The ballots for the election on the second proposed  
13 charter shall be as follows:

14           [ ] For (name of consolidated municipality)

15           [ ] Against (name of consolidated municipality)

16           (d) If the second proposed charter is not approved by at  
17 least fifty-five percent of the legal votes cast by the qualified  
18 voters of the affected municipalities, then the proposed con-  
19 solidation is defeated. A new municipal charter review com-

20 mittee cannot be established for at least two years after the  
21 second proposed charter is defeated.

**§7A-5-6. Filing charter.**

1 After the charter has been approved by at least fifty-five  
2 percent of the legal votes cast by the qualified voters of the  
3 affected municipalities, the charter shall be filed with the  
4 Secretary of State and recorded in the applicable county  
5 clerk's office.

**§7A-5-7. Constitutional consideration.**

1 In preparing the charter, municipalities with excess levies  
2 or general obligation bond indebtedness shall fully comply  
3 with section nine, article X of the Constitution.

**§7A-5-8. Subsequent joining of municipality to consolidated  
municipality.**

1 (a) After a consolidated municipality has been in exis-  
2 tence for at least one year, a municipality may request to join  
3 the consolidated municipality by submitting:

4 (1) A petition signed by at least fifteen percent of the  
5 qualified voters in the municipality; or

6 (2) A resolution by the governing body of the municipal-  
7 ity.

8 (b) Within thirty days of receipt of the petition or resolu-  
9 tion, the governing body of the consolidated municipality  
10 shall vote to accept or reject the municipality requesting to  
11 join.

12 (c) If the governing body of the consolidated municipal-  
13 ity votes to accept the municipality, then the municipality  
14 shall hold an election on consolidation at the next primary or



15 general election in accordance with applicable election laws  
16 and section two of this article.

17 (d) The ballots for the election on consolidation shall be  
18 as follows:

19 [ ] For (name of consolidated municipality)

20 [ ] Against (name of consolidated municipality)

21 (e) If at least fifty-five percent of the legal votes cast by  
22 the qualified voters of the municipality approve consolida-  
23 tion, then consolidation becomes effective pursuant to the  
24 charter.

25 (f) If consolidation is not approved by at least fifty-five  
26 percent of the legal votes cast by the qualified voters of the  
27 municipality, then the consolidation is defeated and cannot be  
28 voted upon for one year.

**ARTICLE 6. ELECTIONS ON COUNTY CONSOLIDATION.**

§7A-6-1. Expenses for election.

§7A-6-2. Notice for election.

§7A-6-3. Election and ballots for county consolidation.

§7A-6-4. Approval of county consolidation and charter.

§7A-6-5. Rejection of charter and reconsideration process.

§7A-6-6. Filing charter.

§7A-6-7. Subsequent joining of county to consolidated county.

**§7A-6-1. Expenses for election.**

1 The governing body of each affected county is responsi-  
2 ble for its expenses of holding an election on the question of  
3 consolidation.

**§7A-6-2. Notice for election.**

1 (a) At least sixty days prior to the election on the ques-  
2 tion of county consolidation, the governing body of each

3 affected county shall make copies of the proposed charter  
4 available to the public.

5 (b) At least fourteen days prior to the election on the  
6 question of county consolidation, the governing bodies of the  
7 affected counties shall publish the proposed charter and pro-  
8 vide notice of the election, as a Class II legal advertisement,  
9 in a newspaper of general circulation in the affected area. The  
10 affected counties may share the expense of publication.

**§7A-6-3. Election and ballots for county consolidation.**

1 (a) After receiving the proposed charter from the county  
2 charter review committee, the governing bodies of the af-  
3 fected counties shall hold an election on the question of con-  
4 solidation at the next primary or general election in accor-  
5 dance with applicable election laws and section two of this  
6 article.

7 (b) The ballots for the election on consolidation shall be  
8 as follows:

9  For (name of consolidated county)

10  Against (name of consolidated county)

**§7A-6-4. Approval of county consolidation and charter.**

1 If at least fifty-five percent of the legal votes cast by the  
2 qualified voters of each of the affected counties approve  
3 consolidation, then consolidation becomes effective pursuant  
4 to the charter.

**§7A-6-5. Rejection of charter and reconsideration process.**

1 (a) If less than fifty-five percent of the legal votes cast by  
2 the qualified voters of any of the affected counties approve  
3 consolidation, then consolidation is defeated. The county

4 charter review committee may reconvene for up to one year  
5 to adopt a second proposed charter.

6 (b) When the second proposed charter is adopted by the  
7 county charter review committee, then the governing bodies  
8 of the affected counties shall hold another election on the  
9 second proposed charter at the next primary or general elec-  
10 tion in accordance with applicable election laws and section  
11 two of this article.

12 (c) The ballots for the election on the second proposed  
13 charter shall be as follows:

14  For (name of consolidated county)

15  Against (name of consolidated county)

16 (d) If the second proposed charter is not approved by at  
17 least fifty-five percent of the legal votes cast by the qualified  
18 voters of the affected counties, then the proposed consolida-  
19 tion is defeated. A new county charter review committee  
20 cannot be established for at least two years after the second  
21 proposed charter is defeated.

#### **§7A-6-6. Filing charter.**

1 After the charter has been approved by at least fifty-five  
2 percent of the legal votes cast by the qualified voters of the  
3 affected counties, the charter shall be filed with the Secretary  
4 of State and recorded in all of the applicable county clerk's  
5 offices.

#### **§7A-6-7. Subsequent joining of county to consolidated county.**

1 (a) After a consolidated county has been in existence for  
2 at least one year, a county may request to join the consoli-  
3 dated county by submitting:

4 (1) A petition signed by at least fifteen percent of the  
5 qualified voters in the county; or

6 (2) A resolution by the governing body of the county.

7 (b) Within thirty days of receipt of the petition or resolu-  
8 tion, the governing body of the consolidated county shall vote  
9 to accept or reject the county requesting to join.

10 (c) If the governing body of the consolidated county  
11 votes to accept the county, then the county shall hold an elec-  
12 tion on consolidation at the next primary or general election  
13 in accordance with applicable election laws and section two  
14 of this article.

15 (d) The ballots for the election on consolidation shall be  
16 as follows:

17  For (name of consolidated county)

18  Against (name of consolidated county)

19 (e) If at least fifty-five percent of the legal votes cast by  
20 the qualified voters of the county approve the consolidation,  
21 then consolidation becomes effective pursuant to the charter.

22 (f) If consolidation is not approved by at least fifty-five  
23 percent of the legal votes cast by the qualified voters of the  
24 county, then the consolidation is defeated and cannot be  
25 voted upon for one year.

#### **ARTICLE 7. ELECTIONS ON METRO GOVERNMENT.**

§7A-7-1. Expenses for election.

§7A-7-2. Notice for election.

§7A-7-3. Election and ballots for metro government.

§7A-7-4. Approval of metro government and charter.

§7A-7-5. Rejection of charter and reconsideration process.

§7A-7-6. Municipalities within territory remain incorporated in metro government.

§7A-7-7. Filing charter.

§7A-7-8. Subsequent joining of municipality, county or metro government to metro government.

**§7A-7-1. Expenses for election.**

1 The governing body of the affected county is responsible  
2 for the expenses of holding an election on the question of  
3 consolidation.

**§7A-7-2. Notice for election.**

1 (a) At least sixty days prior to the election on the ques-  
2 tion of metro consolidation, the governing bodies of the prin-  
3 cipal city and affected county shall make copies of the pro-  
4 posed charter available to the public.

5 (b) At least fourteen days prior to the election on the  
6 question of metro consolidation, the governing body of the  
7 affected county shall publish the proposed charter and pro-  
8 vide notice of the election, as a Class II legal advertisement,  
9 in a newspaper of general circulation in the affected county.

**§7A-7-3. Election and ballots for metro government.**

1 (a) After receiving the proposed charter from the metro  
2 charter review committee, the governing body of the affected  
3 county shall hold an election on the question of consolidation  
4 at the next primary or general election in accordance with  
5 applicable election laws and section two of this article.

6 (b) The ballots for the election on consolidation shall be  
7 as follows:

8 [ ] For (name of metro government)

9 [ ] Against (name of metro government)

**§7A-7-4. Approval of metro government and charter.**

1        If at least fifty-five percent of the legal votes cast by the  
2        qualified voters of the principal city and fifty-five percent of  
3        the legal votes cast by the qualified voters of the affected  
4        county, excluding the principal city, approve consolidation,  
5        then metro government becomes effective pursuant to the  
6        charter.

**§7A-7-5. Rejection of charter and reconsideration process.**

1        (a) If less than fifty-five percent of the legal votes cast by  
2        the qualified voters of the principal city and less than fifty-  
3        five percent of the legal votes cast by the qualified voters of  
4        the affected county, excluding the principal city, approve  
5        consolidation, then consolidation is defeated. The metro char-  
6        ter review committee may reconvene for up to one year to  
7        adopt a second proposed charter.

8        (b) When the second proposed charter is adopted by the  
9        metro charter review committee, then the governing body of  
10       the affected county shall hold another election on the second  
11       proposed charter at the next primary or general election in  
12       accordance with applicable election laws and section two of  
13       this article.

14       (c) The ballots for the election on the second proposed  
15       charter shall be as follows:

16                 For (name of metro government)

17                 Against (name of metro government)

18        (d) If the second proposed charter is not approved by at  
19        least fifty-five percent of the legal votes cast by the qualified  
20        voters of the principal city and fifty-five percent of the legal  
21        votes cast by the qualified voters of the affected county, ex-

22 cluding the principal city, then the proposed consolidation is  
23 defeated. A new metro charter review committee cannot be  
24 established for at least two years after the second proposed  
25 charter is defeated.

**§7A-7-6. Municipalities within territory remain incorporated in metro government.**

1 Upon the approval by voters of metro consolidation,  
2 municipalities within the territory of the metro government,  
3 other than the principal city, remain incorporated and con-  
4 tinue to perform their functions as permitted by law unless  
5 dissolved or consolidated pursuant to section eight of this  
6 article.

**§7A-7-7. Filing charter.**

1 After the charter has been approved by at least fifty-five  
2 percent of the legal votes cast by the qualified voters of the  
3 affected county, the charter shall be filed with the Secretary  
4 of State and recorded in the applicable county clerk's offices.

**§7A-7-8. Subsequent joining of municipality, county or metro government to metro government.**

1 (a) After a metro government has been in existence for at  
2 least one year, a municipality, county or metro government  
3 may request to join the metro government by submitting:

4 (1) A petition signed by at least fifteen percent of the  
5 qualified voters in the municipality, county or metro govern-  
6 ment; or

7 (2) A resolution by the governing body of the municipal-  
8 ity, county or metro government.

9 (b) Within thirty days of receipt of the petition or resolu-  
10 tion, the governing body of the metro government shall vote

11 to accept or reject the municipality, county or metro govern-  
12 ment requesting to join.

13 (c) If the governing body of the metro government votes  
14 to accept the municipality, county or metro government, then  
15 the municipality, county or metro government shall hold an  
16 election on consolidation at the next primary or general elec-  
17 tion. The election shall be held in accordance with applicable  
18 election laws and section two of this article.

19 (d) The ballots for the election on consolidation shall be  
20 as follows:

21 [ ] For the (name of metro government)

22 [ ] Against the (name of metro government)

23 (e) If at least fifty-five percent of the legal votes cast by  
24 the qualified voters of the municipality, county or metro  
25 government approve consolidation, then consolidation be-  
26 comes effective pursuant to the charter.

27 (f) If consolidation is not approved by at least fifty-five  
28 percent of the legal votes cast by the qualified voters of the  
29 municipality, county or metro government, then the consoli-  
30 dation is defeated and cannot be voted upon for one year.

## ARTICLE 8. CHARTER AMENDMENT.

### §7A-8-1. Charter amendment.

1 (a) If a charter is adopted, it may be amended by one of  
2 the following methods:

3 (1) The governing body of the consolidated local govern-  
4 ment may submit a proposed amendment by resolution to the  
5 voters at the next primary or general election. Notice of the  
6 election and the proposed amendment shall be published as a



7 Class II legal advertisement in a newspaper of general circu-  
8 lation in the affected areas. If a majority of the legal votes  
9 cast by the qualified voters of the consolidated local govern-  
10 ment approve the amendment, then the amendment becomes  
11 effective as permitted by law;

12 (2) The governing body of the consolidated local govern-  
13 ment may amend the charter by ordinance. However, if a  
14 petition signed by at least ten percent of the qualified voters  
15 of the consolidated local government is filed with the govern-  
16 ing body within thirty days following publication of the ordi-  
17 nance, the governing body shall submit the charter amend-  
18 ment to the voters at the next primary or general election.  
19 Notice of the election and the proposed amendment shall be  
20 published as a Class II legal advertisement in a newspaper of  
21 general circulation in the affected areas. If a majority of the  
22 legal votes cast by the qualified voters of the consolidated  
23 local government approve the amendment, then the amend-  
24 ment becomes effective as permitted by law; or

25 (3) If a petition, signed by ten percent of the qualified  
26 voters in the consolidated local government, is filed with the  
27 governing body of the consolidated local government propos-  
28 ing an amendment to the charter, then the governing body  
29 shall submit the proposed amendment to the voters at the  
30 next primary or general election. Notice of the election and  
31 the proposed amendment shall be published as a Class II  
32 legal advertisement in a newspaper of general circulation in  
33 the affected areas. If a majority of the legal votes cast by the  
34 qualified voters of the consolidated local government ap-  
35 prove the amendment, then the amendment becomes effec-  
36 tive as permitted by law.

37 (b) If an election is held, then the governing body shall  
38 submit each proposed amendment generally in the following  
39 form:

40       Should the amendment described below be adopted for  
41 the charter of (name of consolidated local government)?

42           [ ] Yes

43           [ ] No

44       The ballot shall contain a summary of the proposed  
45 amendment.

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## CHAPTER 40

**(H. B. 4283 — By Mr. Speaker, Mr. Kiss, and Delegates DeLong,  
Argento, Amores, Caputo, Beach, Perry and Michael)**

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[Passed March 11, 2006; in effect ninety days from passage.]  
[Approved by the Governor on March 31, 2006.]

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AN ACT to amend and reenact §5A-3-37 of the Code of West Virginia, 1931, as amended, relating to providing a preference to West Virginia veterans in the awarding of state contracts in the competitive bidding process.

*Be it enacted by the Legislature of West Virginia:*

That §5A-3-37 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-37. Preference for resident vendors; preference for vendors employing state residents; preference for veteran residents; exceptions.**

1 (a) Other provisions of this article notwithstanding,  
2 effective the first day of July, one thousand nine hundred  
3 ninety, through the thirtieth day of June, one thousand nine  
4 hundred ninety-four, in any instance involving the purchase of  
5 construction services for the construction, repair or improve-  
6 ment of any buildings or portions thereof, where the total  
7 aggregate cost thereof, whether one or a series of contracts are  
8 awarded in completing the project, is estimated by the director  
9 to exceed the sum of fifty thousand dollars and where the  
10 director or any state department is required under the provisions  
11 of this article to make the purchase, construction, repair or  
12 improvement upon competitive bids, the successful bid shall be  
13 determined as provided in this section. Effective beginning the  
14 first day of July, one thousand nine hundred ninety-two, in any  
15 instance that a purchase of commodities or printing by the  
16 director or by a state department is required under the provi-  
17 sions of this article to be made upon competitive bids, the  
18 successful bid shall be determined as provided in this section.  
19 The Secretary of the Department of Revenue shall promulgate  
20 any rules necessary to: (i) Determine that vendors have met the  
21 residence requirements described in this section; (ii) establish  
22 the procedure for vendors to certify the residency requirements  
23 at the time of submitting their bids; (iii) establish a procedure  
24 to audit bids which make a claim for preference permitted by  
25 this section and to reject noncomplying bids; and (iv) otherwise  
26 accomplish the objectives of this section. In prescribing the  
27 rules, the secretary shall use a strict construction of the resi-  
28 dence requirements set forth in this section. For purposes of this  
29 section, a successful bid shall be determined and accepted as  
30 follows:

31 (1) From an individual resident vendor who has resided in  
32 West Virginia continuously for the four years immediately  
33 preceding the date on which the bid is submitted or from a  
34 partnership, association, corporation resident vendor, or from  
35 a corporation nonresident vendor which has an affiliate or

36 subsidiary which employs a minimum of one hundred state  
37 residents and which has maintained its headquarters or principal  
38 place of business within West Virginia continuously for four  
39 years immediately preceding the date on which the bid is  
40 submitted, if the vendor's bid does not exceed the lowest  
41 qualified bid from a nonresident vendor by more than two and  
42 one-half percent of the latter bid, and if the vendor has made  
43 written claim for the preference at the time the bid was submit-  
44 ted: *Provided*, That for purposes of this subdivision, any  
45 partnership, association or corporation resident vendor of this  
46 state, which does not meet the requirements of this subdivision  
47 solely because of the continuous four-year residence require-  
48 ment, shall be considered to meet the requirement if at least  
49 eighty percent of the ownership interest of the resident vendor  
50 is held by another individual, partnership, association or  
51 corporation resident vendor who otherwise meets the require-  
52 ments of this subdivision, including the continuous four-year  
53 residency requirement: *Provided, however*, That the Secretary  
54 of the Department of Revenue shall promulgate rules relating  
55 to attribution of ownership among several resident vendors for  
56 purposes of determining the eighty percent ownership require-  
57 ment; or

58 (2) From a resident vendor, if, for purposes of producing or  
59 distributing the commodities or completing the project which  
60 is the subject of the vendor's bid and continuously over the  
61 entire term of the project, on average at least seventy-five  
62 percent of the vendor's employees are residents of West  
63 Virginia who have resided in the state continuously for the two  
64 immediately preceding years and the vendor's bid does not  
65 exceed the lowest qualified bid from a nonresident vendor by  
66 more than two and one-half percent of the latter bid, and if the  
67 vendor has certified the residency requirements of this subdivi-  
68 sion and made written claim for the preference, at the time the  
69 bid was submitted; or

70 (3) From a nonresident vendor, which employs a minimum  
71 of one hundred state residents or a nonresident vendor which  
72 has an affiliate or subsidiary which maintains its headquarters  
73 or principle place of business within West Virginia and which  
74 employs a minimum of one hundred state residents, if, for  
75 purposes of producing or distributing the commodities or  
76 completing the project which is the subject of the vendor's bid  
77 and continuously over the entire term of the project, on average  
78 at least seventy-five percent of the vendor's employees or the  
79 vendor's affiliate's or subsidiary's employees are residents of  
80 West Virginia who have resided in the state continuously for  
81 the two immediately preceding years and the vendor's bid does  
82 not exceed the lowest qualified bid from a nonresident vendor  
83 by more than two and one-half percent of the latter bid, and if  
84 the vendor has certified the residency requirements of this  
85 subdivision and made written claim for the preference, at the  
86 time the bid was submitted; or

87 (4) From a vendor who meets either the requirements of  
88 both subdivisions (1) and (2) of this subsection or subdivisions  
89 (1) and (3) of this subsection, if the bid does not exceed the  
90 lowest qualified bid from a nonresident vendor by more than  
91 five percent of the latter bid, and if the vendor has certified the  
92 residency requirements above and made written claim for the  
93 preference at the time the bid was submitted; or

94 (5) From an individual resident vendor who is a veteran of  
95 the United States armed forces, the reserves or the National  
96 Guard and has resided in West Virginia continuously for the  
97 four years immediately preceding the date on which the bid is  
98 submitted, if the vendor's bid does not exceed the lowest  
99 qualified bid from a nonresident vendor by more than three and  
100 one-half percent of the latter bid, and if the vendor has made  
101 written claim for the preference at the time the bid was submit-  
102 ted; or

103 (6) From a resident vendor who is a veteran of the United  
104 States armed forces, the reserves or the National Guard, if, for  
105 purposes of producing or distributing the commodities or  
106 completing the project which is the subject of the vendor's bid  
107 and continuously over the entire term of the project, on average  
108 at least seventy-five percent of the vendor's employees are  
109 residents of West Virginia who have resided in the state  
110 continuously for the two immediately preceding years and the  
111 vendor's bid does not exceed the lowest qualified bid from a  
112 nonresident vendor by more than three and one-half percent of  
113 the latter bid, and if the vendor has certified the residency  
114 requirements of this subdivision and made written claim for the  
115 preference, at the time the bid was submitted.

116 (b) If the Secretary of the Department of Revenue deter-  
117 mines under any audit procedure that a vendor who received a  
118 preference under this section fails to continue to meet the  
119 requirements for the preference at any time during the term of  
120 the project for which the preference was received the secretary  
121 may: (1) Reject the vendor's bid; or (2) assess a penalty against  
122 the vendor of not more than five percent of the vendor's bid on  
123 the project.

124 (c) Political subdivisions of the state including county  
125 boards of education may grant the same preferences to any  
126 vendor of this state who has made a written claim for the  
127 preference at the time a bid is submitted, but for the purposes of  
128 this subsection, in determining the lowest bid, any political  
129 subdivision shall exclude from the bid the amount of business  
130 occupation taxes which must be paid by a resident vendor to  
131 any municipality within the county comprising or located  
132 within the political subdivision as a result of being awarded the  
133 contract which is the object of the bid; in the case of a bid  
134 received by a municipality, the municipality shall exclude only  
135 the business and occupation taxes as will be paid to the  
136 municipality: *Provided*, That prior to soliciting any competitive

137 bids, any political subdivision may, by majority vote of all its  
138 members in a public meeting where all the votes are recorded,  
139 elect not to exclude from the bid the amount of business and  
140 occupation taxes as provided in this subsection.

141 (d) If any of the requirements or provisions set forth in this  
142 section jeopardize the receipt of federal funds, then the require-  
143 ment or provisions are void and of no force and effect for that  
144 specific project.

145 (e) If any provision or clause of this section or application  
146 thereof to any person or circumstance is held invalid, the  
147 invalidity shall not affect other provisions or applications of this  
148 section which can be given effect without the invalid provision  
149 or application, and to this end the provisions of this section are  
150 severable.

151 (f) This section may be cited as the “Jobs for West Virgin-  
152 ians Act of 1990.”

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## CHAPTER 41

**(S. B. 791 — By Senators Kessler, Dempsey, Fanning, Foster,  
Hunter, Jenkins, Minard, Oliverio, White, Barnes, Caruth,  
Deem, Harrison, Lanham, McKenzie and Weeks)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §60A-2-212 of the Code of West Virginia, 1931, as amended; and to amend and reenact §60A-10-7 and §60A-10-8 of said code, all relating to ephedrine, pseudoephedrine and phenylpropanolamine; clarifying that offenses and penalties for prohibited acts relating to controlled

substances do not apply to ephedrine, pseudoephedrine or phenylpropanolamine; clarifying that the offenses and penalties for prohibited acts set forth in the provisions of article ten of said chapter are applicable to ephedrine, pseudoephedrine and phenylpropanolamine; clarifying the reporting requirements requiring pharmacists and pharmacy technicians to report sales, transfers and distribution of certain substances containing ephedrine, pseudoephedrine and phenylpropanolamine to the Board of Pharmacy; and providing for the methods of reporting the information required to be reported.

*Be it enacted by the Legislature of West Virginia:*

That §60A-2-212 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §60A-10-7 and §60A-10-8 of said code be amended and reenacted, all to read as follows:

**Article**

**2. Standards and Schedules.**

**10. Methamphetamine Laboratory Eradication Act.**

**ARTICLE 2. STANDARDS AND SCHEDULES.**

**§60A-2-212. Schedule V.**

1 (a) Schedule V shall consist of the drugs and other sub-  
2 stances, by whatever official name, common or usual name,  
3 chemical name, or brand name designated, listed in this section.

4 (b) *Narcotic drugs.* — Unless specifically excepted or  
5 unless listed in another schedule, any material, compound,  
6 mixture or preparation containing any of the following narcotic  
7 drugs and their salts, as set forth below:

8 (1) Buprenorphine.

9 (c) Narcotic drugs containing nonnarcotic active medicinal  
10 ingredients. Any compound, mixture or preparation containing  
11 any of the following narcotic drugs or their salts calculated as



12 the free anhydrous base or alkaloid in limited quantities as set  
13 forth below, which shall include one or more nonnarcotic active  
14 medicinal ingredients in sufficient proportion to confer upon  
15 the compound, mixture or preparation valuable medicinal  
16 qualities other than those possessed by the narcotic drug alone:

17 (1) Not more than 200 milligrams of codeine per 100  
18 milliliters or per 100 grams;

19 (2) Not more than 100 milligrams of dihydrocodeine per  
20 100 milliliters or per 100 grams;

21 (3) Not more than 100 milligrams of ethylmorphine per 100  
22 milliliters or per 100 grams;

23 (4) Not more than 2.5 milligrams of diphenoxylate and not  
24 less than 25 micrograms of atropine sulfate per dosage unit;

25 (5) Not more than 100 milligrams of opium per 100  
26 milliliters or per 100 grams;

27 (6) Not more than 0.5 milligrams of difenoxin and not less  
28 than 25 micrograms of atropine sulfate per dosage unit.

29 (d) *Stimulants*. — Unless specifically exempted or excluded  
30 or unless listed in another schedule, any material, compound,  
31 mixture or preparation which contains any quantity of the  
32 following substances having a stimulant effect on the central  
33 nervous system, including its salts, isomers and salts of  
34 isomers:

35 (1) Pyrovalerone.

36 (e) Any compound, mixture or preparation containing as its  
37 single active ingredient ephedrine, pseudoephedrine or  
38 phenylpropanolamine, their salts or optical isomers, or salts of  
39 optical isomers except products which are for pediatric use  
40 primarily intended for administration to children under the age

41 of twelve: *Provided*, That neither the offenses set forth in  
42 section four hundred one, article four of this chapter, nor the  
43 penalties therein, shall be applicable to ephedrine,  
44 pseudoephedrine or phenylpropanolamine which shall be  
45 subject to the provisions of article ten of this chapter.

**ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.**

§60A-10-7. Restricted products; rule-making authority.

§60A-10-8. Reporting requirements; confidentiality.

**§60A-10-7. Restricted products; rule-making authority.**

1 (a) On or before the first day of July, two thousand five,  
2 the Board of Pharmacy shall promulgate emergency and  
3 legislative rules pursuant to the provision of article three,  
4 chapter twenty-nine-a of this code to implement a program  
5 wherein the Board of Pharmacy shall consult with the Super-  
6 intendent of the State Police in identifying drug products  
7 which are a designated precursor, in addition to those that  
8 contain as their single active ingredient ephedrine,  
9 pseudoephedrine or phenylpropanolamine, that are com-  
10 monly being used in the production and distribution of meth-  
11 amphetamine. Those drug products which the Superintendent  
12 of the State Police have demonstrated by empirical evidence  
13 are commonly used in the manufacture of methamphetamine  
14 shall be added to a supplemental list and shall be subject to  
15 all of the restrictions of this article. These rules established  
16 pursuant to this section shall include:

17 (1) A process whereby pharmacies are made aware of all  
18 drug products that contain as their single active ingredient  
19 ephedrine, pseudoephedrine and phenylpropanolamine that will  
20 be listed as a Schedule V substance and must be sold, trans-  
21 ferred or dispensed from behind a pharmacy counter;

22 (2) A process whereby pharmacies and retail establishments  
23 are made aware of additional drug products added to Schedule

24 V that are required to be placed behind the pharmacy counter  
25 for sale, transfer or distribution can be periodically reviewed  
26 and updated.

27 (b) At any time after the first day of July, two thousand  
28 five, the Board of Pharmacy, upon the recommendation of the  
29 Superintendent of the State Police, shall promulgate emergency  
30 and legislative rules pursuant to the provision of article three,  
31 chapter twenty-nine-a of this code to implement an updated  
32 supplemental list of products containing the controlled sub-  
33 stances ephedrine, pseudoephedrine or phenylpropanolamine as  
34 an active ingredient or any other drug used as a precursor in the  
35 manufacture of methamphetamine, which the Superintendent of  
36 the State Police has demonstrated by empirical evidence is  
37 being used in the manufacture of methamphetamine. This  
38 listing process shall comport with the requirements of subsec-  
39 tion (a) of this section.

**§60A-10-8. Reporting requirements; confidentiality.**

1 (a) Whenever there is a sale, retail, transfer or distribution  
2 of any drug product referred to in section seven of this article  
3 or another designated precursor, the pharmacist or pharmacy  
4 technician making the sale, transfer or distribution shall report  
5 the following information for inclusion in a central repository  
6 established and maintained by the Board of Pharmacy:

7 (1) The date of the transaction;

8 (2) The name, address and driver's license or state-issued  
9 identification number of the person; and

10 (3) The name, quantity of packages and total gram weight  
11 of the product or products purchased, received or otherwise  
12 acquired.

13 (b) The information required to be reported by this section  
14 shall be reported by paper log maintained at the point of sale:

15 *Provided*, That, beginning on the first day of January, two  
 16 thousand seven, reporting shall be by electronic transmission to  
 17 the Board of Pharmacy no more frequently than once a week.

18 (c) The information required by this section shall be the  
 19 property of the state and a pharmacy shall have no duty to retain  
 20 a copy of the information in any format once the information  
 21 has been reported to the Board of Pharmacy as required by this  
 22 section.

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## CHAPTER 42

**(H. B. 4018 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)  
 [By Request of the Executive]**

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[Passed March 10, 2006; in effect from passage.]

[Approved by the Governor on March 30, 2006.]

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AN ACT to amend and reenact §62-11C-2 and §62-11C-4 of the Code of West Virginia, 1931, as amended, all relating to the community corrections subcommittee of the Governor's Committee on Crime, Delinquency and Correction; meetings; funding.

*Be it enacted by the Legislature of West Virginia:*

That §62-11C-2 and §62-11C-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 11C. THE WEST VIRGINIA COMMUNITY CORRECTIONS ACT.**

§62-11C-2. Community corrections subcommittee.

§62-11C-4. Special revenue account.

**§62-11C-2. Community corrections subcommittee.**

1 (a) A community corrections subcommittee of the Gover-  
2 nor's Committee on Crime, Delinquency and Correction is  
3 hereby created and assigned responsibility for screening  
4 community corrections programs submitted by community  
5 criminal justice boards or from other entities authorized by the  
6 provisions of this article to do so for approval for funding by  
7 the Governor's Committee and for making recommendations as  
8 to the disbursement of funds for approved community correc-  
9 tions programs. The subcommittee is to be comprised of fifteen  
10 members of the Governor's Committee including: A representa-  
11 tive of the Division of Corrections, a representative of the  
12 Regional Jail and Correctional Facility Authority, a person  
13 representing the interests of victims of crime, an attorney  
14 employed by a public defender corporation, an attorney who  
15 practices criminal law, a prosecutor and a representative of the  
16 West Virginia coalition against domestic violence. At the  
17 discretion of the West Virginia Supreme Court of Appeals, the  
18 Administrator of the Supreme Court of Appeals, a probation  
19 officer and a circuit judge may serve on the subcommittee as ex  
20 officio, nonvoting members.

21 (b) The subcommittee shall elect a chairperson and a vice  
22 chairperson. The subcommittee shall meet quarterly. Special  
23 meetings may be held upon the call of the chairperson, vice  
24 chairperson or a majority of the members of the subcommittee.  
25 A majority of the members of the subcommittee constitute a  
26 quorum.

**§62-11C-4. Special revenue account.**

1 (a) There is hereby created in the State Treasury a special  
2 revenue account to be known as the "West Virginia Community  
3 Corrections Fund". Expenditures from the fund are for the  
4 purposes set forth in subsection (e) of this section and are not  
5 authorized from collections but are to be made only in accor-  
6 dance with appropriation by the Legislature and in accordance  
7 with the provisions of article three, chapter twelve of this code

8 and upon the fulfillment of the provisions set forth in article  
9 two, chapter five-a of this code. The West Virginia Community  
10 Corrections Fund may receive any gifts, grants, contributions  
11 or other money from any source which is specifically desig-  
12 nated for deposit in the fund.

13 (b) Beginning on the first day of July, two thousand six, in  
14 addition to the fee required in section nine, article twelve of this  
15 chapter, a fee not to exceed thirty-five dollars per month, unless  
16 modified by legislative rule as provided in section three of this  
17 article, is also to be collected from those persons on probation.  
18 This fee is to be based upon the person's ability to pay. The  
19 magistrate or circuit judge shall conduct a hearing prior to  
20 imposition of probation and make a determination on the record  
21 that the offender is able to pay the fee without undue hardship.  
22 The magistrate clerk or circuit clerk shall collect all fees  
23 imposed pursuant to this subsection and deposit them in a  
24 separate account. Within ten calendar days following the  
25 beginning of the calendar month, the magistrate clerk or circuit  
26 clerk shall forward the amount deposited to the State Treasurer  
27 to be credited to the West Virginia Community Corrections  
28 Fund.

29 (c) Beginning on the effective date of this article, in  
30 addition to the fee required in section five, article eleven-b of  
31 this chapter, a fee not to exceed five dollars per day, unless  
32 modified by legislative rule as provided in section three of this  
33 article, is also to be collected from those persons on home  
34 incarceration. The circuit judge, magistrate or municipal court  
35 judge shall consider the person's ability to pay in determining  
36 the imposition and amount of the fee. The circuit clerk,  
37 magistrate clerk or municipal court clerk shall collect all fees  
38 imposed pursuant to this subsection and deposit them in a  
39 separate account. Within ten calendar days following the  
40 beginning of the calendar month, the circuit clerk or municipal  
41 court clerk shall forward the amount deposited to the State

42 Treasurer to be credited to the West Virginia Community  
43 Corrections Fund.

44 (d) Beginning on the first day of July, two thousand six, in  
45 addition to the usual court costs in any criminal case taxed  
46 against any defendant convicted in a municipal, magistrate or  
47 circuit court, excluding municipal parking ordinances, a ten-  
48 dollar fee shall be added. The circuit clerk, magistrate clerk or  
49 municipal court clerk shall collect all fees imposed pursuant to  
50 this subsection and deposit them in a separate account. Within  
51 ten calendar days following the beginning of the calendar  
52 month, the circuit clerk, magistrate court clerk and the municip-  
53 al court clerk shall forward the amount deposited to the State  
54 Treasurer to be credited to the West Virginia Community  
55 Corrections Fund.

56 (e) The moneys of the West Virginia Community Correc-  
57 tions Fund are to be disbursed by the Governor's Committee on  
58 Crime, Delinquency and Correction, upon recommendation by  
59 the community corrections subcommittee, for the funding of  
60 community corrections programs and to pay expenses of the  
61 Governor's Committee in administering the provisions of this  
62 article, which expenses may not in any fiscal year exceed ten  
63 percent of the funds deposited to the special revenue account  
64 during that fiscal year.

65 (f) Any disbursements from the West Virginia Community  
66 Corrections Fund allocated for community corrections pro-  
67 grams by the Governor's Committee may be made contingent  
68 upon local appropriations or gifts in money or in kind for the  
69 support of the programs. Any county commission of any county  
70 or the governing body of a municipality may appropriate and  
71 expend money for establishing and maintaining community  
72 corrections programs.

73 (g) Nothing in this article may be construed to mandate  
74 funding for the West Virginia Community Corrections Fund or  
75 to require any appropriation by the Legislature.

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## CHAPTER 43

**(S. B. 484 — By Senators Kessler, Dempsey, Fanning, Foster, Minard, Oliverio, Barnes, Caruth, Deem, Harrison, Lanham and Weeks)**

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[Passed March 9, 2006; in effect from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §62-11C-5 of the Code of West Virginia, 1931, as amended, relating to authorizing the use of community corrections programs in pretrial supervision.

*Be it enacted by the Legislature of West Virginia:*

That §62-11C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 11C. WEST VIRGINIA COMMUNITY CORRECTIONS ACT.**

**§62-11C-5. Establishment of programs.**

1       (a) Any county or combination of counties or a county or  
2 counties and a Class I or II municipality may establish and  
3 operate community corrections programs, as provided for in  
4 this section, to be used both prior to trial as a condition of bond  
5 in circuit and magistrate court, as well as an alternative  
6 sentencing option for those offenders sentenced within the  
7 jurisdiction of the county or counties which establish and  
8 operate the program: *Provided*, That the chief judge must  
9 certify that the community corrections facility is available for  
10 use in connection with the imposition of pretrial bond condi-  
11 tions.



12 (b) Any county or combination of counties or a county or  
13 counties and a Class I or II municipality that seek to establish  
14 programs as authorized in this section shall submit plans and  
15 specifications for the programs to be established, including  
16 proposed budgets, for review and approval by the community  
17 corrections subcommittee established in section three of this  
18 article.

19 (c) Any county or combination of counties or a county or  
20 counties and a Class I or II municipality may establish and  
21 operate an approved community corrections program to provide  
22 alternative sanctioning options for an offender who is convicted  
23 of an offense for which he or she may be sentenced to a period  
24 of incarceration in a county or regional jail or a state correc-  
25 tional facility and for which probation or home incarceration  
26 may be imposed as an alternative to incarceration.

27 (d) Community corrections programs authorized by  
28 subsection (a) of this section may provide, but are not limited  
29 to providing, any of the following services:

30 (1) Probation supervision programs;

31 (2) Day fine programs;

32 (3) Community service restitution programs;

33 (4) Home incarceration programs;

34 (5) Substance abuse treatment programs;

35 (6) Sex offender containment programs;

36 (7) Licensed domestic violence offender treatment pro-  
37 grams;

38 (8) Day reporting centers;

39 (9) Educational or counseling programs; or

40 (10) Drug courts.

41 (e) A county or combination of counties or a county or  
42 counties and a Class I or II municipality which establish and  
43 operate community corrections programs as provided for in this  
44 section may contract with other counties to provide community  
45 corrections services.

46 (f) For purposes of this section, the phrase “may be  
47 sentenced to a period of incarceration” means that the statute  
48 defining the offense provides for a period of incarceration as a  
49 possible penalty.

50 (g) No provision of this article may be construed to allow  
51 a person participating in or under the supervision of a commu-  
52 nity corrections program to earn “good time” or any other  
53 reduction in sentence.

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## CHAPTER 44

**(Com. Sub. for H. B. 4100 — By Delegates Staton, Browning,  
Beane, Manchin, Tabb, Howard, Wysong, Barker,  
Long, Caputo and G. White)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §7-7-1 and §7-7-4 of the Code of West Virginia, 1931, as amended, all relating to salaries for elected county officials; providing for a salary increase for elected county officials; finding that additional duties have been imposed on county officials which justify the increased compensation to

prosecuting attorneys generally; and providing that a prosecuting attorney for a class VI county which subsequently becomes a class V county may remain part-time and compensated at the class VI county level.

*Be it enacted by the Legislature of West Virginia:*

That §7-7-1 and §7-7-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.**

§7-7-1. Legislative findings and purpose.

§7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.

**§7-7-1. Legislative findings and purpose.**

1           (a) The Legislature finds that it has, since the first day of  
2 January, two thousand three, consistently and annually imposed  
3 upon the county commissioners, sheriffs, county and circuit  
4 clerks, assessors and prosecuting attorneys in each county  
5 board, new and additional duties by the enactment of new  
6 provisions and amendments to this code. The new and addi-  
7 tional duties imposed upon the aforesaid county officials by  
8 these enactments are such that they would justify the increases  
9 in compensation as provided in section four of this article,  
10 without violating the provisions of section thirty-eight, article  
11 VI of the Constitution of West Virginia.

12           (b) The Legislature further finds that there are, from time  
13 to time, additional duties imposed upon all county officials  
14 through the acts of the Congress of the United States and that  
15 such acts constitute new and additional duties for county  
16 officials and, as such, justify the increases in compensation as  
17 provided by section four of this article, without violating the  
18 provisions of section thirty-eight, article VI of the Constitution  
19 of West Virginia.

20 (c) The Legislature further finds that there is a direct  
21 correlation between the total assessed property valuations of a  
22 county on which the salary levels of the county commissioners,  
23 sheriffs, county and circuit clerks, assessors and prosecuting  
24 attorneys are based, and the new and additional duties that each  
25 of these officials is required to perform as they serve the best  
26 interests of their respective counties. Inasmuch as the reap-  
27 praisal of the property valuations in each county has now been  
28 accomplished, the Legislature finds that a change in classifica-  
29 tion of counties by virtue of increased property valuations will  
30 occur on an infrequent basis. However, it is the further finding  
31 of the Legislature that when such change in classification of  
32 counties does occur, that new and additional programs,  
33 economic developments, requirements of public safety and the  
34 need for new services provided by county officials all increase,  
35 that the same constitute new and additional duties for county  
36 officials as their respective counties reach greater heights of  
37 economic development, as exemplified by the substantial  
38 increases in property valuations and, as such, justify the  
39 increases in compensation provided in section four of this  
40 article, without violating the provisions of section thirty-eight,  
41 article VI of the Constitution of West Virginia.

42 (d) The Legislature further finds and declares that the  
43 amendments enacted to this article are intended to modify the  
44 provisions of this article so as to cause the same to be in full  
45 compliance with the provisions of the Constitution of West  
46 Virginia and to be in full compliance with the decisions of the  
47 Supreme Court of Appeals of West Virginia.

**\*§7-7-4. Compensation of elected county officials and county  
commissioners for each class of county; effective  
date.**

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\* **CLERK'S NOTE:** This section was also amended by H. B. 4047 (Chapter 45), which passed prior to this act.

1 (a) (1) All county commissioners shall be paid compensa-  
2 tion out of the county treasury in amounts and according to the  
3 schedule set forth in subdivision (2) of this subsection for each  
4 class of county as determined by the provisions of section three  
5 of this article: *Provided*, That as to any county having a tribunal  
6 in lieu of a county commission, the county commissioners of  
7 the county may be paid less than the minimum compensation  
8 limits of the county commission for the particular class of such  
9 county.

10 (2) COUNTY COMMISSIONERS

|    |           |          |
|----|-----------|----------|
| 11 | Class I   | \$20,000 |
| 12 | Class II  | \$15,500 |
| 13 | Class III | \$14,000 |
| 14 | Class IV  | \$10,000 |
| 15 | Class V   | \$ 7,000 |
| 16 | Class VI  | \$ 4,000 |

17 (3) The compensation, set out in subdivision (2) of this  
18 subsection, shall be paid on and after the first day of January,  
19 one thousand nine hundred eighty-five, to each county commis-  
20 sioner. Within each county, every county commissioner whose  
21 term of office commenced prior to the first day of January, one  
22 thousand nine hundred eighty-five, shall receive the same  
23 annual compensation as commissioners commencing a term of  
24 office on or after that date by virtue of the new duties imposed  
25 upon county commissioners pursuant to the provisions of  
26 chapter fifteen, acts of the Legislature, first extraordinary  
27 session, one thousand nine hundred eighty-three.

28 (4) For the purpose of determining the compensation to be  
29 paid to the elected county officials of each county, the compen-  
30 sations for each office by class, set out in subdivision (5) of this  
31 subsection, are established and shall be used by each county  
32 commission in determining the compensation of each of their

33 county officials other than compensation of members of the  
34 county commission.

35 (5) OTHER ELECTED OFFICIALS

| 36 |           |          | County   | Circuit  |          | Prosecuting |
|----|-----------|----------|----------|----------|----------|-------------|
| 37 |           | Sheriff  | Clerk    | Clerk    | Assessor | Attorney    |
| 38 | Class I   | \$24,200 | \$31,300 | \$31,300 | \$24,200 | \$41,500    |
| 39 | Class II  | \$24,200 | \$28,000 | \$28,000 | \$24,200 | \$39,500    |
| 40 | Class III | \$24,200 | \$28,000 | \$28,000 | \$24,200 | \$30,000    |
| 41 | Class IV  | \$22,300 | \$24,000 | \$24,000 | \$22,300 | \$26,500    |
| 42 | Class V   | \$20,400 | \$22,000 | \$22,000 | \$20,400 | \$23,500    |
| 43 | Class VI  | \$17,200 | \$17,200 | \$17,200 | \$17,200 | \$17,000    |

44 (6) Any county clerk, circuit clerk, joint clerk of the county  
45 commission and circuit court, if any, county assessor, sheriff  
46 and prosecuting attorney of a Class I county, any assessor of a  
47 Class II and Class III county, any sheriff of a Class II and Class  
48 III county and any prosecuting attorney of a Class II county  
49 shall devote full-time to his or her public duties to the exclusion  
50 of any other employment: *Provided*, That any public official,  
51 whose term of office begins when his or her county's classifica-  
52 tion imposes no restriction on his or her outside activities, shall  
53 not be restricted on his or her outside activities during the  
54 remainder of the term for which he or she is elected. The  
55 compensation, set out in subdivision (5) of this subsection, shall  
56 be paid on and after the first day of January, one thousand nine  
57 hundred eighty-five, to each elected county official.

58 (7) In the case of a county that has a joint clerk of the  
59 county commission and circuit court, the compensation of the  
60 joint clerk shall be fixed in an amount twenty-five percent  
61 higher than the compensation would be fixed for the county  
62 clerk if it had separate offices of county clerk and circuit clerk.

63 (8) The Legislature finds that the duties imposed upon  
64 county clerks by the provisions of chapter sixty-four, Acts of

65 the Legislature, regular session, one thousand nine hundred  
66 eighty-two, and by chapter fifteen, Acts of the Legislature, first  
67 extraordinary session, one thousand nine hundred eighty-three,  
68 constitute new and additional duties for county clerks and as  
69 such justify the additional compensation provided in this  
70 section without violating the provisions of section thirty-eight,  
71 article VI of the Constitution of West Virginia.

72 (9) The Legislature further finds that the duties imposed  
73 upon circuit clerks by the provisions of chapters sixty-one and  
74 one hundred eighty-two, Acts of the Legislature, regular  
75 session, one thousand nine hundred eighty-one, and by chapter  
76 sixty, Acts of the Legislature, regular session, one thousand  
77 nine hundred eighty-three, constitute new and additional duties  
78 for circuit clerks and as such justify the additional compensa-  
79 tion provided by this section without violating the provisions of  
80 section thirty-eight, article VI of the Constitution of West  
81 Virginia.

82 (b)(1) Prior to the primary election in the year one thousand  
83 nine hundred ninety-two, and for the fiscal year beginning on  
84 the first day of July, one thousand nine hundred ninety-two, or  
85 for any subsequent fiscal year if the approval, set out in  
86 subdivision (2) of this subsection, is not granted for any fiscal  
87 year, and at least thirty days prior to the meeting to approve the  
88 county budget, the commission shall provide notice to the  
89 public of the date and time of the meeting and that the purpose  
90 of the meeting of the county commission is to decide upon their  
91 budget certification to the Auditor.

92 (2) Upon submission by the county commission to the  
93 Auditor of a proposed annual budget which contains anticipated  
94 receipts into the county's general revenue fund, less anticipated  
95 moneys from the unencumbered fund balance, equal to antici-  
96 pated receipts into the county's general revenue fund, less  
97 anticipated moneys from the unencumbered fund balance and

98 any federal or state special grants, for the immediately preced-  
 99 ing fiscal year, plus such additional amount as is necessary for  
 100 payment of the increases in the salaries set out in subdivisions  
 101 (3) and (5) of this subsection, and related employment taxes  
 102 over that paid for the immediately preceding fiscal year, and  
 103 upon approval thereof by the Auditor, which approval shall not  
 104 be granted for any proposed annual budget containing antici-  
 105 pated receipts which are unreasonably greater or lesser than that  
 106 of the immediately preceding fiscal year, for the purpose of  
 107 determining the compensation to be paid to the elected county  
 108 officials of each county office by class are established and shall  
 109 be used by each county commission in determining the com-  
 110 pensation of each of their county officials: *Provided*, That as to  
 111 any county having a tribunal in lieu of a county commission,  
 112 the county commissioners of the county may be paid less than  
 113 the minimum compensation limits of the county commission  
 114 for the particular class of the county.

115 (3) COUNTY COMMISSIONERS

|     |           |          |
|-----|-----------|----------|
| 116 | Class I   | \$24,000 |
| 117 | Class II  | \$18,600 |
| 118 | Class III | \$16,800 |
| 119 | Class IV  | \$12,000 |
| 120 | Class V   | \$ 8,400 |

121 (4) If the approval, set out in subdivision (2) of this  
 122 subsection, is granted, the compensation, set out in subdivision  
 123 (3) of this subsection, shall be paid on and after the first day of  
 124 January, one thousand nine hundred ninety-three, to each  
 125 county commissioner. Within each county, every county  
 126 commissioner shall receive the same annual compensation by  
 127 virtue of the new duties imposed upon county commissioners  
 128 pursuant to the provisions of chapter one hundred seventy-two,  
 129 Acts of the Legislature, second regular session, one thousand  
 130 nine hundred ninety and chapter five, Acts of the Legislature,  
 131 third extraordinary session, one thousand nine hundred ninety.



## 132 (5) OTHER ELECTED OFFICIALS

| 133 |           |          | County   | Circuit  |          | Prosecuting |
|-----|-----------|----------|----------|----------|----------|-------------|
| 134 |           | Sheriff  | Clerk    | Clerk    | Assessor | Attorney    |
| 135 | Class I   | \$29,040 | \$37,560 | \$37,560 | \$29,040 | \$59,500    |
| 136 | Class II  | \$29,040 | \$33,600 | \$33,600 | \$29,040 | \$59,500    |
| 137 | Class III | \$29,040 | \$33,600 | \$33,600 | \$29,040 | \$36,000    |
| 138 | Class IV  | \$26,760 | \$28,800 | \$28,800 | \$26,760 | \$31,800    |
| 139 | Class V   | \$24,480 | \$26,400 | \$26,400 | \$24,480 | \$28,200    |
| 140 | Class VI  | \$24,480 | \$26,400 | \$26,400 | \$24,480 | \$28,200    |

141 (6) Any county clerk, circuit clerk, joint clerk of the county  
142 commission and circuit court, if any, county assessor, sheriff  
143 and prosecuting attorney of a Class I county, any assessor of a  
144 Class II and Class III county, any sheriff of a Class II and Class  
145 III county and any prosecuting attorney of a Class II county  
146 shall devote full-time to his or her public duties to the exclusion  
147 of any other employment: *Provided*, That any public official,  
148 whose term of office begins when his or her county's classifica-  
149 tion imposes no restriction on his or her outside activities, shall  
150 not be restricted on his or her outside activities during the  
151 remainder of the term for which he or she is elected. If the  
152 approval, set out in subdivision (2) of this subsection, is  
153 granted, the compensation, set out in subdivision (5) of this  
154 subsection, shall be paid on and after the first day of January,  
155 one thousand nine hundred ninety-three, to each elected county  
156 official.

157 (7) In the case of a county that has a joint clerk of the  
158 county commission and circuit court, the compensation of the  
159 joint clerk shall be fixed in an amount twenty-five percent  
160 higher than the compensation would be fixed for the county  
161 clerk if it had separate offices of county clerk and circuit clerk.

162 (8) Prior to the primary election in the year one thousand  
163 nine hundred ninety-two, in the case of a Class III, Class IV or  
164 Class V county which has a part-time prosecuting attorney, the

165 county commission may find that such facts and circumstances  
166 exist that require the prosecuting attorney to devote full-time to  
167 his or her public duties for the four-year term, beginning the  
168 first day of January, one thousand nine hundred ninety-three. If  
169 the county commission makes such a finding, it may by proper  
170 order adopted and entered, require the prosecuting attorney who  
171 takes office on the first day of January, one thousand nine  
172 hundred ninety-three, to devote full-time to his or her public  
173 duties and the county commission shall then compensate said  
174 prosecuting attorney at the same rate of compensation as that of  
175 a prosecuting attorney in a Class II county.

176 (9) For any county: (A) Which on and after the first day of  
177 July, one thousand nine hundred ninety-four, is classified as a  
178 Class II county; and (B) which prior to such date was classified  
179 as a Class III, Class IV or Class V county and maintained a  
180 part-time prosecuting attorney, the county commission may  
181 elect to maintain the prosecuting attorney as a part-time  
182 prosecuting attorney: *Provided*, That prior to the first day of  
183 January, one thousand nine hundred ninety-six, the county  
184 commission shall make a finding, by proper order and entered,  
185 whether to maintain a full-time or part-time prosecuting  
186 attorney. The part-time prosecuting attorney shall be compen-  
187 sated at the same rate of compensation as that of a prosecuting  
188 attorney in the class for the county prior to being classified as  
189 a Class II county.

190 (c)(1) Prior to the primary election in the year one thousand  
191 nine hundred ninety-six, and for the fiscal year beginning on the  
192 first day of July, one thousand nine hundred ninety-six, or for  
193 any subsequent fiscal year if the approval, set out in subdivision  
194 (2) of this subsection, is not granted for any fiscal year, and at  
195 least thirty days prior to the meeting to approve the county  
196 budget, the commission shall provide notice to the public of the  
197 date and time of the meeting and that the purpose of the  
198 meeting of the county commission is to decide upon their  
199 budget certification to the Auditor.

200 (2) Upon submission by the county commission to the  
201 Auditor of a proposed annual budget which contains anticipated  
202 receipts into the county's general revenue fund, less anticipated  
203 moneys from the unencumbered fund balance, equal to antici-  
204 pated receipts into the county's general revenue fund, less  
205 anticipated moneys from the unencumbered fund balance and  
206 any federal or state special grants, for the fiscal year beginning  
207 the first day of July, one thousand nine hundred ninety-six, plus  
208 such additional amount as is necessary for payment of the  
209 increases in the salaries set out in subdivisions (3) and (6) of  
210 this subsection, and related employment taxes over that paid for  
211 the immediately preceding fiscal year, and upon approval  
212 thereof by the Auditor, which approval shall not be granted for  
213 any proposed annual budget containing anticipated receipts  
214 which are unreasonably greater or lesser than that of the  
215 immediately preceding fiscal year for the purpose of determin-  
216 ing the compensation to be paid to the elected county officials  
217 of each county office by class are established and shall be used  
218 by each county commission in determining whether county  
219 revenues are sufficient to pay the compensation mandated  
220 herein for their county officials: *Provided*, That as to any  
221 county having a tribunal in lieu of a county commission, the  
222 county commissioners of the county may be paid less than the  
223 minimum compensation limits of the county commission for  
224 the particular class of the county: *Provided, however*, That  
225 should there be an insufficient projected increase in revenues to  
226 pay the increased compensation and related employment taxes,  
227 then the compensation of that county's elected officials shall  
228 remain at the level in effect at the time certification was sought.

229 (3) COUNTY COMMISSIONERS

|     |           |          |
|-----|-----------|----------|
| 230 | Class I   | \$28,000 |
| 231 | Class II  | \$27,500 |
| 232 | Class III | \$27,000 |
| 233 | Class IV  | \$26,500 |

|     |            |          |
|-----|------------|----------|
| 234 | Class V    | \$26,000 |
| 235 | Class VI   | \$21,500 |
| 236 | Class VII  | \$21,000 |
| 237 | Class VIII | \$19,000 |
| 238 | Class IX   | \$18,500 |
| 239 | Class X    | \$15,000 |

240 (4) The compensation, set out in subdivision (3) of this  
 241 subsection, shall be paid on and after the first day of January,  
 242 one thousand nine hundred ninety-seven, to each county  
 243 commissioner. Every county commissioner in each county,  
 244 whose term of office commenced prior to or on or after the first  
 245 day of January, one thousand nine hundred ninety-seven, shall  
 246 receive the same annual compensation by virtue of legislative  
 247 findings of extra duties as set forth in section one of this article.

248 (5) For the purpose of determining the compensation to be  
 249 paid to the elected county officials of each county, the compen-  
 250 sations for each county office by class, set out in subdivision (6)  
 251 of this subsection, are established and shall be used by each  
 252 county commission in determining the compensation of each of  
 253 their county officials other than compensation of members of  
 254 the county commission.

#### 255 (6) OTHER ELECTED OFFICIALS

| 256 |            | County   | Circuit  |          | Prosecuting |          |
|-----|------------|----------|----------|----------|-------------|----------|
| 257 |            | Sheriff  | Clerk    | Clerk    | Assessor    | Attorney |
| 258 | Class I    | \$34,000 | \$42,000 | \$42,000 | \$34,000    | \$76,000 |
| 259 | Class II   | \$33,500 | \$41,500 | \$41,500 | \$33,500    | \$74,000 |
| 260 | Class III  | \$33,250 | \$40,500 | \$40,500 | \$33,250    | \$72,000 |
| 261 | Class IV   | \$33,000 | \$40,250 | \$40,250 | \$33,000    | \$70,000 |
| 262 | Class V    | \$32,750 | \$40,000 | \$40,000 | \$32,750    | \$68,000 |
| 263 | Class VI   | \$32,500 | \$37,500 | \$37,500 | \$32,500    | \$45,000 |
| 264 | Class VII  | \$32,250 | \$37,000 | \$37,000 | \$32,250    | \$43,000 |
| 265 | Class VIII | \$32,000 | \$36,500 | \$36,500 | \$32,000    | \$41,000 |
| 266 | Class IX   | \$31,750 | \$36,000 | \$36,000 | \$31,750    | \$38,000 |
| 267 | Class X    | \$29,000 | \$32,000 | \$32,000 | \$29,000    | \$35,000 |

268 (7) The compensation, set out in subdivision (6) of this  
269 subsection, shall be paid on and after the first day of January,  
270 one thousand nine hundred ninety-seven, to each elected county  
271 official. Any county clerk, circuit clerk, joint clerk of the  
272 county commission and circuit court, if any, county assessor or  
273 sheriff of a Class I through Class V county, inclusive, any  
274 assessor or any sheriff of a Class VI through Class IX county,  
275 inclusive, shall devote full-time to his or her public duties to the  
276 exclusion of any other employment: *Provided*, That any public  
277 official, whose term of office begins when his or her county's  
278 classification imposes no restriction on his or her outside  
279 activities, shall not be restricted on his or her outside activities  
280 during the remainder of the term for which he or she is elected.

281 (8) In the case of a county that has a joint clerk of the  
282 county commission and circuit court, the compensation of the  
283 joint clerk shall be fixed in an amount twenty-five percent  
284 higher than the compensation would be fixed for the county  
285 clerk if it had separate offices of county clerk and circuit clerk.

286 (9) Any prosecuting attorney of a Class I through Class V  
287 county, inclusive, shall devote full-time to his or her public  
288 duties to the exclusion of any other employment: *Provided*,  
289 That any county which under the prior provisions of this section  
290 was classified as a Class II county and elected to maintain a  
291 part-time prosecutor may continue to maintain a part-time  
292 prosecutor, until such time as the county commission, on  
293 request of the part-time prosecutor, approves and makes a  
294 finding, by proper order entered, that the prosecuting attorney  
295 shall devote full-time to his or her public duties. The county  
296 commission shall then compensate said prosecuting attorney at  
297 the same rate of compensation as that of a prosecuting attorney  
298 in a Class V county: *Provided, however*, That any county which  
299 under the prior provisions of this section was classified as a  
300 Class II county and which did not elect to maintain a part-time  
301 prosecutor shall maintain a full-time prosecuting attorney and

302 shall compensate said prosecuting attorney at the same rate of  
303 compensation as that of a prosecuting attorney in a Class V  
304 county: *Provided further*, That, until the first day of January,  
305 two thousand one, when a vacancy occurs in the office of  
306 prosecuting attorney prior to the end of a term, the county  
307 commission of a Class IV or Class V county may elect to allow  
308 the position to become part-time for the end of that term, and  
309 thereafter the position of prosecuting attorney shall become  
310 full-time.

311 (d) (1) The increased salaries to be paid to the county  
312 commissioners and the other elected county officials described  
313 in this subsection on and after the first day of July, two thou-  
314 sand two, are set out in subdivisions (5) and (7) of this subsec-  
315 tion. Every county commissioner and elected county official in  
316 each county, whose term of office commenced prior to or on or  
317 after the first day of July, two thousand two, shall receive the  
318 same annual salary by virtue of legislative findings of extra  
319 duties as set forth in section one of this article.

320 (2) Before the increased salaries, as set out in subdivisions  
321 (5) and (7) of this subsection, are paid to the county commis-  
322 sioners and the elected county officials, the following require-  
323 ments must be met:

324 (A) The Auditor has certified that the proposed annual  
325 county budget for the fiscal year beginning the first days of  
326 July, two thousand two, has increased over the previous fiscal  
327 year in an amount sufficient for the payment of the increase in  
328 the salaries, set out in subdivisions (5) and (7) of this subsec-  
329 tion, and the related employment taxes: *Provided*, That the  
330 Auditor may not approve the budget certification for any  
331 proposed annual county budget containing anticipated receipts  
332 which are unreasonably greater or lesser than that of the  
333 previous year. For purposes of this subdivision, the term  
334 "receipts" does not include unencumbered fund balance or  
335 federal or state grants; and

336 (B) Each county commissioner or other elected official  
 337 described in this subsection in office on the effective date of the  
 338 increased salaries provided by this subsection who desires to  
 339 receive the increased salary has prior to that date filed in the  
 340 office of the clerk of the county commission his or her written  
 341 agreement to accept the salary increase. The salary for the  
 342 person who holds the office of county commissioner or other  
 343 elected official described in this subsection who fails to file the  
 344 written agreement as required by this paragraph shall be the  
 345 salary for that office in effect immediately prior to the effective  
 346 date of the increased salaries provided by this subsection until  
 347 the person vacates the office or his or her term of office expires,  
 348 whichever first occurs.

349 (3) If there is an insufficient projected increase in revenues  
 350 to pay the increased salaries and the related employment taxes,  
 351 then the salaries of that county's elected officials and commis-  
 352 sioners shall remain at the level in effect at the time certifica-  
 353 tion was sought.

354 (4) In any county having a tribunal in lieu of a county  
 355 commission, the county commissioners of that county may be  
 356 paid less than the minimum salary limits of the county commis-  
 357 sion for that particular class of the county.

358 (5) COUNTY COMMISSIONERS

|     |            |          |
|-----|------------|----------|
| 359 | Class I    | \$30,800 |
| 360 | Class II   | \$30,250 |
| 361 | Class III  | \$29,700 |
| 362 | Class IV   | \$29,150 |
| 363 | Class V    | \$28,600 |
| 364 | Class VI   | \$23,650 |
| 365 | Class VII  | \$23,100 |
| 366 | Class VIII | \$20,900 |
| 367 | Class IX   | \$20,350 |
| 368 | Class X    | \$16,500 |

369 (6) For the purpose of determining the salaries to be paid to  
 370 the elected county officials of each county, the salaries for each  
 371 county office by class, set out in subdivision (7) of this subsec-  
 372 tion, are established and shall be used by each county commis-  
 373 sion in determining the salaries of each of their county officials  
 374 other than salaries of members of the county commission.

375 (7) OTHER ELECTED OFFICIALS

| 376 |            | County   | Circuit  |          | Prosecuting |          |
|-----|------------|----------|----------|----------|-------------|----------|
| 377 |            | Sheriff  | Clerk    | Clerk    | Assessor    | Attorney |
| 378 | Class I    | \$37,400 | \$46,200 | \$46,200 | \$37,400    | \$83,600 |
| 379 | Class II   | \$36,850 | \$45,650 | \$45,650 | \$36,850    | \$81,400 |
| 380 | Class III  | \$36,575 | \$44,550 | \$44,550 | \$36,575    | \$79,200 |
| 381 | Class IV   | \$36,300 | \$44,295 | \$44,295 | \$36,300    | \$77,000 |
| 382 | Class V    | \$36,025 | \$44,000 | \$44,000 | \$36,025    | \$74,800 |
| 383 | Class VI   | \$35,750 | \$41,250 | \$41,250 | \$35,750    | \$49,500 |
| 384 | Class VII  | \$35,475 | \$40,700 | \$40,700 | \$35,475    | \$47,300 |
| 385 | Class VIII | \$35,200 | \$40,150 | \$40,150 | \$35,200    | \$45,100 |
| 386 | Class IX   | \$34,925 | \$39,600 | \$39,600 | \$34,925    | \$41,800 |
| 387 | Class X    | \$31,900 | \$35,200 | \$35,200 | \$31,900    | \$38,500 |

388 (8) Any county clerk, circuit clerk, joint clerk of the county  
 389 commission and circuit court, if any, county assessor or sheriff  
 390 of a Class I through Class V county, inclusive, any assessor or  
 391 any sheriff of a Class VI through Class IX county, inclusive,  
 392 shall devote full-time to his or her public duties to the exclusion  
 393 of any other employment: *Provided*, That any public official,  
 394 whose term of office begins when his or her county's classifica-  
 395 tion imposes no restriction on his or her outside activities, may  
 396 not be restricted on his or her outside activities during the  
 397 remainder of the term for which he or she is elected.

398 (9) In the case of a county that has a joint clerk of the  
 399 county commission and circuit court, the salary of the joint  
 400 clerk shall be fixed in an amount twenty-five percent higher  
 401 than the salary would be fixed for the county clerk if it had  
 402 separate offices of county clerk and circuit clerk.



403       (10) Any prosecuting attorney of a Class I through Class V  
404 county, inclusive, shall devote full-time to his or her public  
405 duties to the exclusion of any other employment: *Provided*,  
406 That any county which under the prior provisions of this section  
407 was classified as a Class II county and elected to maintain a  
408 part-time prosecutor may continue to maintain a part-time  
409 prosecutor, until such time as the county commission, on  
410 request of the part-time prosecutor, approves and makes a  
411 finding, by proper order entered, that the prosecuting attorney  
412 shall devote full-time to his or her public duties. The county  
413 commission shall then compensate said prosecutor at the same  
414 salary as that of a prosecuting attorney in a Class V county:  
415 *Provided, however*, That any county which under the prior  
416 provisions of this section was classified as a Class II county and  
417 which did not elect to maintain a part-time prosecutor shall  
418 maintain a full-time prosecuting attorney and shall compensate  
419 said prosecuting attorney at the same salary as that of a  
420 prosecuting attorney in a Class V county: *Provided further*,  
421 That, until the first day of January, two thousand three, when a  
422 vacancy occurs in the office of prosecuting attorney prior to the  
423 end of a term, the county commission of a Class IV or Class V  
424 county may elect to allow the position to become part-time for  
425 the end of that term and thereafter the position of prosecuting  
426 attorney shall become full-time: *And provided further*, That a  
427 prosecuting attorney for a Class VI county which subsequently  
428 becomes a Class V county on or before the first day of July, two  
429 thousand ten, may continue as a part-time attorney, and  
430 continue to be compensated at the Class VI county level, until  
431 such time as determined by the prosecuting attorney and the  
432 county commission that a full-time prosecuting attorney is  
433 needed.

434       (e) (1) The increased salaries to be paid to the county  
435 commissioners and the other elected county officials described  
436 in this subsection on and after the first day of July, two thou-  
437 sand six, are set out in subdivisions (5) and (7) of this subsec-

438 tion. Every county commissioner and elected county official in  
439 each county, whose term of office commenced prior to or on or  
440 after the first day of July, two thousand six, shall receive the  
441 same annual salary by virtue of legislative findings of extra  
442 duties as set forth in section one of this article.

443 (2) Before the increased salaries, as set out in subdivisions  
444 (5) and (7) of this subsection, are paid to the county commis-  
445 sioners and the elected county officials, the following require-  
446 ments must be met:

447 (A) The Auditor has certified that the proposed annual  
448 county budget for the fiscal year beginning the first days of  
449 July, two thousand six, has increased over the previous fiscal  
450 year in an amount sufficient for the payment of the increase in  
451 the salaries, set out in subdivisions (5) and (7) of this subsec-  
452 tion, and the related employment taxes: *Provided*, That the  
453 Auditor may not approve the budget certification for any  
454 proposed annual county budget containing anticipated receipts  
455 which are unreasonably greater or lesser than that of the  
456 previous year. For purposes of this subdivision, the term  
457 "receipts" does not include unencumbered fund balance or  
458 federal or state grants; and

459 (B) Each county commissioner or other elected official  
460 described in this subsection in office on the effective date of the  
461 increased salaries provided by this subsection who desires to  
462 receive the increased salary has prior to that date filed in the  
463 office of the clerk of the county commission his or her written  
464 agreement to accept the salary increase. The salary for the  
465 person who holds the office of county commissioner or other  
466 elected official described in this subsection who fails to file the  
467 written agreement as required by this paragraph shall be the  
468 salary for that office in effect immediately prior to the effective  
469 date of the increased salaries provided by this subsection until  
470 the person vacates the office or his or her term of office expires,  
471 whichever first occurs.

472 (3) If there is an insufficient projected increase in revenues  
 473 to pay the increased salaries and the related employment taxes,  
 474 then the salaries of that county's elected officials and commis-  
 475 sioners shall remain at the level in effect at the time certifica-  
 476 tion was sought.

477 (4) In any county having a tribunal in lieu of a county  
 478 commission, the county commissioners of that county may be  
 479 paid less than the minimum salary limits of the county commis-  
 480 sion for that particular class of the county.

481 (5) COUNTY COMMISSIONERS

|     |            |          |
|-----|------------|----------|
| 482 | Class I    | \$36,960 |
| 483 | Class II   | \$36,300 |
| 484 | Class III  | \$35,640 |
| 485 | Class IV   | \$34,980 |
| 486 | Class V    | \$34,320 |
| 487 | Class VI   | \$28,380 |
| 488 | Class VII  | \$27,720 |
| 489 | Class VIII | \$25,080 |
| 490 | Class IX   | \$24,420 |
| 491 | Class X    | \$19,800 |

492 (6) For the purpose of determining the salaries to be paid to  
 493 the elected county officials of each county, the salaries for each  
 494 county office by class, set out in subdivision (7) of this subsec-  
 495 tion, are established and shall be used by each county commis-  
 496 sion in determining the salaries of each of their county officials  
 497 other than salaries of members of the county commission.

498 (7) OTHER ELECTED OFFICIALS

| 499 |           | County   | Circuit  | Prosecuting |          |           |
|-----|-----------|----------|----------|-------------|----------|-----------|
| 500 |           | Sheriff  | Clerk    | Clerk       | Assessor | Attorney  |
| 501 | Class I   | \$44,880 | \$55,440 | \$55,440    | \$44,880 | \$ 96,600 |
| 502 | Class II  | \$44,220 | \$54,780 | \$54,780    | \$44,220 | \$ 94,400 |
| 503 | Class III | \$43,890 | \$53,460 | \$53,460    | \$43,890 | \$ 92,200 |
| 504 | Class IV  | \$43,560 | \$53,154 | \$53,154    | \$43,560 | \$ 90,000 |

|     |            |          |          |          |          |           |         |
|-----|------------|----------|----------|----------|----------|-----------|---------|
| 504 |            |          | COUNTIES |          |          |           | [Ch. 44 |
| 505 | Class V    | \$43,230 | \$52,800 | \$52,800 | \$43,230 | \$ 87,800 |         |
| 506 | Class VI   | \$42,900 | \$49,500 | \$49,500 | \$42,900 | \$ 59,400 |         |
| 507 | Class VII  | \$42,570 | \$48,840 | \$48,840 | \$42,570 | \$ 56,760 |         |
| 508 | Class VIII | \$42,240 | \$48,180 | \$48,180 | \$42,240 | \$ 54,120 |         |
| 509 | Class IX   | \$41,910 | \$47,520 | \$47,520 | \$41,910 | \$ 50,160 |         |
| 510 | Class X    | \$38,280 | \$42,240 | \$42,240 | \$38,280 | \$ 46,200 |         |

511           (8) Any county clerk, circuit clerk, joint clerk of the county  
512 commission and circuit court, if any, county assessor or sheriff  
513 of a Class I through Class V county, inclusive, any assessor or  
514 any sheriff of a Class VI through Class IX county, inclusive,  
515 shall devote full-time to his or her public duties to the exclusion  
516 of any other employment: *Provided*, That any public official,  
517 whose term of office begins when his or her county's classifica-  
518 tion imposes no restriction on his or her outside activities, may  
519 not be restricted on his or her outside activities during the  
520 remainder of the term for which he or she is elected.

521           (9) In the case of a county that has a joint clerk of the  
522 county commission and circuit court, the salary of the joint  
523 clerk shall be fixed in an amount twenty-five percent higher  
524 than the salary would be fixed for the county clerk if it had  
525 separate offices of county clerk and circuit clerk.

526           (10) Any prosecuting attorney of a Class I through Class V  
527 county, inclusive, shall devote full-time to his or her public  
528 duties to the exclusion of any other employment: *Provided*,  
529 That any county which under the prior provisions of this section  
530 was classified as a Class II county and elected to maintain a  
531 part-time prosecutor may continue to maintain a part-time  
532 prosecutor, until such time as the county commission, on  
533 request of the part-time prosecutor, approves and makes a  
534 finding, by proper order entered, that the prosecuting attorney  
535 shall devote full-time to his or her public duties. The county  
536 commission shall then compensate said prosecutor at the same  
537 salary as that of a prosecuting attorney in a Class V county:  
538 *Provided, however*, That any county which under the prior

539 provisions of this section was classified as a Class II county and  
540 which did not elect to maintain a part-time prosecutor shall  
541 maintain a full-time prosecuting attorney and shall compensate  
542 said prosecuting attorney at the same salary as that of a  
543 prosecuting attorney in a Class V county: *Provided further,*  
544 That a prosecuting attorney for a Class VI county which  
545 subsequently becomes a Class V county on or before the first  
546 day of July, two thousand ten, may continue as a part-time  
547 attorney, and continue to be compensated at the Class VI county  
548 level, until such time as determined by the prosecuting attorney  
549 and the county commission that a full-time prosecuting attorney  
550 is needed.

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## CHAPTER 45

(Com. Sub. for H. B. 4047 — By Delegates Pethtel,  
Varner and Proudfoot)

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[Passed March 2, 2006; in effect ninety days from passage.]  
[Approved by the Governor on March 13, 2006.]

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AN ACT to amend and reenact §7-7-4 of the Code of West Virginia, 1931, as amended, relating to prosecuting attorneys generally; providing that a prosecuting attorney for a Class VI county which subsequently becomes a Class V county may remain part-time; and providing that the part-time attorney be compensated at the Class VI county level.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.****\*§7-7-4. Compensation of elected county officials and county commissioners for each class of county; effective date.**

1           (a)(1) All county commissioners shall be paid compensa-  
 2           tion out of the county treasury in amounts and according to the  
 3           schedule set forth in subdivision (2) of this subsection for each  
 4           class of county as determined by the provisions of section three  
 5           of this article: *Provided*, That as to any county having a  
 6           tribunal in lieu of a county commission, the county commis-  
 7           sioners of the county may be paid less than the minimum  
 8           compensation limits of the county commission for the particular  
 9           class of such county.

## 10                           (2) COUNTY COMMISSIONERS

|    |           |           |
|----|-----------|-----------|
| 11 | Class I   | \$ 20,000 |
| 12 | Class II  | \$ 15,500 |
| 13 | Class III | \$ 14,000 |
| 14 | Class IV  | \$ 10,000 |
| 15 | Class V   | \$ 7,000  |
| 16 | Class VI  | \$ 4,000  |

17           (3) The compensation, set out in subdivision (2) of this  
 18           subsection, shall be paid on and after the first day of January,  
 19           one thousand nine hundred eighty-five, to each county commis-  
 20           sioner. Within each county, every county commissioner whose  
 21           term of office commenced prior to the first day of January, one  
 22           thousand nine hundred eighty-five, shall receive the same  
 23           annual compensation as commissioners commencing a term of  
 24           office on or after that date by virtue of the new duties imposed  
 25           upon county commissioners pursuant to the provisions of

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\* **CLERK'S NOTE:** This section was also amended by H. B. 4100 (Chapter 44), which passed subsequent to this act.

26 chapter fifteen, Acts of the Legislature, first extraordinary  
27 session, one thousand nine hundred eighty-three.

28 (4) For the purpose of determining the compensation to be  
29 paid to the elected county officials of each county, the compen-  
30 sations for each office by class, set out in subdivision (5) of this  
31 subsection, are established and shall be used by each county  
32 commission in determining the compensation of each of their  
33 county officials other than compensation of members of the  
34 county commission.

35 (5) OTHER ELECTED OFFICIALS

| 36 |           | County   | Circuit  |          | Prosecuting |          |
|----|-----------|----------|----------|----------|-------------|----------|
| 37 |           | Sheriff  | Clerk    | Clerk    | Assessor    | Attorney |
| 38 | Class I   | \$24,200 | \$31,300 | \$31,300 | \$24,200    | \$41,500 |
| 39 | Class II  | \$24,200 | \$28,000 | \$28,000 | \$24,200    | \$39,500 |
| 40 | Class III | \$24,200 | \$28,000 | \$28,000 | \$24,200    | \$30,000 |
| 41 | Class IV  | \$22,300 | \$24,000 | \$24,000 | \$22,300    | \$26,500 |
| 42 | Class V   | \$20,400 | \$22,000 | \$22,000 | \$20,400    | \$23,500 |
| 43 | Class VI  | \$17,200 | \$17,200 | \$17,200 | \$17,200    | \$17,000 |

44 (6) Any county clerk, circuit clerk, joint clerk of the county  
45 commission and circuit court, if any, county assessor, sheriff  
46 and prosecuting attorney of a Class I county, any assessor of a  
47 Class II and Class III county, any sheriff of a Class II and Class  
48 III county and any prosecuting attorney of a Class II county  
49 shall devote full-time to his or her public duties to the exclusion  
50 of any other employment: *Provided*, That any public official,  
51 whose term of office begins when his or her county's classifica-  
52 tion imposes no restriction on his or her outside activities, shall  
53 not be restricted on his or her outside activities during the  
54 remainder of the term for which he or she is elected. The  
55 compensation, set out in subdivision (5) of this subsection, shall  
56 be paid on and after the first day of January, one thousand nine  
57 hundred eighty-five, to each elected county official.

58       (7) In the case of a county that has a joint clerk of the  
59 county commission and circuit court, the compensation of the  
60 joint clerk shall be fixed in an amount twenty-five percent  
61 higher than the compensation would be fixed for the county  
62 clerk if it had separate offices of county clerk and circuit clerk.

63       (8) The Legislature finds that the duties imposed upon  
64 county clerks by the provisions of chapter sixty-four, Acts of  
65 the Legislature, regular session, one thousand nine hundred  
66 eighty-two, and by chapter fifteen, Acts of the Legislature, first  
67 extraordinary session, one thousand nine hundred eighty-three,  
68 constitute new and additional duties for county clerks and as  
69 such justify the additional compensation provided in this  
70 section without violating the provisions of section thirty-eight,  
71 article VI of the Constitution of West Virginia.

72       (9) The Legislature further finds that the duties imposed  
73 upon circuit clerks by the provisions of chapters sixty-one and  
74 one hundred eighty-two, Acts of the Legislature, regular  
75 session, one thousand nine hundred eighty-one, and by chapter  
76 sixty, Acts of the Legislature, regular session, one thousand  
77 nine hundred eighty-three, constitute new and additional duties  
78 for circuit clerks and as such justify the additional compensa-  
79 tion provided by this section without violating the provisions of  
80 section thirty-eight, article VI of the Constitution of West  
81 Virginia.

82       (b)(1) Prior to the primary election in the year one thousand  
83 nine hundred ninety-two, and for the fiscal year beginning on  
84 the first day of July, one thousand nine hundred ninety-two, or  
85 for any subsequent fiscal year if the approval, set out in  
86 subdivision (2) of this subsection, is not granted for any fiscal  
87 year, and at least thirty days prior to the meeting to approve the  
88 county budget, the commission shall provide notice to the  
89 public of the date and time of the meeting and that the purpose  
90 of the meeting of the county commission is to decide upon their  
91 budget certification to the Auditor.



92 (2) Upon submission by the county commission to the  
93 auditor of a proposed annual budget which contains anticipated  
94 receipts into the county's general revenue fund, less anticipated  
95 moneys from the unencumbered fund balance, equal to antici-  
96 pated receipts into the county's general revenue fund, less  
97 anticipated moneys from the unencumbered fund balance and  
98 any federal or state special grants, for the immediately preced-  
99 ing fiscal year, plus such additional amount as is necessary for  
100 payment of the increases in the salaries set out in subdivisions  
101 (3) and (5) of this subsection, and related employment taxes  
102 over that paid for the immediately preceding fiscal year, and  
103 upon approval thereof by the auditor, which approval shall not  
104 be granted for any proposed annual budget containing antici-  
105 pated receipts which are unreasonably greater or lesser than that  
106 of the immediately preceding fiscal year, for the purpose of  
107 determining the compensation to be paid to the elected county  
108 officials of each county office by class are established and shall  
109 be used by each county commission in determining the com-  
110 pensation of each of their county officials: *Provided*, That as  
111 to any county having a tribunal in lieu of a county commission,  
112 the county commissioners of the county may be paid less than  
113 the minimum compensation limits of the county commission  
114 for the particular class of the county.

115 (3) COUNTY COMMISSIONERS

|     |           |          |
|-----|-----------|----------|
| 116 | Class I   | \$24,000 |
| 117 | Class II  | \$18,600 |
| 118 | Class III | \$16,800 |
| 119 | Class IV  | \$12,000 |
| 120 | Class V   | \$8,400  |

121 (4) If the approval, set out in subdivision (2) of this  
122 subsection, is granted, the compensation, set out in subdivision  
123 (3) of this subsection, shall be paid on and after the first day of  
124 January, one thousand nine hundred ninety-three, to each  
125 county commissioner. Within each county, every county

126 commissioner shall receive the same annual compensation by  
 127 virtue of the new duties imposed upon county commissioners  
 128 pursuant to the provisions of chapter one hundred seventy-two,  
 129 Acts of the Legislature, second regular session, one thousand  
 130 nine hundred ninety and chapter five, Acts of the Legislature,  
 131 third extraordinary session, one thousand nine hundred ninety.

132 (5) OTHER ELECTED OFFICIALS

| 133 |           |          | County   | Circuit  |          | Prosecuting |
|-----|-----------|----------|----------|----------|----------|-------------|
| 134 |           | Sheriff  | Clerk    | Clerk    | Assessor | Attorney    |
| 135 | Class I   | \$29,040 | \$37,560 | \$37,560 | \$29,040 | \$59,500    |
| 136 | Class II  | \$29,040 | \$33,600 | \$33,600 | \$29,040 | \$59,500    |
| 137 | Class III | \$29,040 | \$33,600 | \$33,600 | \$29,040 | \$36,000    |
| 138 | Class IV  | \$26,760 | \$28,800 | \$28,800 | \$26,760 | \$31,800    |
| 139 | Class V   | \$24,480 | \$26,400 | \$26,400 | \$24,480 | \$28,200    |
| 140 | Class VI  | \$24,480 | \$26,400 | \$26,400 | \$24,480 | \$28,200    |

141 (6) Any county clerk, circuit clerk, joint clerk of the county  
 142 commission and circuit court, if any, county assessor, sheriff  
 143 and prosecuting attorney of a Class I county, any assessor of a  
 144 Class II and Class III county, any sheriff of a Class II and Class  
 145 III county and any prosecuting attorney of a Class II county  
 146 shall devote full-time to his or her public duties to the exclusion  
 147 of any other employment: *Provided*, That any public official,  
 148 whose term of office begins when his or her county's classifica-  
 149 tion imposes no restriction on his or her outside activities, shall  
 150 not be restricted on his or her outside activities during the  
 151 remainder of the term for which he or she is elected. If the  
 152 approval, set out in subdivision (2) of this subsection, is  
 153 granted, the compensation, set out in subdivision (5) of this  
 154 subsection, shall be paid on and after the first day of January,  
 155 one thousand nine hundred ninety-three, to each elected county  
 156 official.

157 (7) In the case of a county that has a joint clerk of the  
 158 county commission and circuit court, the compensation of the  
 159 joint clerk shall be fixed in an amount twenty-five percent

160 higher than the compensation would be fixed for the county  
161 clerk if it had separate offices of county clerk and circuit clerk.

162 (8) Prior to the primary election in the year one thousand  
163 nine hundred ninety-two, in the case of a Class III, Class IV or  
164 Class V county which has a part-time prosecuting attorney, the  
165 county commission may find that such facts and circumstances  
166 exist that require the prosecuting attorney to devote full-time to  
167 his or her public duties for the four-year term, beginning the  
168 first day of January, one thousand nine hundred ninety-three.  
169 If the county commission makes such a finding, it may by  
170 proper order adopted and entered, require the prosecuting  
171 attorney who takes office on the first day of January, one  
172 thousand nine hundred ninety-three, to devote full-time to his  
173 or her public duties and the county commission shall then  
174 compensate said prosecuting attorney at the same rate of  
175 compensation as that of a prosecuting attorney in a Class II  
176 county.

177 (9) For any county: (A) Which on and after the first day of  
178 July, one thousand nine hundred ninety-four, is classified as a  
179 Class II county; and (B) which prior to such date was classified  
180 as a Class III, Class IV or Class V county and maintained a  
181 part-time prosecuting attorney, the county commission may  
182 elect to maintain the prosecuting attorney as a part-time  
183 prosecuting attorney: *Provided*, That prior to the first day of  
184 January, one thousand nine hundred ninety-six, the county  
185 commission shall make a finding, by proper order and entered,  
186 whether to maintain a full-time or part-time prosecuting  
187 attorney. The part-time prosecuting attorney shall be compen-  
188 sated at the same rate of compensation as that of a prosecuting  
189 attorney in the class for the county prior to being classified as  
190 a Class II county.

191 (c)(1) Prior to the primary election in the year one thousand  
192 nine hundred ninety-six, and for the fiscal year beginning on the  
193 first day of July, one thousand nine hundred ninety-six, or for

194 any subsequent fiscal year if the approval, set out in subdivision  
195 (2) of this subsection, is not granted for any fiscal year, and at  
196 least thirty days prior to the meeting to approve the county  
197 budget, the commission shall provide notice to the public of the  
198 date and time of the meeting and that the purpose of the  
199 meeting of the county commission is to decide upon their  
200 budget certification to the Auditor.

201 (2) Upon submission by the county commission to the  
202 auditor of a proposed annual budget which contains anticipated  
203 receipts into the county's general revenue fund, less anticipated  
204 moneys from the unencumbered fund balance, equal to antici-  
205 pated receipts into the county's general revenue fund, less  
206 anticipated moneys from the unencumbered fund balance and  
207 any federal or state special grants, for the fiscal year beginning  
208 the first day of July, one thousand nine hundred ninety-six, plus  
209 such additional amount as is necessary for payment of the  
210 increases in the salaries set out in subdivisions (3) and (6) of  
211 this subsection, and related employment taxes over that paid for  
212 the immediately preceding fiscal year, and upon approval  
213 thereof by the auditor, which approval shall not be granted for  
214 any proposed annual budget containing anticipated receipts  
215 which are unreasonably greater or lesser than that of the  
216 immediately preceding fiscal year for the purpose of determin-  
217 ing the compensation to be paid to the elected county officials  
218 of each county office by class are established and shall be used  
219 by each county commission in determining whether county  
220 revenues are sufficient to pay the compensation mandated  
221 herein for their county officials: *Provided*, That as to any  
222 county having a tribunal in lieu of a county commission, the  
223 county commissioners of the county may be paid less than the  
224 minimum compensation limits of the county commission for  
225 the particular class of the county: *Provided, however*, That  
226 should there be an insufficient projected increase in revenues to  
227 pay the increased compensation and related employment taxes,  
228 then the compensation of that county's elected officials shall  
229 remain at the level in effect at the time certification was sought.

## 230 (3) COUNTY COMMISSIONERS

|     |            |          |
|-----|------------|----------|
| 231 | Class I    | \$28,000 |
| 232 | Class II   | \$27,500 |
| 233 | Class III  | \$27,000 |
| 234 | Class IV   | \$26,500 |
| 235 | Class V    | \$26,000 |
| 236 | Class VI   | \$21,500 |
| 237 | Class VII  | \$21,000 |
| 238 | Class VIII | \$19,000 |
| 239 | Class IX   | \$18,500 |
| 240 | Class X    | \$15,000 |

241 (4) The compensation, set out in subdivision (3) of this  
 242 subsection, shall be paid on and after the first day of January,  
 243 one thousand nine hundred ninety-seven, to each county  
 244 commissioner. Every county commissioner in each county,  
 245 whose term of office commenced prior to or on or after the first  
 246 day of January, one thousand nine hundred ninety-seven, shall  
 247 receive the same annual compensation by virtue of legislative  
 248 findings of extra duties as set forth in section one of this article.

249 (5) For the purpose of determining the compensation to be  
 250 paid to the elected county officials of each county, the compen-  
 251 sations for each county office by class, set out in subdivision (6)  
 252 of this subsection, are established and shall be used by each  
 253 county commission in determining the compensation of each of  
 254 their county officials other than compensation of members of  
 255 the county commission.

## 256 (6) OTHER ELECTED OFFICIALS

| 257 |           | County   | Circuit  | Prosecuting |          |          |
|-----|-----------|----------|----------|-------------|----------|----------|
| 258 | Sheriff   | Clerk    | Clerk    | Assessor    | Attorney |          |
| 259 | Class I   | \$34,000 | \$42,000 | \$42,000    | \$34,000 | \$76,000 |
| 260 | Class II  | \$33,500 | \$41,500 | \$41,500    | \$33,500 | \$74,000 |
| 261 | Class III | \$33,250 | \$40,500 | \$40,500    | \$33,250 | \$72,000 |

|     |            |          |          |          |          |          |
|-----|------------|----------|----------|----------|----------|----------|
| 262 | Class IV   | \$33,000 | \$40,250 | \$40,250 | \$33,000 | \$70,000 |
| 263 | Class V    | \$32,750 | \$40,000 | \$40,000 | \$32,750 | \$68,000 |
| 264 | Class VI   | \$32,500 | \$37,500 | \$37,500 | \$32,500 | \$45,000 |
| 265 | Class VII  | \$32,250 | \$37,000 | \$37,000 | \$32,250 | \$43,000 |
| 266 | Class VIII | \$32,000 | \$36,500 | \$36,500 | \$32,000 | \$41,000 |
| 267 | Class IX   | \$31,750 | \$36,000 | \$36,000 | \$31,750 | \$38,000 |
| 268 | Class X    | \$29,000 | \$32,000 | \$32,000 | \$29,000 | \$35,000 |

269 (7) The compensation, set out in subdivision (6) of this  
 270 subsection, shall be paid on and after the first day of January,  
 271 one thousand nine hundred ninety-seven, to each elected county  
 272 official. Any county clerk, circuit clerk, joint clerk of the  
 273 county commission and circuit court, if any, county assessor or  
 274 sheriff of a Class I through Class V county, inclusive, any  
 275 assessor or any sheriff of a Class VI through Class IX county,  
 276 inclusive, shall devote full-time to his or her public duties to the  
 277 exclusion of any other employment: *Provided*, That any public  
 278 official, whose term of office begins when his or her county's  
 279 classification imposes no restriction on his or her outside  
 280 activities, shall not be restricted on his or her outside activities  
 281 during the remainder of the term for which he or she is elected.

282 (8) In the case of a county that has a joint clerk of the  
 283 county commission and circuit court, the compensation of the  
 284 joint clerk shall be fixed in an amount twenty-five percent  
 285 higher than the compensation would be fixed for the county  
 286 clerk if it had separate offices of county clerk and circuit clerk.

287 (9) Any prosecuting attorney of a Class I through Class V  
 288 county, inclusive, shall devote full-time to his or her public  
 289 duties to the exclusion of any other employment: *Provided*,  
 290 That any county which under the prior provisions of this section  
 291 was classified as a Class II county and elected to maintain a  
 292 part-time prosecutor may continue to maintain a part-time  
 293 prosecutor, until such time as the county commission, on  
 294 request of the part-time prosecutor, approves and makes a  
 295 finding, by proper order entered, that the prosecuting attorney  
 296 shall devote full-time to his or her public duties. The county

297 commission shall then compensate said prosecuting attorney at  
298 the same rate of compensation as that of a prosecuting attorney  
299 in a Class V county: *Provided, however,* That any county  
300 which under the prior provisions of this section was classified  
301 as a Class II county and which did not elect to maintain a  
302 part-time prosecutor shall maintain a full-time prosecuting  
303 attorney and shall compensate said prosecuting attorney at the  
304 same rate of compensation as that of a prosecuting attorney in  
305 a Class V county: *Provided further,* That, until the first day of  
306 January, two thousand one, when a vacancy occurs in the office  
307 of prosecuting attorney prior to the end of a term, the county  
308 commission of a Class IV or Class V county may elect to allow  
309 the position to become part-time for the end of that term, and  
310 thereafter the position of prosecuting attorney shall become  
311 full-time.

312 (d) (1) The increased salaries to be paid to the county  
313 commissioners and the other elected county officials described  
314 in this subsection on and after the first day of July, two  
315 thousand two, are set out in subdivisions (5) and (7) of this  
316 subsection. Every county commissioner and elected county  
317 official in each county, whose term of office commenced prior  
318 to or on or after the first day of July, two thousand two, shall  
319 receive the same annual salary by virtue of legislative findings  
320 of extra duties as set forth in section one of this article.

321 (2) Before the increased salaries, as set out in subdivisions  
322 (5) and (7) of this subsection, are paid to the county commis-  
323 sioners and the elected county officials, the following require-  
324 ments must be met:

325 (A) The Auditor has certified that the proposed annual  
326 county budget for the fiscal year beginning the first day of July,  
327 two thousand two, has increased over the previous fiscal year  
328 in an amount sufficient for the payment of the increase in the  
329 salaries, set out in subdivisions (5) and (7) of this subsection,  
330 and the related employment taxes: *Provided,* That the auditor

331 may not approve the budget certification for any proposed  
 332 annual county budget containing anticipated receipts which are  
 333 unreasonably greater or lesser than that of the previous year.  
 334 For purposes of this subdivision, the term "receipts" does not  
 335 include unencumbered fund balance or federal or state grants;  
 336 and

337 (B) Each county commissioner or other elected official  
 338 described in this subsection in office on the effective date of the  
 339 increased salaries provided by this subsection who desires to  
 340 receive the increased salary has, prior to that date, filed in the  
 341 office of the clerk of the county commission his or her written  
 342 agreement to accept the salary increase. The salary for the  
 343 person who holds the office of county commissioner or other  
 344 elected official described in this subsection who fails to file the  
 345 written agreement as required by this paragraph shall be the  
 346 salary for that office in effect immediately prior to the effective  
 347 date of the increased salaries provided by this subsection until  
 348 the person vacates the office or his or her term of office expires,  
 349 whichever first occurs.

350 (3) If there is an insufficient projected increase in revenues  
 351 to pay the increased salaries and the related employment taxes,  
 352 then the salaries of that county's elected officials and commis-  
 353 sioners shall remain at the level in effect at the time certifica-  
 354 tion was sought.

355 (4) In any county having a tribunal in lieu of a county  
 356 commission, the county commissioners of that county may be  
 357 paid less than the minimum salary limits of the county commis-  
 358 sion for that particular class of the county.

359 (5) COUNTY COMMISSIONERS

|     |           |          |
|-----|-----------|----------|
| 360 | Class I   | \$30,800 |
| 361 | Class II  | \$30,250 |
| 362 | Class III | \$29,700 |



|     |            |          |
|-----|------------|----------|
| 363 | Class IV   | \$29,150 |
| 364 | Class V    | \$28,600 |
| 365 | Class VI   | \$23,650 |
| 366 | Class VII  | \$23,100 |
| 367 | Class VIII | \$20,900 |
| 368 | Class IX   | \$20,350 |
| 369 | Class X    | \$16,500 |

370 (6) For the purpose of determining the salaries to be paid to  
 371 the elected county officials of each county, the salaries for each  
 372 county office by class, set out in subdivision (7) of this subsec-  
 373 tion, are established and shall be used by each county commis-  
 374 sion in determining the salaries of each of their county officials  
 375 other than salaries of members of the county commission.

376 (7) OTHER ELECTED OFFICIALS

| 377 |            | County   | Circuit  | Prosecuting |          |          |
|-----|------------|----------|----------|-------------|----------|----------|
| 378 |            | Sheriff  | Clerk    | Assessor    | Attorney |          |
| 379 | Class I    | \$37,400 | \$46,200 | \$46,200    | \$37,400 | \$83,600 |
| 380 | Class II   | \$36,850 | \$45,650 | \$45,650    | \$36,850 | \$81,400 |
| 381 | Class III  | \$36,575 | \$44,550 | \$44,550    | \$36,575 | \$79,200 |
| 382 | Class IV   | \$36,300 | \$44,295 | \$44,295    | \$36,300 | \$77,000 |
| 383 | Class V    | \$36,025 | \$44,000 | \$44,000    | \$36,025 | \$74,800 |
| 384 | Class VI   | \$35,750 | \$41,250 | \$41,250    | \$35,750 | \$49,500 |
| 385 | Class VII  | \$35,475 | \$40,700 | \$40,700    | \$35,475 | \$47,300 |
| 386 | Class VIII | \$35,200 | \$40,150 | \$40,150    | \$35,200 | \$45,100 |
| 387 | Class IX   | \$34,925 | \$39,600 | \$39,600    | \$34,925 | \$41,800 |
| 388 | Class X    | \$31,900 | \$35,200 | \$35,200    | \$31,900 | \$38,500 |

389 (8) Any county clerk, circuit clerk, joint clerk of the county  
 390 commission and circuit court, if any, county assessor or sheriff  
 391 of a Class I through Class V county, inclusive, any assessor or  
 392 any sheriff of a Class VI through Class IX county, inclusive,  
 393 shall devote full-time to his or her public duties to the exclusion  
 394 of any other employment: *Provided*, That any public official,  
 395 whose term of office begins when his or her county's classifica-  
 396 tion imposes no restriction on his or her outside activities, may

397 not be restricted on his or her outside activities during the  
398 remainder of the term for which he or she is elected.

399 (9) In the case of a county that has a joint clerk of the  
400 county commission and circuit court, the salary of the joint  
401 clerk shall be fixed in an amount twenty-five percent higher  
402 than the salary would be fixed for the county clerk if it had  
403 separate offices of county clerk and circuit clerk.

404 (10) Any prosecuting attorney of a Class I through Class V  
405 county, inclusive, shall devote full-time to his or her public  
406 duties to the exclusion of any other employment: *Provided,*  
407 That any county which under the prior provisions of this section  
408 was classified as a Class II county and elected to maintain a  
409 part-time prosecutor may continue to maintain a part-time  
410 prosecutor, until such time as the county commission, on  
411 request of the part-time prosecutor, approves and makes a  
412 finding, by proper order entered, that the prosecuting attorney  
413 shall devote full-time to his or her public duties. The county  
414 commission shall then compensate said prosecutor at the same  
415 salary as that of a prosecuting attorney in a Class V county:  
416 *Provided, however,* That any county which under the prior  
417 provisions of this section was classified as a Class II county and  
418 which did not elect to maintain a part-time prosecutor shall  
419 maintain a full-time prosecuting attorney and shall compensate  
420 said prosecuting attorney at the same salary as that of a  
421 prosecuting attorney in a Class V county: *Provided further,*  
422 That, until the first day of January, two thousand three, when a  
423 vacancy occurs in the office of prosecuting attorney prior to the  
424 end of a term, the county commission of a Class IV or Class V  
425 county may elect to allow the position to become part-time for  
426 the end of that term and thereafter the position of prosecuting  
427 attorney shall become full-time. *And provided further,* That a  
428 prosecuting attorney for a Class VI county which subsequently  
429 becomes a Class V county on or before the first day of July, two  
430 thousand ten, may continue as a part-time attorney, and

431 continue to be compensated at the Class VI county level, until  
432 such time as determined by the prosecuting attorney and the  
433 county commission that a full-time prosecuting attorney is  
434 needed.

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## CHAPTER 46

(Com. Sub. for H. B. 4431 — By Mr. Speaker, Mr. Kiss,  
and Delegate Staton)

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[Passed March 11, 2006; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §59-1-10 of the Code of West Virginia, 1931, as amended, relating to allowing the clerk of the county commission to set reasonable fees charged for electronic or other medium versions of documents received or duplicated.

*Be it enacted by the Legislature of West Virginia:*

That §59-1-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 1. FEES AND ALLOWANCES.**

#### **§59-1-10. Fees to be charged by clerk of county commission.**

1 For the purpose of this section, the word “page” is defined  
2 as being a paper or electronic writing of not more than legal  
3 size, 8 ½” x 14”.

4 The clerk of the county commission shall charge and collect  
5 the following fees:

6 (a) When a writing is admitted to record, for receiving  
7 proof of acknowledgment thereof, entering an order in connec-  
8 tion therewith, endorsing clerk’s certificate of recordation  
9 thereon and indexing in a proper index, where the writing is a:

10 (1) Deed of conveyance (with or without a  
11 plat), trust deed, fixture filing or security  
12 agreement concerning real estate lease . . . . . \$10.00

13 (2) Financing, continuation, termination or  
14 other statement or writing permitted to be filed  
15 under chapter forty-six of this code . . . . . \$10.00

16 (3) Plat or map (with no deed of conveyance) . . . \$10.00

17 (4) Service discharge record . . . . . No Charge

18 (5) Any document or writing other than those  
19 referenced in subdivisions (1), (2), (3) and (4)  
20 of this subsection . . . . . \$5.00

21 (6) If any document or writing contains more  
22 than five pages, for each additional page . . . . . \$1.00

23 For any of the documents admitted to record pursuant to this  
24 subsection, if the clerk of the county commission has the  
25 technology available to receive these documents in electronic  
26 form or other media, the clerk shall set a reasonable fee to  
27 record these writings not to exceed the cost for filing paper  
28 documents.

29 (b) For administering any oath other than  
30 oaths by officers and employees of the state,  
31 political subdivisions of the state, or a public  
32 or quasi-public entity of the state or a political  
33 subdivision of the state, taken in his or her  
34 official capacity . . . . . \$5.00

35 (c) For issuance of marriage license and  
 36 other duties pertaining to the marriage license  
 37 (including preparation of the application,  
 38 administrating the oath, registering and recording  
 39 the license, mailing acknowledgment of minister's  
 40 return to one of the licensees and notification to  
 41 a licensee after sixty days of the nonreceipt of  
 42 the minister's return) . . . . . \$35.00

43 (1) One dollar of the marriage license fee received pursuant  
 44 to this subsection shall be paid by the county clerk into the State  
 45 Treasury as a state registration fee in the same manner that  
 46 license taxes are paid into the Treasury under article twelve,  
 47 chapter eleven of this code;

48 (2) Fifteen dollars of the marriage license fee received  
 49 pursuant to this subsection shall be paid by the county clerk into  
 50 the State Treasury for the family protection shelter support act  
 51 in the same manner that license taxes are paid into the Treasury  
 52 under article twelve, chapter eleven of this code;

53 (3) Ten dollars of the marriage license fee received  
 54 pursuant to this subsection shall be deposited in the courthouse  
 55 facilities improvement fund created by section six, article  
 56 twenty-six, chapter twenty-nine of this code.

57 (d) (1) For a copy of any writing or document, if it is not  
 58 otherwise provided for . . . . . \$1.50

59 (2) If the copy of the writing or document contains more  
 60 than two pages, for each additional page . . . . . \$1.00

61 (3) For annexing the seal of the commission  
 62 or clerk to any paper . . . . . \$1.00

63 (4) For a certified copy of a birth certificate,  
 64 death certificate or marriage license . . . . . \$5.00

65 (e) For copies of any record in electronic form or a medium  
66 other than paper, a reasonable fee set by the clerk of the county  
67 commission not to exceed the costs associated with document  
68 search and duplication.

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## CHAPTER 47

**(H. B. 4075 — By Delegates Michael, Doyle, Kominar, Cann,  
H. White, Proudfoot, Stalnaker, Hall, Ashley,  
Carmichael and G. White)**

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[Passed March 9, 2006; in effect from passage.]  
[Approved by the Governor on March 31, 2006.]

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AN ACT to amend and reenact §59-1-28a of the Code of West Virginia, 1931, as amended, relating to the dedication of moneys to the Regional Jail Operations Partial Reimbursement Fund.

*Be it enacted by the Legislature of West Virginia:*

That §59-1-28a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 1. FEES AND ALLOWANCES.**

#### **§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.**

1 (a) Except for those payments to be made from amounts  
2 equaling filing fees received for the institution of divorce  
3 actions as prescribed in subsection (b) of this section, and  
4 except for those payments to be made from amounts equaling  
5 filing fees received for the institution of actions for divorce,  
6 separate maintenance and annulment as prescribed in said

7 subsection, for each civil action instituted under the rules of  
8 civil procedure, any statutory summary proceeding, any  
9 extraordinary remedy, the docketing of civil appeals or any  
10 other action, cause, suit or proceeding in the circuit court the  
11 clerk of the court shall, at the end of each month, pay into the  
12 funds or accounts described in this subsection an amount equal  
13 to the amount set forth in this subsection of every filing fee  
14 received for instituting the action as follows:

15 (1) Into the Regional Jail and Correctional Facility Author-  
16 ity Fund in the State Treasury established pursuant to the  
17 provisions of section ten, article twenty, chapter thirty-one of  
18 this code the amount of sixty dollars;

19 (2) Into the Court Security Fund in the State Treasury  
20 established pursuant to the provisions of section fourteen,  
21 article three, chapter fifty-one of this code the amount of five  
22 dollars; and

23 (3) Into the Regional Jail Operations Partial Reimbursement  
24 Fund established pursuant to the provisions of section ten-b,  
25 article twenty, chapter thirty-one of this code the amount of  
26 twenty dollars.

27 (b) For each action for divorce, separate maintenance or  
28 annulment instituted in the circuit court, the clerk of the court  
29 shall, at the end of each month, report to the Supreme Court of  
30 Appeals the number of actions filed by persons unable to pay  
31 and pay into the funds or accounts in this subsection an amount  
32 equal to the amount set forth in this subsection of every filing  
33 fee received for instituting the divorce action as follows:

34 (1) Into the Regional Jail and Correctional Facility Author-  
35 ity Fund in the State Treasury established pursuant to the  
36 provisions of section ten, article twenty, chapter thirty-one of  
37 this code the amount of ten dollars;

38       (2) Into the special revenue account of the State Treasury,  
39 established pursuant to section six hundred four, article two,  
40 chapter forty-eight of this code an amount of thirty dollars;

41       (3) Into the Family Court Fund established under section  
42 twenty-two, article two-a, chapter fifty-one of this code an  
43 amount of seventy dollars; and

44       (4) Into the Court Security Fund in the State Treasury,  
45 established pursuant to the provisions of section fourteen,  
46 article three, chapter fifty-one of this code the amount of five  
47 dollars.

48       (c) Notwithstanding any provision of subsection (a) or (b)  
49 of this section to the contrary, the clerk of the court shall, at the  
50 end of each month, pay into the Family Court Fund established  
51 under section twenty-two, article two-a, chapter fifty-one of this  
52 code an amount equal to the amount of every fee received for  
53 petitioning for the modification of an order involving child  
54 custody, child visitation, child support or spousal support as  
55 determined by subdivision (3), subsection (a), section eleven of  
56 this article and for petitioning for an expedited modification of  
57 a child support order as provided in subdivision (4) of said  
58 subsection.

59       (d) The clerk of the court from which a protective order is  
60 issued shall, at the end of each month, pay into the Family  
61 Court Fund established under section twenty-two, article two-a,  
62 chapter fifty-one of this code an amount equal to every fee  
63 received pursuant to the provisions of section five hundred  
64 eight, article twenty-seven, chapter forty-eight of this code.

65       (e) Of every fee for service received in any criminal case  
66 against any respondent convicted in circuit court, the clerk of  
67 each circuit court shall, at the end of each month, pay into the  
68 Regional Jail and Correctional Facility Authority Fund in the  
69 State Treasury an amount equal to forty dollars, into the Court  
70 Security Fund in the State Treasury established pursuant to the



71 provisions of section fourteen, article three, chapter fifty-one of  
72 this code an amount equal to five dollars and into the Regional  
73 Jail Operations Partial Reimbursement Fund established  
74 pursuant to the provisions of section ten-b, article twenty,  
75 chapter thirty-one of this code an amount equal to thirty dollars.

76 (f) The clerk of the circuit court shall, at the end of each  
77 month, pay into the Medical Liability Fund established under  
78 article twelve-b, chapter twenty-nine of this code, an amount  
79 equal to one hundred sixty-five dollars of every filing fee  
80 received for instituting a medical professional liability action.

81 (g) The clerk of the circuit court shall, at the end of each  
82 month, pay into the Courthouse Facilities Improvement Fund  
83 created by section six, article twenty-six, chapter twenty-nine  
84 of this code, those amounts received by the clerk which are  
85 dedicated for deposit in the fund.

86 (h) The clerk of each circuit court shall, at the end of each  
87 month, pay into the Regional Jail Operations Partial Reimburse-  
88 ment Fund established in the State Treasury pursuant to the  
89 provisions of section ten-b, article twenty, chapter thirty-one of  
90 this code, those amounts received by the clerk which are  
91 dedicated for deposit in the fund.

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## CHAPTER 48

**(Com. Sub. for H. B. 2235 — By Delegates H. White, Kominar,  
Frederick, Stalnaker, Cann, Browning and G. White)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to amend and reenact §50-1-8, §50-1-9 and §50-1-9a of the  
Code of West Virginia, 1931, as amended, all relating to employ-

ees of magistrate courts generally; increasing salaries for magistrate court clerks, magistrate assistants and magistrate court deputy clerks; and increasing the maximum number of magistrate court deputy clerks that may be appointed.

*Be it enacted by the Legislature of West Virginia:*

That §50-1-8, §50-1-9 and §50-1-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 1. COURTS AND OFFICERS.**

§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.

§50-1-9. Magistrate assistants; salary; duties.

§50-1-9a. Magistrate court deputy clerks; duties; salary.

**§50-1-8. Magistrate court clerks; salaries; duties; duties of circuit clerk.**

1           (a) In each county having three or more magistrates the  
2 judge of the circuit court or the chief judge of the circuit court,  
3 if there is more than one judge of the circuit court, shall appoint  
4 a magistrate court clerk. In all other counties the judge may  
5 appoint a magistrate court clerk or may by rule require the  
6 duties of the magistrate court clerk to be performed by the clerk  
7 of the circuit court, in which event the circuit court clerk is  
8 entitled to additional compensation in the amount of two  
9 thousand five hundred dollars per year. The magistrate court  
10 clerk serves at the will and pleasure of the circuit judge.

11           (b) Magistrate court clerks shall be paid a monthly salary  
12 by the State. Magistrate court clerks serving magistrates who  
13 serve less than eight thousand four hundred in population shall  
14 be paid up to twenty-six thousand four hundred thirty-six  
15 dollars per year and magistrate court clerks serving magistrates  
16 who serve eight thousand four hundred or more in population  
17 shall be paid up to thirty-one thousand three hundred forty-four

18 dollars per year: *Provided*, That on and after the first day of  
19 July, two thousand six, magistrate court clerks serving magis-  
20 trates who serve less than eight thousand four hundred in  
21 population shall be paid up to thirty-one thousand four hundred  
22 thirty-six dollars per year and magistrate court clerks serving  
23 magistrates who serve eight thousand four hundred or more in  
24 population shall be paid up to thirty-six thousand three hundred  
25 forty-four dollars per year: *Provided, however*, That on and  
26 after the first day of July, two thousand seven, magistrate court  
27 clerks serving magistrates who serve less than eight thousand  
28 four hundred in population shall be paid up to thirty-six  
29 thousand four hundred thirty-six dollars per year and magistrate  
30 court clerks serving magistrates who serve eight thousand four  
31 hundred or more in population shall be paid up to forty-one  
32 thousand three hundred forty-four dollars per year: *Provided*  
33 *further*, That after the effective date of this section, any general  
34 salary increase granted to all state employees, whose salaries  
35 are not set by statute, expressed as a percentage increase or an  
36 “across-the-board” increase, may also be granted to magistrate  
37 court clerks. For the purpose of determining the population  
38 served by each magistrate, the number of magistrates autho-  
39 rized for each county shall be divided into the population of  
40 each county. The salary of the magistrate court clerk shall be  
41 established by the judge of the circuit court, or the chief judge  
42 of the circuit court if there is more than one judge of the circuit  
43 court, within the limits set forth in this section.

44 (c) In addition to other duties that may be imposed by the  
45 provisions of this chapter or by the rules of the Supreme Court  
46 of Appeals or the judge of the circuit court or the chief judge of  
47 the circuit court if there is more than one judge of the circuit  
48 court, it is the duty of the magistrate court clerk to establish and  
49 maintain appropriate dockets and records in a centralized  
50 system for the magistrate court, to assist in the preparation of  
51 the reports required of the court and to carry out on behalf of  
52 the magistrates or chief magistrate if a chief magistrate is  
53 appointed, the administrative duties of the court.

54 (d) The magistrate court clerk, or if there is no magistrate  
55 court clerk in the county, the clerk of the circuit court, may  
56 issue all manner of civil process and require the enforcement of  
57 subpoenas and subpoenas duces tecum in magistrate court.

**§50-1-9. Magistrate assistants; salary; duties.**

1 (a) In each county there shall be one magistrate assistant for  
2 each magistrate. Each magistrate assistant shall be appointed by  
3 the magistrate under whose authority and supervision and at  
4 whose will and pleasure he or she shall serve. The assistant  
5 shall not be a member of the immediate family of any magis-  
6 trate and shall not have been convicted of a felony or any  
7 misdemeanor involving moral turpitude and shall reside in the  
8 State of West Virginia. For the purpose of this section,  
9 “immediate family” means the relationships of mother, father,  
10 sister, brother, child or spouse.

11 (b) A magistrate assistant shall have the duties, clerical or  
12 otherwise, assigned by the magistrate and prescribed by the  
13 rules of the Supreme Court of Appeals or the judge of the  
14 circuit court or the chief judge of the circuit court if there is  
15 more than one judge of the circuit court. In addition to these  
16 duties, magistrate assistants shall perform and are accountable  
17 to the magistrate court clerks with respect to the following  
18 duties:

19 (1) The preparation of summons in civil actions;

20 (2) The assignment of civil actions to the various magis-  
21 trates;

22 (3) The collection of all costs, fees, fines, forfeitures and  
23 penalties which are payable to the court;

24 (4) The submission of moneys, along with an accounting of  
25 the moneys, to appropriate authorities as provided by law;

26       (5) The daily disposition of closed files which are to be  
27 located in the magistrate clerk's office;

28       (6) All duties related to the gathering of information and  
29 documents necessary for the preparation of administrative  
30 reports and documents required by the rules of the Supreme  
31 Court of Appeals or the judge of the circuit court or the chief  
32 judge of the circuit court if there is more than one judge of the  
33 circuit court;

34       (7) All duties relating to the notification, certification and  
35 payment of jurors serving pursuant to the terms of this chapter;

36       (8) All other duties or responsibilities whereby the magis-  
37 trate assistant is accountable to the magistrate court clerk as  
38 determined by the magistrate.

39       (c) Magistrate assistants shall be paid a monthly salary by  
40 the State. Magistrate assistants serving magistrates who serve  
41 less than eight thousand four hundred in population shall be  
42 paid up to twenty-three thousand one hundred forty-eight  
43 dollars per year and magistrate assistants serving magistrates  
44 who serve eight thousand four hundred or more in population  
45 shall be paid up to twenty-six thousand two hundred forty-four  
46 dollars per year: *Provided*, That on and after the first day of  
47 July, two thousand six, magistrate assistants serving magistrates  
48 who serve less than eight thousand four hundred in population  
49 shall be paid up to twenty-eight thousand one hundred forty-  
50 eight dollars per year and magistrate assistants serving magis-  
51 trates who serve eight thousand four hundred or more in  
52 population shall be paid up to thirty-one thousand two hundred  
53 forty-four dollars per year: *Provided, however*, That on and  
54 after the first day of July, two thousand seven, magistrate  
55 assistants serving magistrates who serve less than eight  
56 thousand four hundred in population shall be paid up to thirty-  
57 three thousand one hundred forty-eight dollars per year and  
58 magistrate assistants serving magistrates who serve eight

59 thousand four hundred or more in population shall be paid up  
60 to thirty-six thousand two hundred forty-four dollars per year:  
61 *Provided further*, That after the effective date of this section,  
62 any general salary increase granted to all state employees,  
63 whose salaries are not set by statute, expressed as a percentage  
64 increase or an “across-the-board” increase, may also be granted  
65 to magistrate assistants. For the purpose of determining the  
66 population served by each magistrate, the number of magis-  
67 trates authorized for each county shall be divided into the  
68 population of each county. The salary of the magistrate assistant  
69 shall be established by the magistrate within the limits set forth  
70 in this section.

**\*§50-1-9a. Magistrate court deputy clerks; duties; salary.**

1 (a) Whenever required by workload and upon the recom-  
2 mendation of the judge of the circuit court, or the chief judge of  
3 the circuit court if there is more than one judge of the circuit  
4 court, the Supreme Court of Appeals may, by rule, provide for  
5 the appointment of magistrate court deputy clerks, not to exceed  
6 seventy-two in number. The magistrate court deputy clerks  
7 shall be appointed by the judge of the circuit court, or the chief  
8 judge if there is more than one judge of the circuit court, to  
9 serve at his or her will and pleasure under the immediate  
10 supervision of the magistrate court clerk.

11 (b) Magistrate court deputy clerks shall have the duties,  
12 clerical or otherwise, as may be assigned by the magistrate  
13 court clerk and as may be prescribed by the rules of the  
14 Supreme Court of Appeals or the judge of the circuit court or  
15 the chief judge if there is more than one judge of the circuit  
16 court. Magistrate court deputy clerks may also exercise the  
17 power and perform the duties of the magistrate court clerk as  
18 may be delegated or assigned by the magistrate court clerk.

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\* **CLERK’S NOTE:** This section was also amended by H. B. 2016 (Chapter 49), which passed prior to this act.

19 (c) A magistrate court deputy clerk may not be an immedi-  
20 ate family member of any magistrate, magistrate court clerk,  
21 magistrate assistant or judge of the circuit court within the same  
22 county, may not have been convicted of a felony or any  
23 misdemeanor involving moral turpitude and must reside in this  
24 state. For purposes of this subsection, “immediate family  
25 member” means a mother, father, sister, brother, child or  
26 spouse.

27 (d) Magistrate court deputy clerks shall be paid an annual  
28 salary by the state on the same basis and in the same amounts  
29 established for magistrate assistants in each county, as provided  
30 in section nine of this article.

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## CHAPTER 49

**(H. B. 2016 — By Delegates Stalnaker, Williams, Varner,  
Beane, Ennis, Campbell and Michael)**

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[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to amend and reenact §50-1-9a of the Code of West Virginia, 1931, as amended, relating to the administration of magistrate courts generally; increasing the maximum number of magistrate court deputy clerks that may be appointed from sixty-two to seventy-two; and providing that magistrate court deputy clerks be paid on an annual basis.

*Be it enacted by the Legislature of West Virginia:*

That §50-1-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. COURTS AND OFFICERS.****\*§50-1-9a. Magistrate court deputy clerks; duties; salary.**

1 (a) Whenever required by workload and upon the recom-  
2 mendation of the judge of the circuit court, or the chief judge of  
3 the circuit court if there is more than one judge of the circuit  
4 court, the Supreme Court of Appeals may, by rule, provide for  
5 the appointment of magistrate court deputy clerks, not to exceed  
6 seventy-two in number. The magistrate court deputy clerks  
7 shall be appointed by the judge of the circuit court, or the chief  
8 judge if there is more than one judge of the circuit court, to  
9 serve at his or her will and pleasure under the immediate  
10 supervision of the magistrate court clerk.

11 (b) Magistrate court deputy clerks shall have the duties,  
12 clerical or otherwise, as may be assigned by the magistrate  
13 court clerk and as may be prescribed by the rules of the  
14 Supreme Court of Appeals or the judge of the circuit court or  
15 the chief judge if there is more than one judge of the circuit  
16 court. Magistrate court deputy clerks may also exercise the  
17 power and perform the duties of the magistrate court clerk as  
18 may be delegated or assigned by the magistrate court clerk.

19 (c) A magistrate court deputy clerk may not be an immedi-  
20 ate family member of any magistrate, magistrate court clerk,  
21 magistrate assistant or judge of the circuit court within the same  
22 county, may not have been convicted of a felony or any  
23 misdemeanor involving moral turpitude and must reside in this  
24 State. For purposes of this subsection, “immediate family  
25 member” means a mother, father, sister, brother, child or  
26 spouse.

27 (d) Magistrate court deputy clerks shall be paid an annual  
28 salary by the State on the same basis and in the same amounts

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\* **CLERK’S NOTE:** This section was also amended by H. B. 2235 (Chapter 48), which passed subsequent to this act.



29 established for magistrate assistants in each county, as provided  
30 in section nine of this article.

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## CHAPTER 50

(Com. Sub. for H. B. 2146 — By Delegate Stemple)

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[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2006.]

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AN ACT to amend and reenact §50-1-13 of the Code of West Virginia, 1931, as amended, relating to payment to magistrates who serve temporarily in another county.

*Be it enacted by the Legislature of West Virginia:*

That §50-1-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 1. COURTS AND OFFICERS.

#### §50-1-13. Temporary service within or outside of county.

1 (a) The Chief Justice of the Supreme Court of Appeals or  
2 judge of the circuit court of the county in which a magistrate is  
3 elected, or the chief judge thereof if there is more than one  
4 judge of the circuit court, may order a magistrate to serve  
5 temporarily at locations within the county other than at the  
6 regular office or offices of the magistrate.

7 (b) The Chief Justice of the Supreme Court of Appeals or  
8 judge of the circuit court of the county in which a magistrate is  
9 elected, or the chief judge thereof if there is more than one  
10 judge of the circuit court, may by order direct a magistrate to

11 serve temporarily in any other county within the judicial circuit  
12 for such purposes as the judge may direct. The magistrate's  
13 authority, to the extent ordered by the judge, shall be equal to  
14 the jurisdiction and authority of a magistrate elected in the  
15 county to which the magistrate is ordered to serve. The tempo-  
16 rary assignment may not exceed sixty days in length in any  
17 given calendar year, except with the consent of the transferred  
18 magistrate.

19 (c) A magistrate who is temporarily assigned to a county  
20 with a higher salary schedule for magistrates than the salary  
21 schedule in the county from which the magistrate was elected,  
22 shall be reimbursed for the difference of the salary in the  
23 assigned county and the lower salary which the magistrate  
24 received in the county of election, prorated for the number of  
25 days of the temporary assignment. An assigned magistrate may  
26 not be reimbursed on a pro rata basis for less than the salary  
27 received in the county of that magistrate's election.

28 (d) A magistrate shall be reimbursed for reasonable  
29 expenses incurred in service outside of the county, as provided  
30 by rule of the Supreme Court of Appeals.

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## CHAPTER 51

**(S. B. 480 — By Senators Kessler, Dempsey, Fanning, Foster, Hunter,  
Jenkins, Minard, Oliverio, White, Caruth, Deem, Lanham and Weeks)**

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[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §50-3-2 of the Code of West Virginia,  
1931, as amended, relating to increasing the amount of time to  
pay costs of criminal proceedings.

*Be it enacted by the Legislature of West Virginia:*

That §50-3-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. COSTS, FINES AND RECORDS.**

**§50-3-2. Costs in criminal proceedings.**

1           (a) In each criminal case before a magistrate court in which  
2 the defendant is convicted, whether by plea or at trial, there is  
3 imposed, in addition to other costs, fines, forfeitures or penal-  
4 ties as may be allowed by law: (1) Costs in the amount of sixty  
5 dollars, of which five dollars of that amount shall be deposited  
6 in the Courthouse Facilities Improvement Fund created by  
7 section six, article twenty-six, chapter twenty-nine of this code;  
8 (2) an amount equal to the one-day per diem provided for in  
9 subsection (h), section ten, article twenty, chapter thirty-one of  
10 this code; and (3) costs in the amount of thirty dollars to be  
11 deposited in the Regional Jail Operations Partial Reimburse-  
12 ment Fund created by section ten-b of said article. A magistrate  
13 may not collect costs in advance. Notwithstanding any other  
14 provision of this code, a person liable for fines and court costs  
15 in a criminal proceeding in which the defendant is confined in  
16 a jail or prison and not participating in a work release program  
17 shall not be held liable for the fines and court costs until one  
18 hundred eighty days after completion of the term in jail or  
19 prison. A magistrate court shall deposit five dollars from each  
20 of the criminal proceedings fees collected pursuant to this  
21 section in the Court Security Fund created in section fourteen,  
22 article three, chapter fifty-one of this code. A magistrate court  
23 shall, on or before the tenth day of the month following the  
24 month in which the fees imposed in this section were collected,  
25 remit an amount equal to the one-day per diem provided for in  
26 subsection (h), section ten, article twenty, chapter thirty-one of  
27 this code from each of the criminal proceedings in which the  
28 fees specified in this section were collected to the magistrate

29 court clerk, or if there is no magistrate court clerk to the clerk  
30 of the circuit, together with information as may be required by  
31 the rules of the Supreme Court of Appeals and the rules of the  
32 Office of Chief Inspector. These moneys are paid to the sheriff  
33 who shall distribute the moneys solely in accordance with the  
34 provisions of section fifteen, article five, chapter seven of this  
35 code. Amendments made to this section during the regular  
36 session of the Legislature, two thousand one, are effective after  
37 the thirtieth day of June, two thousand one.

38 (b) A magistrate shall assess costs in the amount of two  
39 dollars and fifty cents for issuing a sheep warrant and the  
40 appointment and swearing appraisers and docketing the  
41 proceedings.

42 (c) In each criminal case which must be tried by the circuit  
43 court but in which a magistrate renders some service, costs in  
44 the amount of ten dollars shall be imposed by the magistrate  
45 court and is certified to the clerk of the circuit court in accor-  
46 dance with the provisions of section six, article five, chapter  
47 sixty-two of this code.

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## CHAPTER 52

**(Com. Sub. for S. B. 11 — By Senators Yoder and Barnes)**

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[Passed March 11, 2006; in effect July 1, 2006.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to amend and reenact §51-2-1 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §51-3-18, all relating generally to the appointment of judges and magistrates to fill vacancies; providing

for an additional circuit court judge to be appointed to the twenty-third judicial circuit; and providing for the expeditious filling of judicial vacancies by limiting the time during which a challenge to an appointment may be instituted.

*Be it enacted by the Legislature of West Virginia:*

That §51-2-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §51-3-18, all to read as follows:

**Article**

2. **Circuit Courts; Circuit Judges.**
3. **Courts in General.**

**ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.**

**§51-2-1. Judicial circuits; terms of office; legislative findings and declarations; elections; terms of court.**

- 1 (a) The state shall be divided into the following judicial
- 2 circuits with the following number of judges:

- 3 The counties of Brooke, Hancock and Ohio shall constitute
- 4 the first circuit and shall have four judges; the counties of
- 5 Marshall, Tyler and Wetzel shall constitute the second circuit
- 6 and shall have two judges; the counties of Doddridge, Pleasants
- 7 and Ritchie shall constitute the third circuit and shall have one
- 8 judge; the counties of Wood and Wirt shall constitute the fourth
- 9 circuit and shall have three judges; the counties of Calhoun,
- 10 Jackson, Mason and Roane shall constitute the fifth circuit and
- 11 shall have two judges; the county of Cabell shall constitute the
- 12 sixth circuit and shall have four judges; the county of Logan
- 13 shall constitute the seventh circuit and shall have two judges;
- 14 the county of McDowell shall constitute the eighth circuit and
- 15 shall have two judges; the county of Mercer shall constitute the
- 16 ninth circuit and shall have two judges; the county of Raleigh
- 17 shall constitute the tenth circuit and shall have three judges; the

18 counties of Greenbrier and Pocahontas shall constitute the  
19 eleventh circuit and shall have two judges; the county of  
20 Fayette shall constitute the twelfth circuit and shall have two  
21 judges; the county of Kanawha shall constitute the thirteenth  
22 circuit and shall have seven judges; the counties of Braxton,  
23 Clay, Gilmer and Webster shall constitute the fourteenth circuit  
24 and shall have two judges; the county of Harrison shall  
25 constitute the fifteenth circuit and shall have three judges; the  
26 county of Marion shall constitute the sixteenth circuit and shall  
27 have two judges; the county of Monongalia shall constitute the  
28 seventeenth circuit and shall have two judges; the county of  
29 Preston shall constitute the eighteenth circuit and shall have one  
30 judge; the counties of Barbour and Taylor shall constitute the  
31 nineteenth circuit and shall have one judge; the county of  
32 Randolph shall constitute the twentieth circuit and shall have  
33 one judge; the counties of Grant, Mineral and Tucker shall  
34 constitute the twenty-first circuit and shall have two judges; the  
35 counties of Hampshire, Hardy and Pendleton shall constitute  
36 the twenty-second circuit and shall have one judge; the counties  
37 of Berkeley, Jefferson and Morgan shall constitute the twenty-  
38 third circuit and shall have four judges: *Provided*, That effective  
39 the first day of August, two thousand six, said circuit shall have  
40 five judges; the county of Wayne shall constitute the twenty-  
41 fourth circuit and shall have one judge; the counties of Lincoln  
42 and Boone shall constitute the twenty-fifth circuit and shall  
43 have two judges; the counties of Lewis and Upshur shall  
44 constitute the twenty-sixth circuit and shall have one judge; the  
45 county of Wyoming shall constitute the twenty-seventh circuit  
46 and shall have one judge; the county of Nicholas shall consti-  
47 tute the twenty-eighth circuit and shall have one judge; the  
48 county of Putnam shall constitute the twenty-ninth circuit and  
49 shall have two judges; the county of Mingo shall constitute the  
50 thirtieth circuit and shall have one judge; and the counties of  
51 Monroe and Summers shall constitute the thirty-first circuit and  
52 shall have one judge: *Provided, however*, That the Kanawha  
53 County circuit court shall be a court of concurrent jurisdiction

54 with each single judge circuit where the sitting judge in such  
55 single judge circuit is unavailable by reason of sickness,  
56 vacation or other reason.

57 (b) Any judge in office on the effective date of the  
58 reenactment of this section shall continue as a judge of the  
59 circuit as constituted under prior enactments of this section,  
60 unless sooner removed or retired as provided by law, until the  
61 thirty-first day of December, two thousand.

62 (c) The term of office of all circuit court judges shall be for  
63 eight years. The term of office for all circuit court judges  
64 elected during the general election conducted in the year two  
65 thousand shall commence on the first day of January, two  
66 thousand one, and end on the thirty-first day of December, two  
67 thousand eight.

68 (d) Beginning with the primary and general elections to be  
69 conducted in the year one thousand nine hundred ninety-two, in  
70 all judicial circuits having two or more judges there shall be, for  
71 election purposes, numbered divisions corresponding to the  
72 number of circuit judges in each circuit. Each judge shall be  
73 elected at large from the entire circuit. In each numbered  
74 division of a judicial circuit, the candidates for nomination or  
75 election shall be voted upon and the votes cast for the candi-  
76 dates in each division shall be tallied separately from the votes  
77 cast for candidates in other numbered divisions within the  
78 circuit. The candidate receiving the highest number of the votes  
79 cast within a numbered division shall be nominated or elected,  
80 as the case may be: *Provided*, That beginning with the primary  
81 and general elections to be conducted in the year two thousand,  
82 judges serving a judicial circuit comprised of four or more  
83 counties with two or more judges shall not be residents of the  
84 same county.

85 (e) The Supreme Court of Appeals shall, by rule, establish  
86 the terms of court of circuit judges.

**ARTICLE 3. COURTS IN GENERAL.****§51-3-18. Expeditious filling of judicial vacancies.**

1           (a) The Legislature finds that when judicial offices created  
2 under the constitution and laws of the state are vacant for  
3 extended periods of time, the proper functioning of the judicial  
4 branch of the government is impeded. The Legislature further  
5 finds that when a vacancy in a judicial office is to be filled by  
6 appointment, it is in the public interest that any questions  
7 regarding the qualifications or eligibility of the person nomi-  
8 nated or appointed to fill the vacancy be determined expedi-  
9 tiously.

10          (b) When, pursuant to the provisions of section seven,  
11 article VIII of the Constitution of West Virginia, the Governor  
12 appoints a person to fill a vacancy in the office of Justice of the  
13 Supreme Court of Appeals or in the office of judge of the  
14 circuit court, no suit or action challenging the qualifications or  
15 eligibility of the person so appointed, if it be based upon any  
16 fact or circumstance in existence at the time of the appointment,  
17 will be cognizable in any court of this state unless it be brought  
18 within twenty days after the appointment by the Governor.

19          (c) When, pursuant to the provisions of section ten, article  
20 VIII of the Constitution of West Virginia and the general laws  
21 adopted thereunder, a person is appointed to fill a vacancy in  
22 the office of magistrate, no suit or action challenging the  
23 qualifications or eligibility of the person so appointed, if it be  
24 based upon any fact or circumstance in existence at the time of  
25 the appointment, will be cognizable in any court of this state  
26 unless it be brought within twenty days after the appointment.

27          (d) When, pursuant to the provisions of section sixteen,  
28 article VIII of the Constitution of West Virginia, the Governor  
29 appoints a person to fill a vacancy in the office of judge of the  
30 family court, no suit or action challenging the qualifications or  
31 eligibility of the person so appointed, if it be based upon any



32 fact or circumstance in existence at the time of the appointment,  
33 will be cognizable in any court of this state unless it be brought  
34 within twenty days after the appointment by the Governor.

35 (e) Following a judicial appointment, if no suit or action is  
36 commenced within the time specified above, or if, in a suit  
37 having been timely brought, it is finally adjudged that the  
38 appointee is qualified and eligible to hold the office to which he  
39 or she has been appointed, then the appointee may take the oath  
40 of office and thereafter execute the office for the unexpired  
41 term to which he or she has been appointed, subject to removal  
42 under section eight, article VIII of the Constitution of West  
43 Virginia, in the case of a judge of the Supreme Court of  
44 Appeals, the circuit court or the family court, only by impeach-  
45 ment, and in the case of a magistrate, in the manner provided by  
46 general law for removal of a magistrate.

47 (f) An action timely brought to challenge the qualifications  
48 or eligibility of an appointee to judicial office shall be given  
49 priority over all other actions on the docket of the court in  
50 which the action is brought.

51 (g) Nothing contained in this section is intended by the  
52 Legislature to interfere with the authority of the Supreme Court  
53 of Appeals to discipline or retire judges or magistrates as that  
54 authority is set forth in the Constitution of West Virginia and in  
55 rules adopted by the Supreme Court of Appeals pursuant to the  
56 Constitution of West Virginia.

57 (h) The Legislature declares that the offices of magistrate,  
58 judge of the family court, judge of the circuit court and Justice  
59 of the Supreme Court of Appeals are elective in nature and are  
60 all "offices to be filled by election by the people" within the  
61 meaning of the exceptions clause of section fifteen, article VI  
62 of the Constitution of West Virginia, which clause describes the  
63 kind and character of the offices thereby removed from the  
64 operation of the prohibitory clause and not the method by which  
65 the offices are to be filled.

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## CHAPTER 53

(Com. Sub. for H. B. 3201 — By Delegates Brown, Hunt,  
Webster, Amores and Hatfield)

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[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to amend and reenact §51-2A-6 of the Code of West Virginia, 1931, as amended, relating to the compensation of secretary-clerks and case coordinators to family court judges.

*Be it enacted by the Legislature of West Virginia:*

That §51-2A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 2A. FAMILY COURTS.

#### **§51-2A-6. Compensation and expenses of family court judges and their staffs.**

1       (a) A family court judge is entitled to receive as compensa-  
2       tion for his or her services an annual salary of sixty-two  
3       thousand five hundred dollars: *Provided*, That beginning the  
4       first day of July, two thousand five, a family court judge is  
5       entitled to receive as compensation for his or her services an  
6       annual salary of eighty-two thousand five hundred dollars.

7       (b) The secretary-clerk of the family court judge is ap-  
8       pointed by the family court judge and serves at his or her will  
9       and pleasure. The secretary-clerk of the family court judge is  
10      entitled to receive an annual salary of twenty-seven thousand

11 thirty-six dollars: *Provided*, That on and after the first day of  
12 July, two thousand six, the annual salary of the secretary-clerk  
13 shall be established by the administrative director of the  
14 Supreme Court of Appeals, but may not exceed thirty-five  
15 thousand dollars. In addition, any person employed as a  
16 secretary-clerk to a family court judge on the effective date of  
17 the enactment of this section during the sixth extraordinary  
18 session of the Legislature in the year two thousand one who is  
19 receiving an additional five hundred dollars per year up to ten  
20 years of a certain period of prior employment under the  
21 provisions of the prior enactment of section eight of this article  
22 during the second extraordinary session of the Legislature in the  
23 year one thousand nine hundred ninety-nine shall continue to  
24 receive such additional amount. Further, the secretary-clerk will  
25 receive such percentage or proportional salary increases as may  
26 be provided by general law for other public employees and is  
27 entitled to receive the annual incremental salary increase as  
28 provided in article five, chapter five of this code.

29 (c) The family court judge may employ not more than one  
30 family case coordinator who serves at his or her will and  
31 pleasure. The annual salary of the family case coordinator of  
32 the family court judge shall be established by the Administra-  
33 tive Director of the Supreme Court of Appeals but may not  
34 exceed thirty-six thousand sixty dollars: *Provided*, That on and  
35 after the first day of July, two thousand six, the annual salary of  
36 the family case coordinator of the family court judge may not  
37 exceed forty-six thousand sixty dollars. The family case  
38 coordinator will receive such percentage or proportional salary  
39 increases as may be provided by general law for other public  
40 employees and is entitled to receive the annual incremental  
41 salary increase as provided in article five, chapter five of this  
42 code.

43 (d) The sheriff or his or her designated deputy shall serve  
44 as a bailiff for a family court judge. The sheriff of each county

45 shall serve or designate persons to serve so as to assure that a  
46 bailiff is available when a family court judge determines the  
47 same is necessary for the orderly and efficient conduct of the  
48 business of the family court.

49 (e) Disbursement of salaries for family court judges and  
50 members of their staffs are made by or pursuant to the order of  
51 the Director of the Administrative Office of the Supreme Court  
52 of Appeals.

53 (f) Family court judges and members of their staffs are  
54 allowed their actual and necessary expenses incurred in the  
55 performance of their duties. The expenses and compensation  
56 will be determined and paid by the Director of the Administra-  
57 tive Office of the Supreme Court of Appeals under such  
58 guidelines as he or she may prescribe, as approved by the  
59 Supreme Court of Appeals.

60 (g) Notwithstanding any other provision of law, family  
61 court judges are not eligible to participate in the retirement  
62 system for judges under the provisions of article nine of this  
63 chapter.

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## CHAPTER 54

**(S. B. 636 — By Senator Bailey)**

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[Passed March 9, 2006; in effect July 1, 2006.]

[Approved by the Governor on April 5, 2006.]

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AN ACT to amend and reenact §51-3-14 of the Code of West Virginia, 1931, as amended, relating to the Court Security Fund and administrative costs therein; and authorizing a fee of three

percent not to exceed thirty-thousand dollars to Department of Military Affairs and Public Safety for administering Court Security Fund.

*Be it enacted by the Legislature of West Virginia:*

That §51-3-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. COURTS IN GENERAL.**

**§51-3-14. Court security fund.**

1       (a) The offices and the clerks of the magistrate courts and  
2 the circuit courts shall, on or before the tenth day of each  
3 month, transmit all fees and costs received for the Court  
4 Security Fund in accordance with the provisions of sections one  
5 and two, article three, chapter fifty of this code and section  
6 eleven, article one, chapter fifty-nine of this code for deposit in  
7 the State Treasury to the credit of a special revenue fund to be  
8 known as the Court Security Fund, which is hereby created  
9 under the Department of Military Affairs and Public Safety.  
10 The Court Security Fund may receive any gifts, grants, contri-  
11 butions or other money from any source which is specifically  
12 designated for deposit in the fund. All moneys collected and  
13 received and paid into the State Treasury and credited to the  
14 Court Security Fund shall be expended by the board exclusively  
15 to implement the improvement measures agreed upon in  
16 accordance with the security plans submitted pursuant to  
17 section sixteen of this article and in accordance with an  
18 appropriation by the Legislature and to pay expenses of the  
19 Department of Military Affairs and Public Safety in administer-  
20 ing this fund, which expenses may not in any fiscal year exceed  
21 the lesser of three percent of the funds deposited into the court  
22 security fund or thirty thousand dollars. Amounts collected  
23 which are found from time to time to exceed the funds needed  
24 for the purposes set forth in this article may be transferred to

25 other accounts or funds and redesignated for other purposes  
26 upon appropriation by the Legislature.

27 (b) Notwithstanding any provision of this code to the  
28 contrary, after the thirtieth day of June, two thousand, the court  
29 security board shall transfer such amounts from the Court  
30 Security Fund as may, from time to time, be directed by the  
31 Legislature in an appropriation act to the Domestic Violence  
32 Legal Services Fund created in section four-c, article two-c,  
33 chapter forty-eight of this code. Any moneys transferred to the  
34 Domestic Violence Legal Services Fund pursuant to the  
35 provisions of this section shall be expended for the purposes  
36 specified in said section.

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## CHAPTER 55

**(H. B. 2136 — By Delegates Amores, Webster and Palumbo)**

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[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §36-4-18, relating to certain unlawful covenants or restrictions; requiring the clerk of the county commission to execute, record and post a disclaimer; and suggested form of disclaimer.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §36-4-18, to read as follows:

**ARTICLE 4. COVENANTS.****§36-4-18. Recorded disclaimer of unlawful restrictions.**

1       The clerk of the county commission shall execute, record  
2 and post in a prominent place in the county record room a  
3 document that disclaims the validity and enforceability of  
4 certain restrictions and covenants in deeds. The document shall  
5 contain a disclaimer in substantially the following form:

6       “Except as provided in section eight, article eleven-a,  
7 chapter five of the code of West Virginia, it is the law of this  
8 state that certain covenants or restrictions that are based on  
9 race, color, religion, ancestry, sex, familial status, blindness,  
10 handicap or national origin are invalid and unenforceable. If an  
11 invalid covenant or restriction is contained in a document that  
12 is recorded in this county, the invalid covenant or restriction is  
13 void notwithstanding its recordation.”

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**CHAPTER 56**

**(S. B. 566 — By Senators Kessler, Chafin, Dempsey, Fanning,  
Foster, Hunter, Jenkins, Minard, Oliverio, White, Barnes,  
Caruth, McKenzie and Weeks)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 5, 2006.]

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AN ACT to amend and reenact §14-2A-3 and §14-2A-19a of the Code of West Virginia, 1931, as amended, all relating to increasing the maximum payment for crime scene cleanup costs involving real property damaged by a methamphetamine laboratory; redefining claimant to include as a victim the owner of real

property damaged by a methamphetamine laboratory; amending exclusions for motor vehicle claims to include instances in which a third party leaves the scene of the accident; redefining work loss to include the loss of income from work by a parent or guardian of a minor child who was the victim of a crime; redefining allowable expense to include reasonable travel expenses for out-of-state travel to return a minor or incapacitated adult who has been unlawfully taken from the state; specifying the maximum amounts for such travel expenses; imposing certain duties and restrictions on health care providers that file an assignment of benefits with the court; and tolling of statute of limitations to collect unpaid medical bills until the claim is processed by the court.

*Be it enacted by the Legislature of West Virginia:*

That §14-2A-3 and §14-2A-19a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.**

§14-2A-3. Definitions.

§14-2A-19a. Effect on physician, hospital and healthcare providers filing an assignment of benefits; tolling of the statute of limitations.

**§14-2A-3. Definitions.**

1 As used in this article, the term:

2 (a) "Claimant" means any of the following persons,  
3 whether residents or nonresidents of this state, who claim an  
4 award of compensation under this article:

5 (1) A victim: *Provided*, That the term victim does not  
6 include a nonresident of this state where the criminally injuri-  
7 ous act did not occur in this state;

8 (2) A dependent, spouse or minor child of a deceased  
9 victim; or in the event that the deceased victim is a minor, the  
10 parents, legal guardians and siblings of the victim;



11 (3) A third person other than a collateral source, who  
12 legally assumes or voluntarily pays the obligations of a victim,  
13 or of a dependent of a victim, which obligations are incurred as  
14 a result of the criminally injurious conduct that is the subject of  
15 the claim;

16 (4) A person who is authorized to act on behalf of a victim,  
17 dependent or a third person who is not a collateral source,  
18 including, but not limited to, assignees, persons holding power  
19 of attorney or other persons who hold authority to make or  
20 submit claims in place of or on behalf of a victim, a dependent  
21 or third person who is not a collateral source; and, in the event  
22 that the victim, dependent or third person who is not a collateral  
23 source is a minor or other legally incompetent person, the duly  
24 qualified fiduciary of the minor; and

25 (5) A person who is a secondary victim in need of mental  
26 health counseling due to the person's exposure to the crime  
27 committed. An award to a secondary victim may not exceed one  
28 thousand dollars.

29 (6) A person who owns real property damaged by the  
30 operation of a methamphetamine laboratory without the  
31 knowledge or consent of the owner of the real property.

32 (b) "Collateral source" means a source of benefits or  
33 advantages for economic loss otherwise compensable that the  
34 victim or claimant has received, or that is readily available to  
35 him or her, from any of the following sources:

36 (1) The offender, including any restitution received from  
37 the offender pursuant to an order by a court of law sentencing  
38 the offender or placing him or her on probation following a  
39 conviction in a criminal case arising from the criminally  
40 injurious act for which a claim for compensation is made;

41 (2) The government of the United States or any of its  
42 agencies, a state or any of its political subdivisions or an  
43 instrumentality of two or more states;

44 (3) Social Security, Medicare and Medicaid;

45 (4) State-required, temporary, nonoccupational disability  
46 insurance; other disability insurance;

47 (5) Workers' compensation;

48 (6) Wage continuation programs of any employer;

49 (7) Proceeds of a contract of insurance payable to the  
50 victim or claimant for loss that was sustained because of the  
51 criminally injurious conduct;

52 (8) A contract providing prepaid hospital and other health  
53 care services or benefits for disability; and

54 (9) That portion of the proceeds of all contracts of insur-  
55 ance payable to the claimant on account of the death of the  
56 victim which exceeds twenty-five thousand dollars.

57 (c) "Criminally injurious conduct" means conduct that  
58 occurs or is attempted in this state or in any state not having a  
59 victim compensation program which by its nature poses a  
60 substantial threat of personal injury or death and is punishable  
61 by fine or imprisonment or death or would be so punishable  
62 but for the fact that the person engaging in the conduct lacked  
63 capacity to commit the crime under the laws of this state.  
64 Criminally injurious conduct also includes an act of terrorism,  
65 as defined in 18 U. S. C. §2331, committed outside of the  
66 United States against a resident of this state. Criminally  
67 injurious conduct does not include conduct arising out of the  
68 ownership, maintenance or use of a motor vehicle, except  
69 when the person engaging in the conduct intended to cause

70 personal injury or death, or when the person engaging in the  
71 conduct committed negligent homicide, driving under the  
72 influence of alcohol, controlled substances or drugs, reckless  
73 driving, or when the person leaves the scene of the accident.

74 (d) “Dependent” means an individual who received over  
75 half of his or her support from the victim. For the purpose of  
76 determining whether an individual received over half of his or  
77 her support from the victim, there shall be taken into account  
78 the amount of support received from the victim as compared to  
79 the entire amount of support which the individual received from  
80 all sources, including support which the individual himself or  
81 herself supplied. The term “support” includes, but is not limited  
82 to, food, shelter, clothing, medical and dental care and educa-  
83 tion. The term “dependent” includes a child of the victim born  
84 after his or her death.

85 (e) “Economic loss” means economic detriment consisting  
86 only of allowable expense, work loss and replacement services  
87 loss. If criminally injurious conduct causes death, economic  
88 loss includes a dependent’s economic loss and a dependent’s  
89 replacement services loss. Noneconomic detriment is not  
90 economic loss; however, economic loss may be caused by pain  
91 and suffering or physical impairment. For purposes of this  
92 article, the term “economic loss” includes a lost scholarship as  
93 defined in this section.

94 (f)(1) “Allowable expense” means reasonable charges  
95 incurred or to be incurred for reasonably needed products,  
96 services and accommodations, including those for medical care,  
97 mental health counseling, prosthetic devices, eye glasses,  
98 dentures, rehabilitation and other remedial treatment and care.

99 (2) Allowable expense includes a total charge not in excess  
100 of six thousand dollars for expenses in any way related to  
101 funeral, cremation and burial. It does not include that portion of  
102 a charge for a room in a hospital, clinic, convalescent home,

103 nursing home or any other institution engaged in providing  
104 nursing care and related services in excess of a reasonable and  
105 customary charge for semiprivate accommodations, unless  
106 accommodations other than semiprivate accommodations are  
107 medically required.

108 (3) Allowable expense also includes:

109 (A) A charge, not to exceed five thousand dollars, for  
110 cleanup of real property damaged by a methamphetamine  
111 laboratory, or a charge, not to exceed one thousand dollars, for  
112 any other crime scene cleanup;

113 (B) Victim relocation costs, not to exceed one thousand  
114 dollars; and

115 (C) Reasonable travel expenses, not to exceed one thousand  
116 dollars, for a claimant to attend court proceedings that are  
117 conducted for the prosecution of the offender.

118 (D) Reasonable travel expenses for a claimant to return a  
119 person who is a minor or incapacitated adult who has been  
120 unlawfully removed from this state to another state or country,  
121 if such removal constitutes a crime under the laws of this state.  
122 Reasonable travel expenses to another state for such purpose  
123 may not exceed two thousand dollars and reasonable travel  
124 expenses for such purpose to another county may not exceed  
125 three thousand dollars.

126 (g) "Work loss" means loss of income from work that the  
127 injured person would have performed if he or she had not been  
128 injured and expenses reasonably incurred or to be incurred by  
129 him or her to obtain services in lieu of those he or she would  
130 have performed for income, reduced by any income from  
131 substitute work actually performed or to be performed by him  
132 or her, or by income he or she would have earned in available  
133 appropriate substitute work that he or she was capable of

134 performing but unreasonably failed to undertake. “Work loss”  
135 also includes loss of income from work by the parent or legal  
136 guardian of a minor victim who must miss work to take care of  
137 the minor victim.

138 (h) “Replacement services loss” means expenses reasonably  
139 incurred or to be incurred in obtaining ordinary and necessary  
140 services in lieu of those the injured person would have per-  
141 formed, not for income but for the benefit of himself or herself  
142 or his or her family, if he or she had not been injured.

143 (i) “Dependent’s economic loss” means loss after a victim’s  
144 death of contributions or things of economic value to his or her  
145 dependents, not including services they would have received  
146 from the victim if he or she had not suffered the fatal injury,  
147 less expenses of the dependents avoided by reason of the  
148 victim’s death.

149 (j) “Dependent’s replacement service loss” means loss  
150 reasonably incurred or to be incurred by dependents after a  
151 victim’s death in obtaining ordinary and necessary services in  
152 lieu of those the victim would have performed for their benefit  
153 if he or she had not suffered the fatal injury, less expenses of  
154 the dependents avoided by reason of the victim’s death and not  
155 subtracted in calculating dependent’s economic loss.

156 (k) “Victim” means a person who suffers personal injury or  
157 death as a result of any one of the following: (1) Criminally  
158 injurious conduct; (2) the good faith effort of the person to  
159 prevent criminally injurious conduct; or (3) the good faith effort  
160 of the person to apprehend a person that the injured person has  
161 observed engaging in criminally injurious conduct, or who the  
162 injured person has reasonable cause to believe has engaged in  
163 criminally injurious conduct immediately prior to the attempted  
164 apprehension. “Victim” shall also include the owner of real  
165 property damaged by the operation of a methamphetamine  
166 laboratory.

167 (l) “Contributory misconduct” means any conduct of the  
168 claimant, or of the victim through whom the claimant claims an  
169 award, that is unlawful or intentionally tortious and that,  
170 without regard to the conduct’s proximity in time or space to  
171 the criminally injurious conduct, has causal relationship to the  
172 criminally injurious conduct that is the basis of the claim and  
173 shall also include the voluntary intoxication of the claimant,  
174 either by the consumption of alcohol or the use of any con-  
175 trolled substance when the intoxication has a causal connection  
176 or relationship to the injury sustained. The voluntary intoxica-  
177 tion of a victim is not a defense against the estate of a deceased  
178 victim.

179 (m) “Lost scholarship” means a scholarship, academic  
180 award, stipend or other monetary scholastic assistance which  
181 had been awarded or conferred upon a victim in conjunction  
182 with a postsecondary school educational program and, which  
183 the victim is unable to receive or use, in whole or in part, due  
184 to injuries received from criminally injurious conduct.

**§14-2A-19a. Effect on physician, hospital and healthcare provid-  
ers filing an assignment of benefits; tolling of the  
statute of limitations.**

1 (a) As part of the order, the court, or a judge or commis-  
2 sioner thereof, shall determine whether fees are due and owing  
3 for health care services rendered by a physician, hospital or  
4 other health care provider stemming from an injury received as  
5 defined under this article, and further, whether or not the  
6 physician, hospital or other health care provider has been  
7 presented an assignment of benefits, signed by the crime victim,  
8 authorizing direct payments of benefits to the health care  
9 provider. If such fees are due and owing and the health care  
10 provider has presented a valid assignment of benefits, the court,  
11 or a judge or commissioner thereof, shall determine the amount  
12 or amounts and shall cause such reasonable fees to be paid out

13 of the amount awarded the crime victim under this article  
14 directly to the physician, hospital or other health care provider.  
15 The requirements of this section shall be applicable to, and any  
16 such unpaid fees shall be determined and payable from, the  
17 awards made by the Legislature at regular session, one thousand  
18 nine hundred eighty-seven, and subsequently: *Provided*, That  
19 when a claim is filed under this section, the court shall deter-  
20 mine the total damages due the crime victim, and where the  
21 total damages exceed the maximum amount which may be  
22 awarded under this article, the amount paid the health care  
23 provider shall be paid in the same proportion to which the  
24 actual award bears to the total damages determined by the  
25 court. In any case wherein an award is made which includes an  
26 amount for funeral, cremation or burial expenses, or a combina-  
27 tion thereof, the court shall provide for the payment directly to  
28 the provider or providers of such services, in an amount deemed  
29 proper by the court, where such expenses are unpaid at the time  
30 of the award.

31 (b) If the health care provider has filed an assignment of  
32 benefits, the provider shall aid the crime victim in the develop-  
33 ment of his or her claim by providing the court with the amount  
34 of such fees as well as the amount of any portion of the fees  
35 paid the provider by the crime victim directly or paid the  
36 provider for the crime victim by a collateral source.

37 (c) Whether or not a health care provider has filed an  
38 assignment of benefits, the court shall disclose no information  
39 regarding the status of the claim to the provider: *Provided*, That  
40 the court shall promptly notify the provider of the final disposi-  
41 tion of the claim, if the provider is known to the court.

42 (d) Whenever a person files a claim under this article, the  
43 statute of limitations for the collection of unpaid fees paid for  
44 such health care services shall be tolled during the pendency of  
45 the claim before the court.

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## CHAPTER 57

**(Com. Sub. for H. B. 4588 — By Delegates Carmichael and Armstead)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-5a, relating to creating a crime for concealing a deceased human body; exceptions; defense of affirmatively informing law enforcement; and prescribing penalties.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-2-5a, to read as follows:

**ARTICLE 2. CRIMES AGAINST THE PERSON.**

**§61-2-5a. Concealment of deceased human body; penalty.**

1       (a) Any person who, by any means, knowingly and willfully  
2       conceals, attempts to conceal or who otherwise aids and abets  
3       any person to conceal a deceased human body where death  
4       occurred as a result of criminal activity is guilty of a felony and,  
5       upon conviction thereof, shall be confined in a correctional  
6       facility for not less than one year nor more than five years and  
7       fined not less than one thousand dollars, nor more than five  
8       thousand dollars.

9       (b) It shall be a complete defense in a prosecution pursuant  
10      to subsection (a) of this section that the defendant affirmatively



11 brought to the attention of law enforcement within forty-eight  
12 hours of concealing the body and prior to being contacted  
13 regarding the death by law enforcement the existence and  
14 location of the concealed deceased human body.

15 (c) The provisions of subsection (a) of this section do not  
16 apply to practitioners regulated by the provisions of article six,  
17 chapter thirty of this code or their agents while acting in their  
18 lawful professional capacities.

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## CHAPTER 58

(Com. Sub. for H. B. 3213 — By Delegates Delong, Craig, Amores)

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-16a, relating to creating crimes against common carriers and providing penalties.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-2-16a, to read as follows:

### ARTICLE 2. CRIMES AGAINST THE PERSON.

**§61-2-16a. Malicious assault; unlawful assault; battery and recidivism of battery; assault on a driver, conductor, motorman, captain, pilot or other person in charge of any vehicle used for public conveyance.**

1       (a) *Malicious assault.* — Any person who maliciously  
2 shoots, stabs, cuts or wounds or by any means causes bodily  
3 injury with intent to maim, disfigure, disable or kill any driver,  
4 conductor, motorman, captain or other person in charge of any  
5 vehicle or boat, driven by steam, electricity, gasoline or other  
6 motive power and used for public conveyance acting in his or  
7 her official capacity and the person committing the malicious  
8 assault knows or has reason to know that the victim is a driver,  
9 conductor, motorman, captain or other person in charge of any  
10 vehicle or boat used as a public conveyance, acting in his or her  
11 official capacity, is guilty of a felony and, upon conviction  
12 thereof, shall be confined in a correctional facility for not less  
13 than three nor more than fifteen years.

14       (b) *Unlawful assault.* — Any person who unlawfully but  
15 not maliciously shoots, stabs, cuts or wounds or by any means  
16 causes any driver, conductor, motorman, captain or other  
17 person in charge of any vehicle, aircraft or boat, driven by  
18 steam, electricity, gasoline or other motive power and used for  
19 public conveyance acting in his or her official capacity, bodily  
20 injury with intent to maim, disfigure, disable or kill him or her  
21 and the person committing the unlawful assault knows or has  
22 reason to know that the victim is a driver, conductor, motor-  
23 man, captain or other person in charge of any vehicle or boat  
24 used as a public conveyance, acting in his or her official  
25 capacity, is guilty of a felony and, upon conviction thereof,  
26 shall be confined in a correctional facility for not less than two  
27 nor more than five years.

28       (c) *Battery.* — Any person who unlawfully, knowingly and  
29 intentionally makes physical contact of an insulting or provok-  
30 ing nature with a driver, conductor, motorman, captain or other  
31 person in charge of any vehicle or boat, driven by steam,  
32 electricity, gasoline or other motive power and used for public  
33 conveyance, acting in his or her official capacity, or unlawfully  
34 and intentionally causes physical harm to a driver, conductor,

35 motorman, captain or other person in charge of any vehicle or  
36 boat, driven by steam, electricity, gasoline or other motive  
37 power and used for public conveyance, in such capacity, and  
38 the person committing the battery knows or has reason to know  
39 that the victim is a driver, conductor, motorman, captain or  
40 other person in charge of any vehicle or boat used as a public  
41 conveyance, acting in his or her official capacity is guilty of a  
42 misdemeanor and, upon conviction thereof, shall be confined in  
43 the county or regional jail for not less than one month nor more  
44 than twelve months, fined the sum of five hundred dollars, or  
45 both. If any person commits a second such offense, he or she is  
46 guilty of a felony and, upon conviction thereof, shall be  
47 confined in a correctional facility for not less than one year nor  
48 more than three years or fined the sum of one thousand dollars  
49 or both fined and confined. Any person who commits a third  
50 violation of this subsection is guilty of a felony and, upon  
51 conviction thereof, shall be confined in a correctional facility  
52 not less than two years nor more than five years or fined not  
53 more than two thousand dollars or both fined and confined.

54 (d) *Assault.* — Any person who unlawfully attempts to  
55 commit a violent injury to the person of a driver, conductor,  
56 motorman, captain or other person in charge of any vehicle or  
57 boat, driven by steam, electricity, gasoline or other motive  
58 power and used for public conveyance, acting in his or her  
59 official capacity, or unlawfully commits an act which places a  
60 driver, conductor, motorman, captain or other person in charge  
61 of any vehicle or boat, driven by steam, electricity, gasoline or  
62 other motive power and used for public conveyance, acting in  
63 his or her official capacity, in reasonable apprehension of  
64 immediately receiving a violent injury, and the person commit-  
65 ting the assault knows or has reason to know that the victim is  
66 a driver, conductor, motorman, captain or other person in  
67 charge of any vehicle or boat used as a public conveyance,  
68 acting in his or her official capacity is guilty of a misdemeanor  
69 and, upon conviction thereof, shall be confined in the county or

70 regional jail for not less than twenty-four hours nor more than  
 71 six months, fined not more than two hundred dollars, or both  
 72 fined and confined.

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## CHAPTER 59

**(Com. Sub. for S. B. 554 — By Senator Bowman)**

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[Passed March 10, 2006; in effect ninety days from passage.]  
 [Approved by the Governor on March 31, 2006.]

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AN ACT to amend and reenact §61-8B-15 of the Code of West Virginia, 1931, as amended, relating to clarification of permissible expenditures from the Forensic Medical Examination Fund.

*Be it enacted by the Legislature of West Virginia:*

That §61-8B-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 8B. SEXUAL OFFENSES.**

**§61-8B-15. Forensic Medical Examination Fund; training of sexual assault nurse examiners.**

1       There is continued the “Forensic Medical Examination  
 2 Fund”, created as a special fund in the State Treasury, into  
 3 which shall be deposited legislative appropriations to the fund.  
 4 The West Virginia Prosecuting Attorneys Institute, created by  
 5 the provisions of section six, article four, chapter seven of this  
 6 code, shall make expenditures from the fund, where it is  
 7 determined to be practical by the executive council and the  
 8 executive director to pay the costs of forensic medical examina-  
 9 tions as defined in section sixteen of this article, to train nurses

- 10 to examine sexual assault victims and to reimburse the institute  
11 for its expenses in administering payments from the fund.

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## CHAPTER 60

**(Com. Sub. for H. B. 4036 — By Mr. Speaker, Mr. Kiss, and  
Delegates Varner, Campbell, Stemple, Kominar, Amores,  
Crosier, Ron Thompson and Craig)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-11-8a, relating to creating the offense of solicitation to commit a felony crime of violence against the person; defining terms; penalties; and defenses.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §61-11-8a, to read as follows:

### **ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.**

#### **§61-11-8a. Solicitation to commit certain felonies; classification; defenses.**

- 1 (a) Any person who solicits another to commit a violation  
2 of the law which constitutes a felony crime of violence against  
3 the person is guilty of a felony, and upon conviction thereof,  
4 shall be:

5 (1) Confined in a state correctional facility for not less than  
6 three nor more than fifteen years if the offense solicited is  
7 punishable by life imprisonment;

8 (2) Imprisoned in the state correctional facility for not less  
9 than one nor more three years or fined not more than five  
10 thousand dollars, or both, if the offense solicited is punishable  
11 by incarceration in the state correctional facility for a term of  
12 less than life imprisonment. In the circuit court's discretion a  
13 person so convicted may be ordered confined in jail for a term  
14 not to exceed one year in lieu of incarceration in a state  
15 correctional facility;

16 (b)(1) As used in this section, "solicitation" means the  
17 willful and knowing instigation or inducement of another to  
18 commit a felony crime of violence against the person of a third  
19 person; and

20 (2) As used in this section, "felony crime of violence  
21 against the person" means the felony offense set forth in  
22 sections one, nine, ten-b and twelve, article two of this chapter.

23 (c) In a prosecution under the provisions of this section, it  
24 is not a defense:

25 (1) That the defendant belongs to a class of persons who by  
26 definition are legally incapable in an individual capacity of  
27 committing the crime that is the object of the solicitation; or

28 (2) That a person whom the defendant solicits could not be  
29 guilty of a crime that is the object of the solicitation.

30 (d) It is an affirmative and complete defense to a prosecu-  
31 tion under the provisions of this section that the defendant  
32 under circumstances manifesting a voluntary and complete  
33 renunciation of the defendant's criminal intent, after soliciting  
34 another person to engage in conduct constituting a felony,  
35 prevented the commission of the crime.

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## CHAPTER 61

**(H. B. 2329 — By Delegates Ennis, Swartzmiller and G. White)**

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[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2006.]

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AN ACT to amend and reenact §61-11A-4 of the Code of West Virginia, 1931, as amended, relating to authorizing a court to order a defendant to contribute monetarily or through hours of service to a local crime victim's assistance program or juvenile mediation program which meets certain requirements.

*Be it enacted by the Legislature of West Virginia:*

That §61-11A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 11A. VICTIM PROTECTION ACT OF 1984.**

#### **§61-11A-4. Restitution; when ordered.**

1       (a) The court, when sentencing a defendant convicted of a  
2 felony or misdemeanor causing physical, psychological or  
3 economic injury or loss to a victim, shall order, in addition to  
4 or in lieu of any other penalty authorized by law, that the  
5 defendant make restitution to any victim of the offense, unless  
6 the court finds restitution to be wholly or partially impractical  
7 as set forth in this article.

8       If the court does not order restitution, or orders only partial  
9 restitution, under this section, the court shall state on the record  
10 the reasons therefor.

11 (b) The order shall require that the defendant:

12 (1) In the case of an offense resulting in damage to, loss of,  
13 or destruction of property of a victim of the offense:

14 (A) Return the property to the owner of the property or  
15 someone designated by the owner; or

16 (B) If return of the property under subparagraph (A) is  
17 impossible, impractical or inadequate, pay an amount equal to  
18 the greater of: (i) The value of the property on the date of  
19 sentencing; or (ii) the value of the property on the date of the  
20 damage, loss or destruction less the value (as of the date the  
21 property is returned) of any part of the property that is returned;

22 (2) In the case of an offense resulting in bodily injury to a  
23 victim:

24 (A) Pay an amount equal to the cost of necessary medical  
25 and related professional services and devices relating to  
26 physical, psychiatric and psychological care, including  
27 nonmedical care and treatment rendered in accordance with a  
28 method of healing recognized by the law of the place of  
29 treatment;

30 (B) Pay an amount equal to the cost of necessary physical  
31 and occupational therapy and rehabilitation; and

32 (C) Reimburse the victim for income lost by the victim as  
33 a result of the offense;

34 (3) In the case of an offense resulting in bodily injury that  
35 also results in the death of a victim, pay an amount equal to the  
36 cost of necessary funeral and related services; and

37 (4) In any case, if the victim (or if the victim is deceased,  
38 the victim's estate) consents, or if payment is impossible or  
39 impractical, make restitution in services in lieu of money, or



40 make restitution to a person or organization designated by the  
41 victim or the estate.

42 (c) If the court decides to order restitution under this  
43 section, the court shall, if the victim is deceased, order that the  
44 restitution be made to the victim's estate.

45 (d) The court shall impose an order of restitution to the  
46 extent that the order is as fair as possible to the victim and the  
47 imposition of the order will not unduly complicate or prolong  
48 the sentencing process.

49 (e) The court shall not impose restitution with respect to a  
50 loss for which the victim has received or is to receive compen-  
51 sation, except that the court may, in the interest of justice, order  
52 restitution to any person who has compensated the victim for  
53 loss to the extent that the person paid the compensation. An  
54 order of restitution shall require that all restitution to victims  
55 under the order be made before any restitution to any other  
56 person under the order is made.

57 (f) The court may require that such defendant make  
58 restitution under this section within a specified period or in  
59 specified installments. The end of the period or the last  
60 installment shall not be later than: (i) The end of the period of  
61 probation, if probation is ordered; (ii) five years after the end of  
62 the term of imprisonment imposed, if the court does not order  
63 probation; and (iii) five years after the date of sentencing in any  
64 other case.

65 If not otherwise provided by the court under this subsection,  
66 restitution shall be made immediately.

67 (g) If the defendant is placed on probation or paroled under  
68 this article, any restitution ordered under this section shall be a  
69 condition of the probation or parole unless the court or Parole  
70 Board finds restitution to be wholly or partially impractical as  
71 set forth in this article.

72       The court may revoke probation and the Parole Board may  
73       revoke parole if the defendant fails to comply with the order. In  
74       determining whether to revoke probation or parole, the court or  
75       parole board shall consider the defendant's employment status,  
76       earning ability, financial resources, the willfulness of the  
77       defendant's failure to pay, and any other special circumstances  
78       that may have a bearing on the defendant's ability to pay.

79       (h) An order of restitution may be enforced by the state or  
80       a victim named in the order to receive the restitution in the  
81       same manner as a judgment in a civil action.

82       (i) Notwithstanding any provision of this section to the  
83       contrary, the court may order, in addition to or in lieu of,  
84       restitution, that a defendant be required to contribute  
85       monetarily, or through hours of service, to a local crime  
86       victim's assistance program or juvenile mediation program  
87       which meets the following requirements:

88       (1) The program is approved by a circuit judge presiding in  
89       the judicial circuit; and

90       (2) The program is a nonprofit organization certified as a  
91       corporation in this state, and is governed by a board of direc-  
92       tors.

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## CHAPTER 62

**(Com. Sub. for H. B. 2118 — By Delegate Azinger)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 28, 2006.]

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AN ACT to amend and reenact §62-1C-12 of the Code of West Virginia, 1931, as amended, relating to forfeiture of bail bond for

failure of a defendant to appear in court; providing for reimbursement to the bail bondsman for the amount of the forfeited bond if the bail bondsman later returns the bonded person to the custody of court; and authorizing the Administrator of the West Virginia Supreme Court to oversee bondsmen and audit, review and suspend bondsmen who have insufficient assets.

*Be it enacted by the Legislature of West Virginia:*

That §62-1C-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1C. BAIL.**

**§62-1C-12. Same — Exoneration; return of deposit.**

1           (a) When the condition of the bond has been satisfied or the  
2 forfeiture thereof has been set aside or remitted, the court or  
3 magistrate shall exonerate the surety and release any bail and,  
4 if the bail be in a form other than a recognizance, the deposit  
5 shall be returned to the person who made the same. The surety  
6 may be exonerated by a deposit of cash in the amount of the  
7 bail or by a timely surrender of the defendant into custody.

8           (b) Notwithstanding any provision of this code to the  
9 contrary, when a bail bondsman, as defined in article ten,  
10 chapter fifty-one of this code, has a surety bond forfeited  
11 because of the failure of a defendant to appear before a court or  
12 magistrate, that bail bondsman shall be reimbursed the full  
13 amount of the bond forfeiture, be it cash or surety, if the bail  
14 bondsman returns the defendant to the custody of the court or  
15 magistrate, within two years of the forfeiture of the bond.

16           (c) The Administrator of the West Virginia Supreme Court  
17 of Appeals shall, ex officio, be empowered to audit, review and  
18 suspend any bail bondsman whose surety on bonds is or  
19 becomes insufficient or whose assets are below the amount of  
20 bonds he or she has in existence.

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## CHAPTER 63

**(H. B. 4854 — By Delegates Morgan, Craig, Webster, Hamilton,  
Howard, Pino, Moore, DeLong, Ellem, Long, Hrutkay)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to amend and reenact §62-6B-3 of the Code of West Virginia, 1931, as amended, relating to allowing expert opinions of licensed psychologists with at least five years clinical experience in treatment and evaluation of children; and taking testimony of child witness through use of live two-way closed-circuit television.

*Be it enacted by the Legislature of West Virginia:*

That §62-6B-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 6B. PROTECTION AND PRESERVATION OF STATEMENTS  
AND TESTIMONY OF CHILD WITNESS.**

**§62-6B-3. Findings of fact required for taking testimony of child  
witness by closed-circuit television; considerations  
for court.**

- 1 (a) Upon a written motion filed by the prosecuting attorney,
- 2 and upon findings of fact determined pursuant to subsection (b)
- 3 of this section, a circuit court may order that the testimony of
- 4 a child witness may be taken at a pretrial proceeding or at trial
- 5 through the use of live, two-way closed-circuit television.

6 (b) Prior to ordering that the testimony of a child witness  
7 may be taken through the use of live, two-way closed-circuit  
8 television, the circuit court must find by clear and convincing  
9 evidence, after conducting an evidentiary hearing on this issue,  
10 that:

11 (1) The child is an otherwise competent witness;

12 (2) That, absent the use of live, two-way closed-circuit  
13 television, the child witness will be unable to testify due solely  
14 to being required to be in the physical presence of the defendant  
15 while testifying;

16 (3) The child witness can only testify if live, two-way  
17 closed-circuit television is used in the trial; and

18 (4) That the state's ability to proceed against the defendant  
19 without the child witness' live testimony would be substantially  
20 impaired or precluded.

21 (c) The court shall consider the following factors in  
22 determining the necessity of allowing a child witness to testify  
23 by the use of live, two-way closed-circuit television:

24 (1) The age and maturity of the child witness;

25 (2) The facts and circumstances of the alleged offense;

26 (3) The necessity of the child's live testimony to the  
27 prosecution's ability to proceed;

28 (4) Whether or not the facts of the case involve the alleged  
29 infliction of bodily injury to the child witness or the threat of  
30 bodily injury to the child or another; and

31 (5) Any mental or physical handicap of the child witness.

32 (d) In determining whether to allow a child witness to  
33 testify through live, two-way closed-circuit television the court

34 shall appoint a psychiatrist, licensed psychologist with at least  
35 five years clinical experience or a licensed clinical social  
36 worker with at least five years of significant clinical experience  
37 in the treatment and evaluation of children who shall serve as  
38 an advisor or friend of the court to provide the court with an  
39 expert opinion as to whether, to a reasonable degree of profes-  
40 sional certainty, the child witness will suffer severe emotional  
41 harm, be unable to testify based solely on being in the physical  
42 presence of the defendant while testifying and that the child  
43 witness does not evidence signs of being subjected to undue  
44 influence or coercion. The opinion of the psychiatrist, licensed  
45 psychologist or licensed clinical social worker shall be filed  
46 with the circuit court at least thirty days prior to the final  
47 hearing on the use of live, two-way closed-circuit television and  
48 the defendant shall be allowed to review the opinion and  
49 present evidence on the issue by the use of an expert or experts  
50 or otherwise.

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## CHAPTER 64

**(S. B. 538 —By Senators Chafin, Helmick and Love)**

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[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to amend and reenact §5-10B-1, §5-10B-2, §5-10B-3, §5-10B-4, §5-10B-5, §5-10B-9 and §5-10B-10 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §5-10B-11, §5-10B-12 and §5-10B-13, all relating to government employees' deferred compensation plans; transferring responsibility for the State Employee Deferred Compensation Plan to the State Treasurer on

the first day of July, two thousand six; authorizing political subdivisions without plans to request the Treasurer include its employees in the state plan; allowing political subdivision employees to participate in the state plan; allowing political subdivision employees to participate in the state plan when their employer does not offer a plan; clarifying various powers and requirements; authorizing employees to attend meetings called by the state or public employer during regular working hours to explain the plan; authorizing the state and public employers to charge fees for plan administration; clarifying liability; establishing trust fund and administrative account in the State Treasury; providing that information that would tend to disclose the identity of a participating employee is exempt from disclosure under the Freedom of Information Act; and protecting the moneys from certain legal processes.

*Be it enacted by the Legislature of West Virginia:*

That §5-10B-1, §5-10B-2, §5-10B-3, §5-10B-4, §5-10B-5, §5-10B-9 and §5-10B-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §5-10B-11, §5-10B-12 and §5-10B-13, all to read as follows:

**ARTICLE 10B. GOVERNMENT EMPLOYEES DEFERRED COMPENSATION PLANS.**

- §5-10B-1. Legislative purpose.
- §5-10B-2. Definitions.
- §5-10B-3. Powers; contracts; meetings.
- §5-10B-4. Responsibility for implementing plans — Payroll reductions — Billing and administration.
- §5-10B-5. Investment of funds.
- §5-10B-9. Liabilities of State of West Virginia or political subdivisions.
- §5-10B-10. Deferred compensation plan funds held in trust.
- §5-10B-11. Deferred Compensation Administrative Account.
- §5-10B-12. Confidential information exempt from disclosure.
- §5-10B-13. Moneys not subject to legal process.

**§5-10B-1. Legislative purpose.**

1       The legislative purpose of this enactment is to enable  
2 employees of the state, its agencies, counties, municipalities  
3 and political subdivisions of such governmental bodies to  
4 participate in voluntary deferred compensation plans authorized  
5 by the United States Internal Revenue Code as interpreted by  
6 the Internal Revenue Service, thereby permitting such employ-  
7 ees to obtain the advantages inherent in such plans relative to  
8 the income tax treatment of the contributions and disbursements  
9 made pursuant to such voluntary income deferral plans. It is  
10 further the purpose of this enactment to authorize the establish-  
11 ment of separate plans for the state and its agencies and for  
12 counties, municipalities and political subdivisions within the  
13 state and to authorize county, municipal and political subdivi-  
14 sion employees to participate in the state deferred compensation  
15 plan if their employer does not have a plan.

**§5-10B-2. Definitions.**

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

3       (a) “Board” means the Consolidated Public Retirement  
4 Board provided for in article ten of this chapter.

5       (b) “Deferred compensation” means the income and  
6 earnings on that income an employee may legally defer for  
7 personal income tax purposes pursuant to the Internal Revenue  
8 Code until distribution.

9       (c) “Deferred compensation plan” or “plan” means a trust  
10 whereby the state employer or a public employer agrees with an  
11 employee for the voluntary reduction in employee compensa-  
12 tion for the payment of benefits by the state employer or the  
13 public employer to the employee at a later date pursuant to this  
14 article and the federal laws and regulations relating to eligible



15 state deferred compensation plans as described in Section 457  
16 of the Internal Revenue Code.

17 (d) “Deferred compensation trust fund” or “trust” means the  
18 fund in which deferred amounts and investment income of  
19 participating employees are held.

20 (e) “Employee” means any person, whether appointed,  
21 elected or under contract, providing services for the state  
22 employer or public employer for which compensation is paid.

23 (f) “Internal Revenue Code” means the Internal Revenue  
24 Code of 1986, as it has been amended.

25 (g) “Investment product” means any fixed or variable rate  
26 annuity, life insurance contract, savings account, certificate of  
27 deposit, money market account, bond, mutual fund or any other  
28 form of investment not prohibited under the Internal Revenue  
29 Code and authorized by the state employer or the public  
30 employer for the purpose of receiving funds under a plan.

31 (h) “Public employer” means counties, municipalities or  
32 political subdivisions of those governmental bodies which meet  
33 the definition of “state” as described in Internal Revenue Code  
34 Section 457 (d)(1), but which do not meet the definition of  
35 “state employer” as used in this article.

36 (i) “State employer” means the State of West Virginia,  
37 which includes every state board, commission, agency and  
38 instrumentality.

39 (j) “Treasurer” means the State Treasurer.

40 (k) “Vendor” means a private entity that sells investment  
41 products or provides goods and services.

**§5-10B-3. Powers; contracts; meetings.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, including, without limitation, this chapter and chapter  
3 five-a of this code, the state employer and a public employer  
4 have the power necessary or appropriate to carry out the  
5 provisions and objectives of this article and to operate the trust,  
6 including, without limitation, entering into contracts and  
7 executing and delivering instruments; engaging consultants,  
8 auditors, counsel, managers, advisors, trustees or any other  
9 contractors or professionals; and charging and collecting  
10 administrative fees.

11 (b) The state employer or any public employer may, by  
12 contract, agree with any of its employees to defer and hold in  
13 trust any portion of that employee's compensation and may  
14 subsequently purchase or acquire from vendors licensed to do  
15 business in the State of West Virginia investment products for  
16 the purpose of carrying out the objectives of the deferred  
17 compensation plan as described in this article.

18 (c) Employees are authorized to attend meetings called by  
19 the state employer or public employer for the purpose of  
20 explaining a plan during regular working hours.

**§5-10B-4. Responsibility for implementing plans — Payroll  
reductions — Billing and administration.**

1 (a) The responsibility for implementing the deferred  
2 compensation plan for employees of the state employer shall be  
3 delegated to the board of trustees through the thirtieth day of  
4 June, two thousand six. On the first day of July, two thousand  
5 six, the Treasurer shall manage any deferred compensation plan  
6 for state employees. Any and all records, moneys, contracts,  
7 property and other matters involving deferred compensation  
8 plans for state employees shall transfer on the first day of July,  
9 two thousand six, to the Treasurer.

10 (b) The responsibility for implementing the deferred  
11 compensation plan for employees of a public employer is  
12 delegated to the county commission of a county, the governing  
13 body of a municipality, as that term is defined in section two,  
14 article one, chapter eight of this code, and, in the case of any  
15 other political subdivision, the board, commission or other  
16 similar body responsible for determining the policy of such  
17 political subdivision. A county commission or a governing  
18 body of another public employer may request the Treasurer  
19 authorize its employees to participate in the state plan instead  
20 of implementing its own plan.

21 (c) If the governing body has adopted more than one plan,  
22 an employee electing to participate shall also elect the plan or  
23 plans in which he or she desires to participate. When a public  
24 employer has not implemented a plan, its employees may  
25 participate in the state plan.

26 (d) Payroll reductions shall be remitted as specified by the  
27 state employer or public employer for deposit in the trust, in  
28 each instance, by the appropriate payroll officer. The board of  
29 trustees, the Treasurer or appropriately designated local officer,  
30 board or committee of deferred compensation plan may contract  
31 with one or more vendors to provide consolidated billing and all  
32 or any other goods and services needed for a plan.

33 (e) Plans shall operate without cost to or contribution from  
34 the state employer or public employer except for the incidental  
35 expense of administering the payroll salary reductions and the  
36 remittance thereof.

37 (f) The state employer and the public employers may  
38 charge fees on plan contributions, total assets, total return or  
39 other selected method as necessary to provide for the adminis-  
40 trative expenses of a plan.

**§5-10B-5. Investment of funds.**

1 Notwithstanding any other provision of law to the contrary,  
2 the board, or the Treasurer beginning the first day of July, two  
3 thousand six, as well as the appropriate local officer, board or  
4 committee, designated as responsible for implementing a  
5 deferred compensation plan, is hereby authorized to invest  
6 compensation held pursuant to a deferred compensation plan in  
7 investment products.

**§5-10B-9. Liabilities of State of West Virginia or political subdivisions.**

1 The state employer and the public employers shall not incur  
2 any liability for losses suffered or change in value of an  
3 investment product. The financial liability of the state employer  
4 or public employer under any deferred compensation plan shall  
5 be limited in each instance to amounts paid over to the trust but  
6 not invested.

**§5-10B-10. Deferred compensation plan funds held in trust.**

1 (a) Notwithstanding anything herein to the contrary, as of  
2 the first day of January, one thousand nine hundred ninety-  
3 eight, all assets and income of all deferred compensation plans  
4 created or administered pursuant to this article shall be held in  
5 trust for the exclusive benefit of participants and their benefi-  
6 ciaries.

7 (b) The West Virginia Deferred Compensation Trust Fund  
8 is created within the accounts held by the Treasurer or with one  
9 or more financial institutions, vendors or any other entities  
10 selected by the Treasurer for the purpose of managing and  
11 investing the trust. A public employer managing a trust shall  
12 create a trust fund and select one or more financial institutions,  
13 vendors or other entities to hold the trust.

14 (c) The corpus, assets and earnings of the trust do not  
15 constitute public funds of the state or public employer and are  
16 available solely for carrying out the purposes of this article.  
17 Any contract entered into by or any obligation of the state  
18 employer or a public employer in connection with a plan does  
19 not create or constitute a debt, but is solely an obligation of the  
20 trust.

**§5-10B-11. Deferred Compensation Administrative Account.**

1 The Deferred Compensation Administrative Account is  
2 created in the accounts of the Treasurer for the purposes of  
3 implementing, operating and maintaining the trust and plan.  
4 The account shall receive all fees charged and collected by the  
5 Treasurer under this article.

**§5-10B-12. Confidential information exempt from disclosure.**

1 All information contained in the records maintained  
2 pursuant to this article that would tend to disclose the identity  
3 of a participating employee, including, without limitation,  
4 social security number, account number, address, telephone  
5 number, e-mail address, amounts invested, selected invest-  
6 ments, returns and medical or disability information, are  
7 confidential and exempt from disclosure under the provisions  
8 of article one, chapter twenty-nine-b of this code. Employees  
9 and persons authorized by employees are permitted access to  
10 their own information.

**§5-10B-13. Moneys not subject to legal process.**

1 No account, benefit or right, created pursuant to this article,  
2 accrued or accruing, is subject to execution, garnishment,  
3 attachment, sale to satisfy a judgment or order, the operation of  
4 bankruptcy or insolvency laws, or other process of law and shall  
5 be unassignable.

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## CHAPTER 65

**(S. B. 774 — By Senators Kessler, Dempsey, Fanning, Minard, White, Barnes, Caruth, Deem, Harrison, Lanham, McKenzie and Weeks)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §22-1-2, §22-1-7 and §22-1-8 of the Code of West Virginia, 1931, as amended, all relating to the organization of offices within the Department of Environmental Protection; and defining certain terms.

*Be it enacted by the Legislature of West Virginia:*

That §22-1-2, §22-1-7 and §22-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

### **ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.**

§22-1-2. Definitions.

§22-1-7. Offices within division.

§22-1-8. Supervisory officers.

#### **§22-1-2. Definitions.**

1 As used in this chapter, unless otherwise provided or  
2 indicated by the context:

3 (1) “Chief” means the Secretary of the Department of  
4 Environmental Protection, or his or her designee, who is also  
5 the chief executive officer of an office, division or section  
6 within the department.

7 (2) “Department” means the Department of Environmental  
8 Protection.

9 (3) "Director" means the Secretary of the Department of  
10 Environmental Protection or his or her designee.

11 (4) "Division" means the Department of Environmental  
12 Protection.

13 (5) "Function" means any duty, obligation, power, author-  
14 ity, responsibility, right, privilege, activity or program.

15 (6) "Office" means any office, division, board, agency, unit,  
16 organizational entity or component thereof within the Depart-  
17 ment of Environmental Protection.

18 (7) "Secretary" means the Secretary of the Department of  
19 Environmental Protection.

#### **§22-1-7. Offices within division.**

1 Consistent with the provisions of this article, the secretary  
2 shall, at a minimum, maintain the following offices within the  
3 division:

4 (1) The Office of Abandoned Mine Lands and Reclamation,  
5 which is charged, at a minimum, with administering and  
6 enforcing, under the supervision of the director, the provisions  
7 of article two of this chapter;

8 (2) The Division of Mining and Reclamation, which is  
9 charged, at a minimum, with administering and enforcing,  
10 under the supervision of the director, the provisions of articles  
11 three and four of this chapter;

12 (3) The Division of Air Quality, which is charged, at a  
13 minimum, with administering and enforcing, under the supervi-  
14 sion of the director, the provisions of article five of this chapter;

15 (4) The Office of Oil and Gas, which is charged, at a  
16 minimum, with administering and enforcing, under the supervi-

17 sion of the director, the provisions of articles six, seven, eight,  
18 nine and ten of this chapter;

19 (5) The Division of Water and Waste Management, which  
20 is charged, at a minimum, with administering and enforcing,  
21 under the supervision of the director, the provisions of articles  
22 eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen,  
23 eighteen, nineteen and twenty of this chapter; and

24 (6) The Office of Explosives and Blasting, which is  
25 charged, at a minimum, with administering and enforcing,  
26 under the supervision of the director, the provisions of article  
27 three-a of this chapter.

#### **§22-1-8. Supervisory officers.**

1 (a) The secretary shall appoint a competent and qualified  
2 person to be the chief executive officer of each office specified  
3 in section seven of this article. The chief executive officer is the  
4 principal administrative officer of that office and is accountable  
5 and responsible for the orderly and efficient performance of the  
6 duties, functions and services of her or his office.

7 (b) There shall be in the department such other supervisory  
8 officers as the secretary determines is necessary to administer  
9 the functions of the department. Such supervisory officers are  
10 “administrators” as such term is defined in section two, article  
11 six, chapter twenty-nine of this code, notwithstanding the fact  
12 that the positions filled by such persons are not statutorily  
13 created. Any such supervisory officer may be designated by the  
14 secretary as a deputy director, assistant director, chief, adminis-  
15 trator or other administrative title or designation. Each of the  
16 supervisory officers shall be appointed by the secretary and  
17 serve at the will and pleasure of the secretary. The compensa-  
18 tion of such supervisory officers shall be fixed by the secretary.  
19 A single individual may be appointed to serve simultaneously  
20 in two distinct supervisory positions, but in a case where a dual



21 appointment is made, the supervisory officer shall not receive  
22 additional compensation above that which would be paid for  
23 serving in one supervisory position.

24 (c) A supervisory officer appointed pursuant to the provi-  
25 sions of this section shall report directly to the secretary and  
26 shall, in addition to any functions vested in or required to be  
27 delegated to such officer, perform additional functions as the  
28 secretary may prescribe.

29 (d) Each supervisory officer of the department shall, before  
30 entering upon the discharge of his or her duties, take the oath of  
31 office prescribed by section five, article IV of the Constitution  
32 of West Virginia and shall execute a bond in the penalty of two  
33 thousand dollars, with security to be approved by the Governor,  
34 conditioned upon the faithful discharge of their duties, a  
35 certificate of the oath and bond shall be filed in the office of the  
36 Secretary of State. Premiums on the bond shall be paid from the  
37 department funds.

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## CHAPTER 66

**(Com. Sub. for H. B. 2548 — By Delegates Tucker, Perdue,  
Leach, Long, Marshall, Trump and Canterbury)**

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[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-2K-1, §18-2K-2, §18-2K-3 and §18-2K-4, all relating to establishment of individual diabetes care plans for students with diabetes by county boards of education; requiring the State Board of Education to

adopt guidelines for the development and implementation of individual diabetes care plans on or before the first day of January, two thousand seven; requiring each county board of education to adopt a diabetes care plan meeting the guidelines for diabetes care plans adopted by the State Board of Education; requiring the State Board of Education to report to the Legislature regarding adoption of the guidelines and the establishment and implementation of diabetes care plans by county boards of education.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18-2K-1, §18-2K-2, §18-2K-3 and §18-2K-4, all to read as follows:

**ARTICLE 2K. THE DIABETES CARE PLAN ACT.**

§18-2K-1. Title of article.

§18-2K-2. Adoption of guidelines for individual diabetes care plans.

§18-2K-3. Establishment and implementation of diabetes care plans by county boards to support and assist students with diabetes.

§18-2K-4. Progress report to the Legislature.

**§18-2K-1. Title of article.**

1 This article shall be known as “The Diabetes Care Plan Act.”

**§18-2K-2. Adoption of guidelines for individual diabetes care plans.**

1 (a) The State Board of Education shall adopt guidelines for  
 2 the development and implementation of individual diabetes care  
 3 plans on or before the first day of January, two thousand seven.  
 4 The guidelines for information and allowable actions in a  
 5 diabetes care plan shall meet or exceed the American Diabetes  
 6 Association’s recommendations for the management of children  
 7 with diabetes in the school and day care setting. The State

8 Board of Education shall consult with the Bureau for Public  
9 Health and the Department of Health and Human Resources in  
10 the development of these guidelines. The State Board of  
11 Education also shall consult with county board of education  
12 employees who have been designated as responsible for  
13 coordinating their individual county's efforts to comply with  
14 federal regulations adopted under Section 504 of the Rehabilita-  
15 tion Act of 1973, as amended, 29 U.S.C. § 794. In its develop-  
16 ment of these guidelines, the State Board of Education shall  
17 consider recent resolutions by the Office of Civil Rights of the  
18 United States Department of Education regarding investigation  
19 of complaints alleging discrimination against students with  
20 diabetes.

21 The guidelines adopted by the state board shall include:

22 (1) Procedures for school nurses to develop an individual  
23 diabetes care plan for any student diagnosed with diabetes,  
24 which shall involve the parent or guardian, the student's health  
25 care provider, the student's classroom teacher, the student if  
26 appropriate, and other appropriate school personnel;

27 (2) Procedures for regular review of an individual care plan.

28 (3) Information to be included in a diabetes care plan,  
29 including the responsibilities and appropriate staff development  
30 for teachers and other school personnel, an emergency care  
31 plan, the identification of allowable actions to be taken, the  
32 extent to which the student is able to participate in the student's  
33 diabetes care and management and other information necessary  
34 for teachers and other school personnel in order to offer  
35 appropriate assistance and support to the student; and

36 (4) Procedures for information and staff development to be  
37 made available to teachers and other school personnel in order  
38 to appropriately support and assist students with diabetes.

39 (b) The State Board of Education shall provide that the  
40 guidelines and any subsequent changes are published and  
41 disseminated to county boards of education.

**§18-2K-3. Establishment and implementation of diabetes care plans by county boards to support and assist students with diabetes.**

1 Each county board of education shall establish and adopt a  
2 diabetes care plan which shall be implemented in schools in  
3 which students diagnosed with diabetes are enrolled. The plan  
4 shall be adopted not later than six months after the State Board  
5 of Education adopts guidelines for the plans pursuant to section  
6 two of this article. The plan shall meet all of the guidelines for  
7 diabetes care plans adopted by the State Board of Education  
8 pursuant to section two of this article. In particular, the boards  
9 shall require the implementation of the procedures set forth in  
10 those guidelines for the development and implementation of  
11 individual diabetes care plans. County boards also shall make  
12 available necessary information and staff development to  
13 teachers and school personnel in order to appropriately support  
14 and assist students with diabetes in accordance with their  
15 individual diabetes care plans.

**§18-2K-4. Progress report to the Legislature.**

1 The State Board of Education shall report no later than the  
2 first day of September, two thousand seven, to the Legislative  
3 Oversight Commission on Health and Human Resources  
4 Accountability on the board's progress regarding the adoption  
5 and dissemination of the guidelines pursuant to section two of  
6 this article and the establishment and implementation of  
7 diabetes care plans by county boards of education pursuant to  
8 section three of this article.

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## CHAPTER 67

**(Com. Sub. for H. B. 4491 — By Mr. Speaker,  
Mr. Kiss, and Delegate Campbell)**

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[Passed March 8, 2006; in effect ninety days from passage.]  
[Approved by the Governor on March 29, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-100-1, §18-100-2, §18-100-3, §18-100-4 and §18-100-5, all relating to increasing the awareness and understanding of the history and contributions of people with disabilities in the state, nation and world; designating the third week of October as Disability History Week for the State of West Virginia; requiring integration of instruction on disability history, people with disabilities and the disability rights movement into the existing public school curriculum; legislative findings; and defined terms.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §18-100-1, §18-100-2, §18-100-3, §18-100-4 and §18-100-5, all to read as follows:

**ARTICLE 100. DISABILITY HISTORY WEEK.**

§18-100-1. Short title.

§18-100-2. Legislative findings.

§18-100-3. Purpose.

§18-100-4. Definitions.

§18-100-5. Disability History Week designated.

**§18-100-1. Short title.**

1 This article is known and may be cited as the “Disability  
2 History Week Act.”

**§18-100-2. Legislative findings.**

1 The Legislature finds that:

2 (1) According to the two thousand United States Census  
3 over four hundred thousand West Virginians have disabilities,  
4 which is nearly twenty-four percent of the state’s general  
5 population;

6 (2) In order to ensure the full inclusion of people with  
7 disabilities into society, it is necessary to expand the public’s  
8 knowledge, awareness and understanding of the history of  
9 disabilities and the disability rights movement;

10 (3) The disability rights movement is a civil rights move-  
11 ment that is an important part of the history of this state and this  
12 country;

13 (4) October is recognized nationally as Disability Aware-  
14 ness Month; and

15 (5) By designating the third week of October as Disability  
16 History Week, students and the public will have the opportunity  
17 to learn about the history and contributions of people with  
18 disabilities.

**§18-100-3. Purpose.**

1 The purpose of this article is to increase the awareness and  
2 understanding of the history and contributions of people with  
3 disabilities in the state, nation and world by designating the  
4 annual observance of the third week of October as Disability  
5 History Week.

**§18-100-4. Definitions.**

1 As used in this article the following words and phrases have  
2 the following meanings:

3 (a) “Disability history” means the people, events and  
4 timelines of the development and evolution of services to, and  
5 the civil rights of, people with disabilities. Disability history  
6 includes the contributions of specific people with disabilities;  
7 and

8 (b) “Existing school curriculum” means all the courses and  
9 curricula currently in place at a public school.

**§18-100-5. Disability History Week designated.**

1 (a) The third week of October annually is designated as  
2 Disability History Week for the State of West Virginia.

3 (b) In recognition of and to further the purposes of Disabil-  
4 ity History Week, each public school shall provide instruction  
5 on disability history, people with disabilities and the disability  
6 rights movement. The instruction shall be integrated into the  
7 existing school curriculum in a manner such as, but not limited  
8 to, supplementing existing lesson plans, holding school  
9 assemblies or providing other school activities. The instruction  
10 may be delivered by school personnel or by guest speakers.

11 (c) State institutions of higher education are encouraged to  
12 conduct and promote activities that provide education, aware-  
13 ness and understanding of disability history, people with  
14 disabilities and the disability rights movement.

15 (d) The Legislature is encouraged to annually recognize  
16 Disability History Week by introducing a concurrent resolution  
17 to:

18 (1) Recognize youth leaders in the disability rights move-  
19 ment;

20 (2) Reaffirm a commitment to the full inclusion of people  
21 with disabilities in society; and

22 (3) Recognize the disability rights movement as an impor-  
23 tant part of the history of this state and nation.

24 (e) Recognized resources for information, materials and  
25 speakers regarding disability history, people with disabilities  
26 and the disability rights movement include, but are not limited  
27 to:

28 (1) Centers for Independent Living;

29 (2) The Statewide Independent Living Council;

30 (3) The Developmental Disabilities Council; and

31 (4) The State Americans with Disabilities Act Coordinator.

32 (f) The provisions of this article are not intended to create  
33 a burden, financial or otherwise, for public schools, teachers or  
34 state institutions of higher education.

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## CHAPTER 68

**(Com. Sub. for S. B. 576 — By Senators Jenkins, Harrison,  
Foster, Oliverio, Kessler and McKenzie)**

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[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2006.]

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AN ACT to amend and reenact §48-1-302 of the Code of West Virginia, 1931, as amended; and to amend and reenact §56-6-31 of said code, all relating to the rate of interest allowed for certain



prejudgment and post-judgment awards; providing interest rate for domestic relation judgment obligations; establishing methodology for establishing rates for judgments or decrees generally; allowing exceptions to established interest rate based on prior written agreements; requiring the state Supreme Court of Appeals to annually determine and publish annual interest rate; providing that the interest rate applies for the entire term of the judgment or decree; and providing internal effective dates.

*Be it enacted by the Legislature of West Virginia:*

That §48-1-302 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §56-6-31 of said code be amended and reenacted, all to read as follows:

**Chapter**

**48. Domestic Relations.**

**56. Pleading and Practice.**

**CHAPTER 48. DOMESTIC RELATIONS.**

**ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.**

**PART 3. MISCELLANEOUS PROVISIONS RELATING  
TO DOMESTIC RELATIONS.**

**§48-1-302. Calculation of interest.**

1       (a) Notwithstanding any other provisions of the code, if an  
2 obligation to pay interest arises under this chapter, the rate of  
3 interest is ten percent per annum and proportionate thereto for  
4 a greater or lesser sum, or for a longer or shorter time. Interest  
5 awarded shall only be simple interest and nothing in this section  
6 may be construed to permit awarding of compound interest.  
7 Interest accrues only upon the outstanding principal of such  
8 obligation.

9       (b) Notwithstanding any other provision of law, no court  
10 may award or approve prejudgment interest in a domestic

11 relations action against a party unless the court finds, in writing,  
12 that the party engaged in conduct that would violate subsection  
13 (b), Rule 11 of the West Virginia Rules of Civil Procedure. If  
14 prejudgment interest is awarded, the court shall calculate  
15 prejudgment interest from the date the offending representation  
16 was presented to the court pursuant to subsection (a) of this  
17 section.

18 (c) Upon written agreement by both parties, an obligor may  
19 petition the court to enter an order conditionally suspending the  
20 collection of all or part of the interest that has accrued on  
21 past-due child support prior to the date of the agreement:  
22 *Provided*, That said agreement shall also establish a reasonable  
23 payment plan which is calculated to fully discharge all  
24 arrearages within twenty-four months. Upon successful  
25 completion of the payment plan, the court shall enter an order  
26 which permanently relieves the obligor of the obligation to pay  
27 the accrued interest. If the obligor fails to comply with the  
28 terms of the written agreement, then the court shall enter an  
29 order which reinstates the accrued interest.

30 (d) Amendments to this section enacted by the Legislature  
31 during the two thousand six regular session shall become  
32 effective the first day of January, two thousand seven.

## CHAPTER 56. PLEADING AND PRACTICE.

### ARTICLE 6. TRIAL.

#### §56-6-31. Interest on judgment or decree.

1 (a) Except where it is otherwise provided by law, every  
2 judgment or decree for the payment of money, whether in an  
3 action sounding in tort, contract or otherwise, entered by any  
4 court of this state shall bear interest from the date thereof,  
5 whether it be so stated in the judgment or decree or not:  
6 *Provided*, That if the judgment or decree, or any part thereof, is

7 for special damages, as defined below, or for liquidated  
8 damages, the amount of special or liquidated damages shall  
9 bear interest at the rate in effect for the calendar year in which  
10 the right to bring the same shall have accrued, as determined by  
11 the court and that established rate shall remain constant from  
12 that date until the date of the judgment or decree, notwithstand-  
13 ing changes in the federal reserve district discount rate in effect  
14 in subsequent years prior to the date of the judgment or decree.  
15 Special damages includes lost wages and income, medical  
16 expenses, damages to tangible personal property and similar  
17 out-of-pocket expenditures, as determined by the court. If an  
18 obligation is based upon a written agreement, the obligation  
19 shall bear a prejudgment interest at the rate set forth in the  
20 written agreement until the date the judgment or decree is  
21 entered and, thereafter, the judgment interest rate shall be the  
22 same rate as provided for in this section.

23 (b) Notwithstanding the provisions of section five, article  
24 six, chapter forty-seven of this code, the rate of interest on  
25 judgments and decrees for the payment of money, including  
26 prejudgment interest, is three percentage points above the Fifth  
27 Federal Reserve District secondary discount rate in effect on the  
28 second day of January of the year in which the judgment or  
29 decree is entered: *Provided*, That the rate of prejudgment and  
30 post-judgment interest shall not exceed eleven percent per  
31 annum or be less than seven percent per annum. The adminis-  
32 trative office of the Supreme Court of Appeals shall annually  
33 determine the interest rate to be paid upon judgments or decrees  
34 for the payment of money and shall take appropriate measures  
35 to promptly notify the courts and members of the West Virginia  
36 State Bar of the rate of interest in effect for the calendar year in  
37 question. Once the rate of interest is established by a judgment  
38 or decree as provided in this section, that established rate shall  
39 thereafter remain constant for that particular judgment or  
40 decree, notwithstanding changes in the Federal Reserve District  
41 discount rate in effect in subsequent years.

42 (c) Amendments to this section enacted by the Legislature  
 43 during the year two thousand six regular session shall become  
 44 effective the first day of January, two thousand seven.

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## CHAPTER 69

**(H. B. 4472 — By Delegates Kominar, Varner and Craig)**

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[Passed March 8, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to amend and reenact §48-10-101, §48-10-301, §48-10-401, §48-10-501, §48-10-901, §48-10-1001, §48-10-1002 and §48-10-1101 of the Code of West Virginia, 1931, as amended, all relating to including family court jurisdiction in all proceedings concerning grandparent visitation.

*Be it enacted by the Legislature of West Virginia:*

That §48-10-101, §48-10-301, §48-10-401, §48-10-501, §48-10-901, §48-10-1001, §48-10-1002 and §48-10-1101 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 10. GRANDPARENT VISITATION.**

- §48-10-101. Legislative findings.
- §48-10-301. Persons who may apply for grandparent visitation; venue.
- §48-10-401. Motion for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is pending.
- §48-10-501. Necessary findings for grant of reasonable visitation to a grandparent.
- §48-10-901. Effect of remarriage of the custodial parent.
- §48-10-1001. Continuing jurisdiction of circuit court or family court.
- §48-10-1002. Termination of grandparent visitation.
- §48-10-1101. Attorney's fees; reasonable costs.

**§48-10-101. Legislative findings.**

1       The Legislature finds that circumstances arise where it is  
2       appropriate for circuit courts or family courts of this state to  
3       order that grandparents of minor children may exercise  
4       visitation with their grandchildren. The Legislature further finds  
5       that in such situations, as in all situations involving children,  
6       the best interests of the child or children are the paramount  
7       consideration.

**§48-10-301. Persons who may apply for grandparent visitation;  
venue.**

1       A grandparent of a child residing in this state may, by  
2       motion or petition, make application to the circuit court or  
3       family court of the county in which that child resides for an  
4       order granting visitation with his or her grandchild.

**§48-10-401. Motion for grandparent visitation when action for  
divorce, custody, legal separation, annulment or  
establishment of paternity is pending.**

1       (a) The provisions of this section apply to any pending  
2       actions for divorce, custody, legal separation, annulment or  
3       establishment of paternity.

4       (b) After the commencement of the action, a grandparent  
5       seeking visitation with his or her grandchild may, by motion,  
6       apply to the circuit court or family court for an order granting  
7       visitation. A grandparent moving for an order of visitation will  
8       not be afforded party status, but may be called as a witness by  
9       the court, and will be subject to cross-examination by the  
10      parties.

**§48-10-501. Necessary findings for grant of reasonable visitation  
to a grandparent.**

1       The circuit court or family court shall grant reasonable  
2 visitation to a grandparent upon a finding that visitation would  
3 be in the best interests of the child and would not substantially  
4 interfere with the parent-child relationship.

**§48-10-901. Effect of remarriage of the custodial parent.**

1       The remarriage of the custodial parent of a child does not  
2 affect the authority of a circuit court or family court to grant  
3 reasonable visitation to any grandparent.

**§48-10-1001. Continuing jurisdiction of circuit court or family court.**

1       Any circuit court or family court that grants visitation rights  
2 to a grandparent shall retain jurisdiction throughout the  
3 minority of the minor child with whom visitation is granted to  
4 modify or terminate such rights as dictated by the best interests  
5 of the minor child.

**§48-10-1002. Termination of grandparent visitation.**

1       A circuit court or family court shall, based upon a petition  
2 brought by an interested person, terminate any grant of the right  
3 of grandparent visitation upon presentation of a preponderance  
4 of the evidence that a grandparent granted visitation has  
5 materially violated the terms and conditions of the order of  
6 visitation.

**§48-10-1101. Attorney's fees; reasonable costs.**

1       In an action brought under the provisions of this article, a  
2 circuit court or family court may order payment of reasonable  
3 attorney's fees and costs based upon the equities of the posi-  
4 tions asserted by the parties to pay such fees and costs.

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## CHAPTER 70

**(S. B. 481 — By Senators Kessler, Dempsey, Fanning, Foster, Hunter, Minard, Oliverio, White, Caruth, Deem, Harrison, Lanham and Weeks)**

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[Passed March 8, 2006; in effect from passage.]  
[Approved by the Governor on March 23, 2006.]

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AN ACT to amend and reenact §48-27-311 of the Code of West Virginia, 1931, as amended, relating to domestic violence protective orders served on persons out-of-state having the same force and effect as those served in-state.

*Be it enacted by the Legislature of West Virginia:*

That §48-27-311 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

**§48-27-311. Service of process.**

1       A protective order may be served on the respondent by  
2 means of a Class I legal advertisement published notice, with  
3 the publication area being the county in which the respondent  
4 resides, published in accordance with the provisions of section  
5 two, article three, chapter fifty-nine of this code if: (1) The  
6 petitioner files an affidavit with the court stating that an attempt  
7 at personal service pursuant to Rule 4 of the West Virginia  
8 Rules of Civil Procedure has been unsuccessful or evidence is  
9 adduced at the hearing for the protective order that the respon-  
10 dent has left the state of West Virginia; and (2) a copy of the  
11 order is mailed by certified or registered mail to the respondent

12 at the respondent's last known residence and returned undeliv-  
13 ered.

14 Any protective order issued by the court of this state which  
15 is served in compliance with the provisions of Rule 4(f) of the  
16 West Virginia Rules of Civil Procedure served outside the  
17 boundaries of this state shall carry the same force and effect as  
18 if it had been personally served within this state's boundaries.

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## CHAPTER 71

(Com. Sub. for H. B. 4313 — By Delegates Brown,  
Amores, Howard and Longstreth)

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[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §48-27-510 of the Code of West Virginia, 1931, as amended, relating to petitions of appeal of domestic violence protective orders.

*Be it enacted by the Legislature of West Virginia:*

That §48-27-510 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.**

#### **§48-27-510. Appeals.**

1 (a) A petitioner who has been denied an emergency  
2 protective order may file a petition for appeal of the denial,  
3 within five days of the denial, to the family court.



4 (b) Any party who alleges that he or she will be adversely  
5 affected or aggrieved by a final protective order, or the denial  
6 or dismissal of a petition for a protective order, may file a  
7 petition for appeal with the circuit court within ten days of the  
8 entry of the order by the family court. The order shall remain in  
9 effect pending an appeal unless stayed by order of the family  
10 court sua sponte or upon motion of a party, or by order of the  
11 circuit court upon motion of a party. No bond shall be required  
12 for any appeal under this section.

13 (c) A petition for appeal filed pursuant to this section shall  
14 be heard by the court within ten days from the filing of the  
15 petition.

16 (d) The standard of review of findings of fact made by the  
17 family court is clearly erroneous and the standard of review of  
18 application of the law to the facts is an abuse of discretion  
19 standard.

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## CHAPTER 72

**(Com. Sub. for S. B. 219 — By Senators Foster,  
Oliverio, Minard and Hunter)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to amend and reenact §17B-1-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17B-2-3a of said code, all relating to graduated-driver's licenses generally; changing the expiration for level one permits and level two licenses; prohibiting the use of a handheld wireless communication device while driving by a minor holding a level one instruc-

tion permit or a level two license; and providing penalties for such violations.

*Be it enacted by the Legislature of West Virginia:*

That §17B-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §17B-2-3a of said code be amended and reenacted, all to read as follows:

**Article**

**1. Words and Phrases Defined.**

**2. Issuance of License, Expiration and Renewal.**

**ARTICLE 1. WORDS AND PHRASES DEFINED.**

**§17B-1-1. Definitions.**

1           The following words and phrases when used in this chapter  
2 shall, for the purpose of this chapter, have the meanings  
3 respectively ascribed to them in this article:

4           (a) *Vehicle*. — Every device in, upon, or by which any  
5 person or property is or may be transported or drawn upon a  
6 public highway, excepting devices moved by human power or  
7 used exclusively upon stationary rails or tracks;

8           (b) *Motor vehicle*. — Every vehicle which is self-propelled  
9 and every vehicle which is propelled by electric power obtained  
10 from overhead trolley wires, but not operated upon rails;

11           (c) *Motorcycle*. — Every motor vehicle having a seat or  
12 saddle for the use of the rider and designed to travel on not  
13 more than three wheels in contact with the ground, but exclud-  
14 ing a farm tractor as defined herein, a moped as defined in  
15 section five-a, article one, chapter seventeen-c of this code, a  
16 snowmobile as defined in section one-mm, article one, chapter  
17 seventeen-a of this code and an all-terrain vehicle as defined in  
18 section one-ii, article one, chapter seventeen-a of this code;

19       (d) *Farm tractor*. — Every motor vehicle designed and  
20 used primarily as a farm implement for drawing plows, mowing  
21 machines, and other implements of husbandry;

22       (e) *School bus*. — Every motor vehicle owned by a public  
23 governmental agency and operated for the transportation of  
24 children to or from school or privately owned and operated for  
25 compensation for the transportation of children to or from  
26 school;

27       (f) *Person*. — Every natural person, firm, copartnership,  
28 association or corporation;

29       (g) *Operator*. — Every person, other than a chauffeur, who  
30 drives or is in actual physical control of a motor vehicle upon  
31 a highway or who is exercising control over or steering a  
32 vehicle being towed by a motor vehicle;

33       (h) *Chauffeur*. — Every person who is employed by another  
34 for the principal purpose of driving a motor vehicle and every  
35 person who drives a school bus transporting school children or  
36 any motor vehicle when in use for the transportation of persons  
37 or property for compensation;

38       (i) *Driver*. — Means any person who drives, operates or is  
39 in physical control of a motor vehicle, in any place open to the  
40 general public for purposes of vehicular traffic, or who is  
41 required to hold a driver's license;

42       (j) *Driver's License*. — Means any permit or license issued  
43 by this state to a person which authorizes the person to drive a  
44 motor vehicle of a specific class or classes subject to any  
45 restriction or endorsement contained thereon;

46       (k) *Owner*. — A person who holds the legal title of a  
47 vehicle or in the event a vehicle is the subject of an agreement  
48 for the conditional sale or lease thereof with the right of

49 purchase upon performance of the conditions stated in the  
50 agreement and with an immediate right of possession vested in  
51 the conditional vendee or lessee, or in the event a mortgagor of  
52 a vehicle is entitled to possession, then such conditional vendee  
53 or lessee or mortgagor shall be deemed the owner for the  
54 purpose of this chapter;

55 (l) *Nonresident*. — Every person who is not a resident of  
56 this state;

57 (m) *Street or highway*. — The entire width between the  
58 boundary lines of every way publicly maintained when any part  
59 thereof is open to the use of the public for purposes of vehicular  
60 travel;

61 (n) *Commissioner*. — The Commissioner of Motor  
62 Vehicles of this state;

63 (o) *Division*. — The Division of Motor Vehicles of this  
64 state acting directly or through its duly authorized officers or  
65 agents;

66 (p) *Suspension*. — Suspension means that the driver's  
67 license and privilege to drive a motor vehicle on the public  
68 highways are temporarily withdrawn but only during the period  
69 of such suspension;

70 (q) *Revocation*. — Revocation means that the driver's  
71 license and privilege to drive a motor vehicle on the public  
72 highways are terminated and shall not be renewed or restored,  
73 except that an application for a new license may be presented  
74 and acted upon by the division after the expiration of at least  
75 one year after the date of revocation, except as otherwise  
76 provided in section two, article five-a, chapter seventeen-c of  
77 this code;

78 (r) *Cancellation*. — Cancellation means that a driver's  
79 license is annulled and terminated because of some error or

80 defect or because the licensee is no longer entitled to such  
81 license, but the cancellation of a license is without prejudice  
82 and application for a new license may be made at any time after  
83 such cancellation.

84 (s) "9-1-1 system" means an emergency telephone system  
85 or enhanced emergency telephone system as defined in section  
86 two, article six, chapter twenty-four of this code.

87 (t) "Wireless communication device" means a handheld  
88 device used to access a wireless telephone service or a text  
89 messaging device.

## ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

### §17B-2-3a. Graduated driver's licenses.

1 (a) Any person under the age of eighteen may not operate  
2 a motor vehicle unless he or she has obtained a graduated  
3 driver's license in accordance with the three level graduated  
4 driver's license system described in the following provisions.

5 (b) Any person under the age of twenty-one, regardless of  
6 class or level of licensure, who operates a motor vehicle with  
7 any measurable alcohol in his or her system is subject to the  
8 provisions of section two, article five, and section two, article  
9 five-a both of chapter seventeen-c of this code. Any person  
10 under the age of eighteen, regardless of class or licensure level,  
11 is subject to the mandatory school attendance provisions of  
12 section eleven, article eight, chapter eighteen of this code.

13 (c) *Level one instruction permit.* — An applicant who is  
14 fifteen years or older meeting all other requirements prescribed  
15 in this code may be issued a level one instruction permit.

16 (1) *Eligibility.* — The division shall not issue a level one  
17 instruction permit unless the applicant:

18 (A) Presents a completed application, as prescribed by the  
19 provisions of section six of this article, and which is accompa-  
20 nied by a writing, duly acknowledged, consenting to the  
21 issuance of the graduated driver's license and executed by a  
22 parent or guardian entitled to custody of the applicant;

23 (B) Presents a certified birth certificate issued by a state or  
24 other governmental entity responsible for vital records,  
25 evidencing that the applicant meets the minimum age require-  
26 ment;

27 (C) Passes the vision and written knowledge examination,  
28 and completes the driving under the influence awareness  
29 program, as prescribed in section seven of this article;

30 (D) Presents a current school enrollment form or otherwise  
31 shows compliance with the provisions of section eleven, article  
32 eight, chapter eighteen of this code; and

33 (E) Pays a fee of five dollars.

34 (2) *Terms and conditions of instruction permit.* — A level  
35 one instruction permit issued under the provisions of this  
36 section is valid until thirty days after the date the applicant  
37 attains the age of eighteen and is not renewable. However, any  
38 permit holder who allows his or her permit to expire prior to  
39 successfully passing the road skills portion of the driver  
40 examination, and who has not committed any offense which  
41 requires the suspension, revocation or cancellation of the  
42 instruction permit, may reapply for a new instruction permit  
43 under the provisions of section six of this article. The division  
44 shall immediately revoke the permit upon receipt of a second  
45 conviction for a moving violation of traffic regulations and laws  
46 of the road or violation of the terms and conditions of a level  
47 one instruction permit, which convictions have become final  
48 unless a greater penalty is required by this section or any other  
49 provision of this code. Any person whose instruction permit has

50 been revoked is disqualified from retesting for a period of  
51 ninety days. However, after the expiration of ninety days, the  
52 person may retest if otherwise eligible. In addition to all other  
53 provisions of this code for which a driver's license may be  
54 restricted, suspended, revoked or canceled, the holder of a level  
55 one instruction permit may only operate a motor vehicle under  
56 the following conditions:

57 (A) Under the direct supervision of a licensed driver,  
58 twenty-one years of age or older, or a driver's education or  
59 driving school instructor who is acting in an official capacity as  
60 an instructor, who is fully alert and unimpaired, and the only  
61 other occupant of the front seat. The vehicle may be operated  
62 with no more than two additional passengers, unless the  
63 passengers are family members;

64 (B) Between the hours of five a.m. and eleven p.m.;

65 (C) All occupants must use safety belts in accordance with  
66 the provisions of section forty-nine, article fifteen, chapter  
67 seventeen-c of this code;

68 (D) Without any measurable blood alcohol content, in  
69 accordance with the provisions of subsection (h), section two,  
70 article five, chapter seventeen-c of this code; and

71 (E) Maintains current school enrollment or otherwise shows  
72 compliance with the provisions of section eleven, article eight,  
73 chapter eighteen of this code.

74 (F) A holder of a level one instruction permit or a level two  
75 intermediate driver's license who is under the age of eighteen  
76 years may not use a wireless communication device while  
77 operating a motor vehicle, unless the use of the wireless  
78 communication device is for contacting a 9-1-1 system. A law-  
79 enforcement officer may enforce the provisions of this para-  
80 graph only as a secondary action when a law-enforcement

81 officer with probable cause detains a driver for a suspected  
82 violation of another provision of this code.

83 (d) *Level two intermediate driver's license.* — An applicant  
84 sixteen years of age or older, meeting all other requirements of  
85 the code, may be issued a level two intermediate driver's  
86 license.

87 (1) *Eligibility.* — The division shall not issue a level two  
88 intermediate driver's license unless the applicant:

89 (A) Presents a completed application as prescribed in  
90 section six of this article;

91 (B) Has held the level one instruction permit conviction-free for the one hundred eighty days immediately preceding the date of application for a level two intermediate license;

94 (C) Has completed either a driver's education course approved by the state department of education or thirty hours of behind the wheel driving experience certified by a parent or legal guardian or other responsible adult over the age of twenty-one as indicated on the form prescribed by the division:  
99 *Provided*, That nothing in this paragraph shall be construed to  
100 require any school or any county board of education to provide  
101 any particular number of driver's education courses or to  
102 provide driver's education training to any student;

103 (D) Presents a current school enrollment form or otherwise  
104 shows compliance with the provisions of section eleven, article  
105 eight, chapter eighteen of this code;

106 (E) Passes the road skills examination as prescribed by  
107 section seven of this article; and

108 (F) Pays a fee of five dollars.

109 (2) *Terms and conditions of a level two intermediate*  
110 *driver's license.* — A level two intermediate driver's license



111 issued under the provisions of this section shall expire thirty  
112 days after the applicant attains the age of eighteen, or until the  
113 licensee qualifies for a level three full Class E license, which-  
114 ever comes first. In addition to all other provisions of this code  
115 for which a driver's license may be restricted, suspended,  
116 revoked or canceled, the holder of a level two intermediate  
117 driver's license may only operate a motor vehicle under the  
118 following conditions:

119 (A) Unsupervised between the hours of five a.m. and eleven  
120 p.m.;

121 (B) Only under the direct supervision of a licensed driver,  
122 age twenty-one years or older, between the hours of eleven p.m.  
123 and five a.m. except when the licensee is going to or returning  
124 from:

125 (i) Lawful employment;

126 (ii) A school sanctioned activity;

127 (iii) A religious event; or

128 (iv) An emergency situation that requires the licensee to  
129 operate a motor vehicle to prevent bodily injury or death of  
130 another;

131 (C) All occupants shall use safety belts in accordance with  
132 the provisions of section forty-nine, article fifteen, chapter  
133 seventeen-c of this code;

134 (D) Operates the vehicle with no more than three passen-  
135 gers under the age of nineteen, unless the passengers are family  
136 members, in addition to the driver;

137 (E) Without any measurable blood alcohol content in  
138 accordance with the provisions of subsection (h), section two,  
139 article five, chapter seventeen-c of this code;

140 (F) Maintains current school enrollment or otherwise shows  
141 compliance with the provisions of section eleven, article eight,  
142 chapter eighteen of this code;

143 (G) A holder of a level one instruction permit or a level two  
144 intermediate driver's license who is under the age of eighteen  
145 years may not use a wireless communication device while  
146 operating a motor vehicle, unless the use of the wireless  
147 communication device is for contacting a 9-1-1 system. A law-  
148 enforcement officer may enforce the provisions of this para-  
149 graph only as a secondary action when a law-enforcement  
150 officer with probable cause detains a driver for a suspected  
151 violation of another provision of this code.

152 (H) Upon the first conviction for a moving traffic violation  
153 or a violation of paragraph (A), (B), (C), (D) or (G), subdivision  
154 (1), subsection (d) of this section of the terms and conditions of  
155 a level two intermediate driver's license, the licensee shall  
156 enroll in an approved driver improvement program unless a  
157 greater penalty is required by this section or by any other  
158 provision of this code.

159 At the discretion of the commissioner, completion of an  
160 approved driver improvement program may be used to negate  
161 the effect of a minor traffic violation as defined by the commis-  
162 sioner against the one year conviction free driving criteria for  
163 early eligibility for a level three driver's license; and

164 (I) Upon the second conviction for a moving traffic  
165 violation or a violation of the terms and conditions of the level  
166 two intermediate driver's license, the licensee's privilege to  
167 operate a motor vehicle shall be revoked or suspended for the  
168 applicable statutory period or until the licensee's eighteenth  
169 birthday, whichever is longer unless a greater penalty is  
170 required by this section or any other provision of this code. Any  
171 person whose driver's license has been revoked as a level two  
172 intermediate driver, upon reaching the age of eighteen years and

173 if otherwise eligible may reapply for an instruction permit, then  
174 a driver's license in accordance with the provisions of sections  
175 five, six and seven of this article.

176 (e) *Level three, full Class E license.* — The level three  
177 license is valid until the day designated by the commissioner of  
178 the month in which the licensee attains the age of twenty-one.  
179 Unless otherwise provided in this section or any other section  
180 of this code, the holder of a level three full Class E license is  
181 subject to the same terms and conditions as the holder of a  
182 regular Class E driver's license.

183 A level two intermediate licensee whose privilege to  
184 operate a motor vehicle has not been suspended, revoked or  
185 otherwise canceled and who meets all other requirements of the  
186 code, may be issued a level three full Class E license without  
187 further examination or road skills testing, if the licensee:

188 (1) Has reached the age of seventeen years; and

189 (A) Presents a completed application as prescribed by the  
190 provisions of section six of this article;

191 (B) Has held the level two intermediate license convic-  
192 tion-free for the twelve-month period immediately preceding  
193 the date of the application;

194 (C) Has completed any driver improvement program  
195 required under paragraph (G), subdivision (2), subsection (d) of  
196 this section; and

197 (D) Pays a fee of two dollars and fifty cents for each year  
198 the license is valid. An additional fee of fifty cents shall be  
199 collected to be deposited in the combined voter registration and  
200 driver's licensing fund established in section twelve, article  
201 two, chapter three of this code; or

202 (2) Reaches the age of eighteen years; and

203 (A) Presents a completed application as prescribed by the  
204 provisions of section six of this article; and

205 (B) Pays a fee of two dollars and fifty cents for each year  
206 the license is valid. An additional fee of fifty cents shall be  
207 collected to be deposited in the combined voter registration and  
208 driver's licensing fund established in section twelve, article  
209 two, chapter three of this code.

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## CHAPTER 73

**(S. B. 785 — By Senators Plymale, Edgell, Dempsey,  
Hunter, Oliverio, White, Boley and Sprouse)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §18-2-7a of the Code of West Virginia, 1931, as amended, relating to requirements for physical education in public schools; additional condition authorizing development of alternative programs to meet requirements; grouping requirements by programmatic rather than grade levels; and requiring state board rule on collection, use and reporting body mass index data.

*Be it enacted by the Legislature of West Virginia:*

That §18-2-7a of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-7a. Legislative findings; required physical education; program in physical fitness.**

1 (a) The Legislature hereby finds that obesity is a problem  
2 of epidemic proportions in this state. There is increasing  
3 evidence that all segments of the population, beginning with  
4 children, are becoming more sedentary, more overweight and  
5 more likely to develop health risks and diseases including Type  
6 II Diabetes, high blood cholesterol and high blood pressure. The  
7 Legislature further finds that the promotion of physical activity  
8 during the school day for school children is a crucial step in  
9 combating this growing epidemic and in changing the attitudes  
10 and behavior of the residents of this state toward health  
11 promoting physical activity.

12 (b) As a result of these findings, the State Department of  
13 Education shall establish the requirement that each child  
14 enrolled in the public schools of this state actively participates  
15 in physical education classes during the school year to the level  
16 of his or her ability as follows:

17 (1) *Elementary school grades.* -- Not less than thirty  
18 minutes of physical education, including physical exercise and  
19 age-appropriate physical activities, for not less than three days  
20 a week.

21 (2) *Middle school grades.* -- Not less than one full period  
22 of physical education, including physical exercise and age-  
23 appropriate physical activities, each school day of one semester  
24 of the school year.

25 (3) *High school grades.* -- Not less than one full course  
26 credit of physical education, including physical exercise and  
27 age-appropriate physical activities, which shall be required for  
28 graduation and the opportunity to enroll in an elective lifetime  
29 physical education course.

30 (c) Enrollment in physical education classes and activities  
31 required by the provisions of this section shall not exceed, and  
32 shall be consistent with, state guidelines for enrollment in all  
33 other subjects and classes: *Provided*, That schools which do not  
34 currently have the number of certified physical education  
35 teachers, do not currently have the required physical setting or  
36 would have to significantly alter academic offerings to meet the  
37 physical education requirements may develop alternate  
38 programs that will enable current staff, physical settings and  
39 offerings to be used to meet the physical education require-  
40 ments established herein. These alternate programs shall be  
41 submitted to the State Department of Education and the Healthy  
42 Lifestyle Council for approval. Those schools needing to  
43 develop alternate programs shall not be required to implement  
44 this program until the school year commencing two thousand  
45 six.

46 (d) The state board shall prescribe a program within the  
47 existing health and physical education program which incorpo-  
48 rates fitness testing, reporting, recognition, fitness events and  
49 incentive programs which requires the participation in grades  
50 four through eight and the required high school course. The  
51 program shall be selected from nationally accepted fitness  
52 testing programs designed for school-aged children that test  
53 cardiovascular fitness, muscular strength and endurance,  
54 flexibility and body composition: *Provided*, That nothing in this  
55 subsection shall be construed to prohibit the use of programs  
56 designed under the auspices of the President's Council on  
57 Physical Fitness and Sports. The program shall include modi-  
58 fied tests for exceptional students. Each school in the state shall  
59 participate in National Physical Fitness and Sports Month in  
60 May of each year and shall make every effort to involve the  
61 community it serves in the related events.

62 (e) The state board shall promulgate a rule in accordance  
63 with the provisions article three-b, chapter twenty-nine-a of this  
64 code that includes at least the following provisions to provide

65 for the collection, reporting and use of body mass index data in  
66 the public schools:

67 (1) The data shall be collected using the appropriate  
68 methodology for assessing the body mass index from student  
69 height and weight data;

70 (2) The data shall be collected on a scientifically drawn  
71 sample of students;

72 (3) The data shall be collected and reported in a manner that  
73 protects student confidentiality;

74 (4) The data shall be reported to the Department of Educa-  
75 tion; and

76 (5) All body mass index data shall be reported in aggregate  
77 to the Governor, the State Board of Education, the Healthy  
78 Lifestyles Coalition and the Legislative Oversight Commission  
79 on Health and Human Resources Accountability for use as an  
80 indicator of progress toward promoting healthy lifestyles  
81 among school-aged children.

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## CHAPTER 74

**(Com. Sub. for S. B. 127 — By Senators Tomblin,  
Mr. President, and Sprouse)  
[By Request of the Executive]**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §18-2-15a of the Code of West  
Virginia, 1931, as amended; and to amend and reenact §18-9A-8a

of said code, all relating to regional education service agencies; study by the State Superintendent of Schools; and foundation allowance for regional education service agencies.

*Be it enacted by the Legislature of West Virginia:*

That §18-2-15a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18-9A-8a of said code be amended and reenacted, all to read as follows:

**Article**

**2. State Board of Education.**

**9a. Public School Support.**

**ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-15a. Comprehensive study of regional education service agencies.**

1 (a) The state superintendent shall conduct a comprehensive  
2 study of the programs, governance and administration of the  
3 regional education service agencies established pursuant to  
4 section twenty-six of this article.

5 (b) The study shall include, but is not limited to, the  
6 following:

7 (1) The general structure and specific processes for  
8 governance and oversight of the regional education service  
9 agencies to ensure efficiency of operations and accountability  
10 in the areas of:

11 (A) Financial integrity, oversight and accountability;

12 (B) Fiscal oversight of budgeting, salaries, benefits and  
13 employment;

14 (C) Service delivery in priority areas, including, but not  
15 limited to: (i) The types, cost, convenience and results of in-



16 service training programs and other efforts to assist low  
17 performing schools and school systems; and (ii) the costs and  
18 turnaround time of computer repair services; and

19 (D) The costs and benefits of other services provided to the  
20 respective members' counties;

21 (2) Areas of needed improvements, including any existing  
22 limitations or hindrances to improvement;

23 (3) The powers and duties of state board and state superin-  
24 tendent relating to regional education service agencies;

25 (4) The qualifications and procedures for selection of  
26 agency executive directors;

27 (5) The selection and supervision of agency staff;

28 (6) Development of agency budget;

29 (7) Oversight of agency purchasing and auditing proce-  
30 dures;

31 (8) Development of programs and delivery of services; and

32 (9) Procedures to ensure fiscal and programmatic account-  
33 ability.

34 (c) The state superintendent shall report findings generated  
35 by the study, together with recommendations and any legisla-  
36 tion necessary to effectuate the recommendations, to the  
37 Legislative Oversight Commission on Education Accountability  
38 by the first day of December, two thousand six.

#### **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

#### **§18-9A-8a. Foundation allowance for regional education service agencies.**

1 For the fiscal year beginning on the first day of July, two  
2 thousand six, and for each fiscal year thereafter, the foundation  
3 allowance for regional education service agencies shall be equal  
4 to sixty-three one-hundredths percent of the allocation for  
5 professional educators as determined in section four of this  
6 article, but not more than four million two hundred thousand  
7 dollars. The allowance shall be distributed to the regional  
8 education service agencies in accordance with rules adopted by  
9 the state board. The allowance for regional education service  
10 agencies shall be excluded from the computation of total basic  
11 state aid as provided in section twelve of this article.

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## CHAPTER 75

**(Com. Sub. for S. B. 53 — By Senators Hunter, Dempsey and Unger)**

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[Passed March 11, 2006; in effect July 1, 2006.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to amend and reenact §18-5-22 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18-9A-10a, all relating to improving the capacity of county boards of education to provide school health services; providing for distribution to counties of appropriations to support certain school health service needs; eliminating the authority of the Commissioner of the Bureau for Public Health to promulgate a rule to implement certain training and create certain standards and giving that authority to the State Board of Education; and establishing an allowance for new nurse positions to the extent funds are available.

*Be it enacted by the Legislature of West Virginia:*

That §18-5-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18-9A-10a, all to read as follows:

**Article**

**5. County Board of Education.**

**9A. Public School Support.**

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-22. Medical and dental inspection; school nurses; specialized health procedures; establishment of council of school nurses.**

1           (a) County boards shall provide proper medical and dental  
2 inspections for all pupils attending the schools of their county  
3 and have the authority to take any other action necessary to  
4 protect the pupils from infectious diseases, including the  
5 authority to require from all school personnel employed in their  
6 county, certificates of good health and of physical fitness.

7           (b) Each county board shall employ full time at least one  
8 school nurse for every one thousand five hundred kindergarten  
9 through seventh grade pupils in net enrollment or major fraction  
10 thereof: *Provided*, That each county shall employ full time at  
11 least one school nurse: *Provided, however*, That a county board  
12 may contract with a public health department for services  
13 considered equivalent to those required by this section in  
14 accordance with a plan to be approved by the state board:  
15 *Provided further*, That the state board shall promulgate rules  
16 requiring the employment of school nurses in excess of the  
17 number required by this section to ensure adequate provision of  
18 services to severely handicapped pupils. An appropriation may  
19 be made to the state department to be distributed to county  
20 boards to support school health service needs that exceed the  
21 capacity of staff as mandated in this section. Each county board  
22 shall apply to the state superintendent for receipt of this funding

23 in a manner set forth by the state superintendent that assesses  
24 and takes into account varying acuity levels of students with  
25 specialized health care needs.

26 (c) Any person employed as a school nurse must be a  
27 registered professional nurse properly licensed by the West  
28 Virginia Board of Examiners for Registered Professional  
29 Nurses in accordance with article seven, chapter thirty of this  
30 code.

31 (d) Specialized health procedures that require the skill,  
32 knowledge and judgment of a licensed health professional may  
33 be performed only by school nurses, other licensed school  
34 health care providers as provided in this section, or school  
35 employees who have been trained and retrained every two years  
36 who are subject to the supervision and approval by school  
37 nurses. After assessing the health status of the individual  
38 student, a school nurse, in collaboration with the student's  
39 physician, parents and, in some instances, an individualized  
40 education program team, may delegate certain health care  
41 procedures to a school employee who shall be trained pursuant  
42 to this section, considered competent, have consultation with,  
43 and be monitored or supervised by the school nurse: *Provided,*  
44 That nothing in this section prohibits any school employee from  
45 providing specialized health procedures or any other prudent  
46 action to aid any person who is in acute physical distress or  
47 requires emergency assistance. For the purposes of this section  
48 "specialized health procedures" means, but is not limited to,  
49 catheterization, suctioning of tracheostomy, naso-gastric tube  
50 feeding or gastrostomy tube feeding. "School employee" means  
51 "teachers" as defined in section one, article one of this chapter  
52 and "aides" as defined in section eight, article four, chapter  
53 eighteen-a of this code. Commencing with the school year  
54 beginning on the first day of July, two thousand two, "school  
55 employee" also means "secretary I", "secretary II" and  
56 "secretary III" as defined in section eight, article four, chapter

57 eighteen-a of this code: *Provided, however,* That a “secretary  
58 I”, “secretary II” and “secretary III” shall be limited to the  
59 dispensing of medications.

60 (e) Any school service employee who elects, or is required  
61 by this section, to undergo training or retraining to provide, in  
62 the manner specified in this section, the specialized health care  
63 procedures for those students for which the selection has been  
64 approved by both the principal and the county board shall  
65 receive additional pay of at least one pay grade higher than the  
66 highest pay grade for which the employee is paid: *Provided,*  
67 That any training required in this section may be considered in  
68 lieu of required in-service training of the school employee and  
69 a school employee may not be required to elect to undergo the  
70 training or retraining: *Provided, however,* That commencing  
71 with the first day of July, one thousand nine hundred  
72 eighty-nine, any newly employed school employee in the field  
73 of special education is required to undergo the training and  
74 retraining as provided in this section: *Provided further,* That if  
75 an employee who holds a class title of an aide is employed in a  
76 school and the aide has received the training, pursuant to this  
77 section, then an employee in the field of special education is not  
78 required to perform the specialized health care procedures.

79 (f) Each county school nurse, as designated and defined by  
80 this section, shall perform a needs assessment. These nurses  
81 shall meet on the basis of the area served by their regional  
82 educational service agency, prepare recommendations and elect  
83 a representative to serve on the council of school nurses  
84 established under this section.

85 (g) There shall be a council of school nurses which shall be  
86 convened by the State Board of Education. This council shall  
87 prepare a procedural manual and shall provide recommenda-  
88 tions regarding a training course to the Commissioner of the  
89 Bureau for Public Health who shall consult with the State

90 Department of Education. The state board then has the authority  
91 to promulgate a rule in accordance with the provisions of article  
92 three-b, chapter twenty-nine-a of this code to implement the  
93 training and to create standards used by those school nurses and  
94 school employees performing specialized health procedures.  
95 The council shall meet every two years to review the certifica-  
96 tion and training program regarding school employees.

97 (h) The State Board of Education shall work in conjunction  
98 with county boards to provide training and retraining every two  
99 years as recommended by the Council of School Nurses and  
100 implemented by the rule promulgated by the state board.

#### **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

##### **§18-9A-10a. Allowance for student health services.**

1 (a) The Legislature finds that the need for health services  
2 has grown over the years in the public schools, particularly with  
3 respect to serving special needs students and regulations on the  
4 administration of medications, and the existing statutorily  
5 required ratio of one nurse for each one thousand five hundred  
6 students in net enrollment in grades kindergarten through seven  
7 is no longer adequate. The Legislature further finds that limits  
8 on state-funded professional personnel, required ratios for  
9 instructional personnel and declining student population and  
10 population density require county boards to make increasingly  
11 difficult decisions with respect to the instructional personnel  
12 employed in the classroom and those that provide health and  
13 other services to students. Therefore, the intent of this section  
14 is to augment the funding of instructional personnel and to  
15 assure improved health services for students by partially  
16 funding nurse positions for certain counties as an intermediate  
17 step toward improving instructional personnel staffing. The  
18 Legislature intends to further examine the state basic founda-  
19 tion program in context with the changing educational environ-

20 ment and address the staffing and other needs of the public  
21 schools as may be indicated through that examination.

22 (b) Commencing with the school year beginning on the first  
23 day of July, two thousand six, notwithstanding any other  
24 provision of this code to the contrary and not subject to nor  
25 counted toward the respective ratios of professional and  
26 instructional personnel per students in adjusted and net enroll-  
27 ment set forth in sections four and five-a of this article, counties  
28 shall receive funding at the state average contracted salary for  
29 nurses plus fixed charges, retirement and the public employee  
30 insurance employer premium for nurse positions as determined  
31 by applying a ratio of one nurse per each one thousand five  
32 hundred students in net enrollment, or major fraction thereof, in  
33 grades prekindergarten through twelve, less existing nurses  
34 employed during the two thousand five-two thousand six school  
35 year, to the extent funds are available.

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## CHAPTER 76

**(S. B. 635 — By Senators Edgell, Plymale, Bailey, Dempsey, Hunter,  
Unger, White, Boley, Guills, Harrison and Sprouse)**

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[Passed March 8, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-47, relating to requiring flood insurance on certain buildings, and the contents of those buildings, owned by a county board of education.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5-47, to read as follows:

**ARTICLE 5. COUNTY BOARD OF EDUCATION.**

**§18-5-47. County board flood insurance requirements.**

1       (a) Each county board shall maintain flood insurance on  
2 each insurable building that it owns and that meets one or both  
3 of the following requirements:

4       (1) The building is within the identified special flood  
5 hazard area which is the area on a flood hazard boundary map  
6 or a flood insurance rate map that is identified as an “A zone”,  
7 a numbered “A zone” or an “AE zone” or regulatory one  
8 hundred year floodplain and the building has a replacement  
9 value that is greater than three hundred thousand dollars; or

10       (2) The building has been damaged in a previous flood and  
11 flood insurance is required by the Federal Emergency Manage-  
12 ment Agency.

13       (b) Each county board also shall maintain flood insurance  
14 on the contents of each insurable building that it owns and that  
15 meets one or both of the requirements set forth in subsection (a)  
16 of this section.

17       (c) The buildings and the contents of those buildings  
18 required to be insured by this section shall be insured at the  
19 maximum amounts available through the National Flood  
20 Insurance Program or the estimated replacement value of the  
21 structure and contents, whichever is less.



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## CHAPTER 77

**(S. B. 631 — By Senators Kessler, Dempsey, Hunter,  
Caruth, Deem, Lanham, McKenzie and Weeks)**

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[Passed March 9, 2006; in effect ninety days from passage.]  
[Approved by the Governor on March 23, 2006.]

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AN ACT to amend and reenact §18-8-4 of the Code of West Virginia, 1931, as amended, relating to process, service and parties charged in summons or warrants for violations of compulsory school attendance; authorizing charge of more than one parent, custodian or guardian in single complaint; and continuing attempts to serve until executed or end of school term.

*Be it enacted by the Legislature of West Virginia:*

That §18-8-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**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  
21 provisions of this article, then the attendance director or  
22 assistant shall make complaint against the parent, guardian or  
23 custodian before a magistrate of the county. If it appears from  
24 the complaint that there is probable cause to believe that an  
25 offense has been committed and that the accused has committed  
26 it, a summons or a warrant for the arrest of the accused shall  
27 issue to any officer authorized by law to serve the summons or  
28 to arrest persons charged with offenses against the state. More  
29 than one parent, guardian or custodian may be charged in a  
30 complaint. Initial service of a summons or warrant issued  
31 pursuant to the provisions of this section shall be attempted  
32 within ten calendar days of receipt of the summons or warrant  
33 and subsequent attempts at service shall continue until the  
34 summons or warrant is executed or until the end of the school  
35 term during which the complaint is made, whichever is later.

36 (c) The magistrate court clerk, or the clerk of the circuit  
37 court performing the duties of the magistrate court as autho-  
38 rized in section eight, article one, chapter fifty of this code,  
39 shall assign the case to a magistrate within ten days of execu-  
40 tion of the summons or warrant. The hearing shall be held  
41 within twenty days of the assignment to the magistrate, subject

42 to lawful continuance. The magistrate shall provide to the  
43 accused at least ten days' advance notice of the date, time and  
44 place of the hearing.

45 (d) When any doubt exists as to the age of a child absent  
46 from school, the attendance director shall have authority to  
47 require a properly attested birth certificate or an affidavit from  
48 the parent, guardian or custodian of such child, stating age of  
49 the child. The county attendance director or assistant shall, in  
50 the performance of his or her duties, have authority to take  
51 without warrant any child absent from school in violation of the  
52 provisions of this article and to place such child in the school in  
53 which such child is or should be enrolled.

54 (e) The county attendance director shall devote such time  
55 as is required by section three of this article to the duties of  
56 attendance director in accordance with this section during the  
57 instructional term and at such other times as the duties of an  
58 attendance director are required. All attendance directors hired  
59 for more than two hundred days may be assigned other duties  
60 determined by the superintendent during the period in excess of  
61 two hundred days. The county attendance director shall be  
62 responsible under direction of the county superintendent for the  
63 efficient administration of school attendance in the county.

64 (f) In addition to those duties directly relating to the  
65 administration of attendance, the county attendance director and  
66 assistant directors shall also perform the following duties:

67 (1) Assist in directing the taking of the school census to see  
68 that it is taken at the time and in the manner provided by law;

69 (2) Confer with principals and teachers on the comparison  
70 of school census and enrollment for the detection of possible  
71 nonenrollees;

72       (3) Cooperate with existing state and federal agencies  
73 charged with enforcement of child labor laws;

74       (4) Prepare a report for submission by the county superin-  
75 tendent to the state superintendent of schools on school  
76 attendance, at such times and in such detail as may be required.  
77 The state board shall promulgate a legislative rule pursuant to  
78 article three-b, chapter twenty-nine-a of this code that sets forth  
79 student absences that shall be excluded for accountability  
80 purposes. The absences that shall be excluded by the rule shall  
81 include, but not be limited to, excused student absences,  
82 students not in attendance due to disciplinary measures and  
83 absent students for whom the attendance director has pursued  
84 judicial remedies to compel attendance to the extent of his or  
85 her authority. The attendance director shall file with the county  
86 superintendent and county board of education at the close of  
87 each month a report showing activities of the school attendance  
88 office and the status of attendance in the county at the time;

89       (5) Promote attendance in the county by the compilation of  
90 data for schools and by furnishing suggestions and recommen-  
91 dations for publication through school bulletins and the press,  
92 or in such manner as the county superintendent may direct;

93       (6) Participate in school teachers' conferences with parents  
94 and students;

95       (7) Assist in such other ways as the county superintendent  
96 may direct for improving school attendance;

97       (8) Make home visits of students who have excessive  
98 unexcused absences, as provided above, or if requested by the  
99 chief administrator, principal or assistant principal; and

100       (9) Serve as the liaison for homeless children and youth.

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## CHAPTER 78

(S. B. 32 — By Senators Hunter, White, Dempsey,  
Sharpe, Minard and Love)

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[Passed March 11, 2006; in effect July 1, 2006.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to amend and reenact §18-19-1, §18-19-2 and §18-19-3 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18C-1-4 of said code, all relating to state-funded student financial aid resources; modifying eligibility criteria for certain programs; modifying the types of institutions at which certain benefits may be used; expanding certain benefit eligibility to children of certain military personnel; increasing certain benefit amounts; extending eligibility age limits for certain benefits; and extending the benefit eligibility until a date certain to certain students who attend public high school outside the state.

*Be it enacted by the Legislature of West Virginia:*

That §18-19-1, §18-19-2 and §18-19-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §18C-1-4 of said code be amended and reenacted, all to read as follows:

**Chapter**

**18. Education.**

**18C. Student Loans; Scholarships and State Aid.**

### **CHAPTER 18. EDUCATION.**

**ARTICLE 19. EDUCATIONAL OPPORTUNITIES FOR CHILDREN OF  
DECEASED SOLDIERS, SAILORS, MARINES AND  
AIRMEN.**

§18-19-1. Appropriation to provide educational opportunities.

§18-19-2. Eligibility of applicant for benefits; application forms; preference.

§18-19-3. No tuition fees to be charged; how funds to be expended; cessation of allowances.

**§18-19-1. Appropriation to provide educational opportunities.**

1 (a) The purpose of this article is to provide educational  
2 opportunities for the children of those:

3 (1) Who served in:

4 (A) The Army, Navy or Marine Corps of the United States  
5 during the world war from the sixth day of April, one thousand  
6 nine hundred seventeen, to the second day of July, one thousand  
7 nine hundred twenty-one, all dates inclusive;

8 (B) The armed forces of the United States of America at  
9 any time between the first day of December, one thousand nine  
10 hundred forty-one, and the declaration of peace by the Congress  
11 of the United States, all dates inclusive;

12 (C) The armed forces of the United States of America at  
13 any time between the twenty-seventh day of June, one thousand  
14 nine hundred fifty, and the thirty-first day of January, one  
15 thousand nine hundred fifty-five, all dates inclusive;

16 (D) The armed forces of the United States of America at  
17 any time between the fifth day of August, one thousand nine  
18 hundred sixty-four, and the seventh day of May, one thousand  
19 nine hundred seventy-five, all dates inclusive; or

20 (E) The Armed Forces of the United States of America at  
21 any time during which the forces or members of the reserve  
22 components are called to active duty by the President of the  
23 United States under Title 10 of the United States Code for the  
24 purpose of entering into armed combat; and

25 (2) Who were killed in action or have died or may hereafter  
26 die from disease or disability resulting from this war service.

27 (b) For the purpose of this article, there is appropriated  
28 from the State Fund, General Revenue the sum of at least five  
29 thousand dollars for each fiscal year commencing the first day  
30 of July and ending on the thirtieth day of June of each year of  
31 the next biennium to be used for the benefit of these children  
32 while attending post-secondary education or training institu-  
33 tions.

34 (c) This benefit also shall be given to children of a service  
35 member killed during hostile actions as defined by the agency  
36 administering this section.

37 (d) The term "children" as used in this article includes any  
38 child of a veteran who has been legitimized by operation of law  
39 prior to the veteran's demise.

**§18-19-2. Eligibility of applicant for benefits; application forms;  
preference.**

1 (a) To be eligible for the benefits of this article, a child set  
2 forth in section one of this article shall be:

3 (1) At least sixteen and not more than twenty-five years of  
4 age;

5 (2) Enrolled in a post-secondary education or training  
6 institution in this state; and

7 (3) The child of an enlistee who designated West Virginia  
8 as his or her state of record.

9 (b) The application shall be made to, and upon forms  
10 provided by, the West Virginia Division of Veterans' Affairs.  
11 The division shall determine the eligibility of those who apply

12 and the yearly amount to be allotted each applicant. The  
13 amount, in the discretion of the division, may vary from year to  
14 year, but may not exceed the sum of one thousand dollars in any  
15 one semester or a total of two thousand dollars in any one year.  
16 In selecting those to receive the benefits of this article, prefer-  
17 ence shall be given those who are otherwise financially unable  
18 to secure the educational opportunities.

**§18-19-3. No tuition fees to be charged; how funds to be expended; cessation of allowances.**

1 (a) A state post-secondary education or training institution  
2 may not charge tuition and fees to an eligible applicant attend-  
3 ing that institution pursuant to this article. The funds herein  
4 appropriated shall be expended by the West Virginia Division  
5 of Veterans' Affairs only for matriculation fees, board, room  
6 rent, books, supplies and other necessary living expenses of  
7 those children.

8 (b) In the event that a child eligible for a tuition waiver  
9 pursuant to this section attends a private post-secondary  
10 education or training institution where the tuition waiver is not  
11 applicable, that child remains eligible for up to two thousand  
12 dollars per year in education benefits pursuant to section two of  
13 this article.

14 (c) In addition to the tuition waiver available pursuant to  
15 this section, a child attending a state post-secondary education  
16 or training institution is eligible for up to two thousand dollars  
17 per year in education benefits as provided in section two of this  
18 article.

19 (d) The division is charged with the duty of disbursing the  
20 funds herein provided and shall draw its requisitions upon the  
21 State Auditor for that purpose. In its discretion the division, if  
22 satisfied as to the accuracy and amounts of the expenditures,



23 shall make the requisitions payable to the post-secondary  
24 education or training institutions or to those furnishing to the  
25 children board, room rent, books, supplies and other necessary  
26 living expenses.

27 (e) If a child receiving benefits or tuition waivers pursuant  
28 to this article withdraws from the institution, all allowances to  
29 the child shall cease.

30 (f) A member or employee of the division may not receive  
31 any additional compensation for the services herein required.

32 (g) Acceptance of benefits or tuition waivers pursuant to  
33 this article does not limit the acceptance of any other scholar-  
34 ship or grant for which a student may be eligible.

35 (h) Notwithstanding the provisions of this article to the  
36 contrary, until the first day of January, two thousand seven,  
37 benefits received pursuant to this article may be used for  
38 educational opportunities received at an education or training  
39 institution that is below the post-secondary level.

## CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

### ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.

#### **\*§18C-1-4. Eligibility of commuting students and children of military personnel for state-funded student financial aid, grants and scholarships.**

1 (a) Notwithstanding any other provision of this code or rule  
2 to the contrary, a student who attended a public or private high  
3 school outside the state is eligible for state-funded student  
4 financial aid, grants and scholarships if:

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\* **CLERK'S NOTE:** This section was also amended by H. B. 4049 (Chapter 79), which passed subsequent to this act.

5 (1) The student meets all other eligibility requirements for  
6 the aid, grant or scholarship; and either

7 (2) The student resided in West Virginia while attending  
8 high school in another state, and:

9 (A) The student resided with his or her parent or legal  
10 guardian who:

11 (i) Was a resident of this state; and

12 (ii) Had been a resident of this state for at least two years  
13 immediately preceding the student's attendance at the school;

14 (B) The student commuted during the school term on a  
15 daily basis from this state to the school;

16 (C) The student is a dependent of the parent or legal  
17 guardian upon which eligibility is based;

18 (D) The student has not established domicile outside the  
19 state; and

20 (E) At the discretion of the State Superintendent of Schools,  
21 as defined in section one, article one, chapter eighteen of this  
22 code:

23 (i) The school is fully accredited in that state to the degree  
24 acceptable to the State Superintendent of Schools; and

25 (ii) The school's curriculum requirements for graduation  
26 are equivalent to the curriculum requirements for graduation in  
27 this state, or sufficiently similar to those requirements, as  
28 determined by the State Superintendent of Schools; or

29 (3) The student resided and attended high school in another  
30 state or a United States territory, United States possession or  
31 foreign country and:

32 (A) The student resided with his or her parent or legal  
33 guardian; and

34 (B) The student's parent or legal guardian:

35 (i) Served in the United States armed forces while the  
36 student attended high school in such state, territory, possession  
37 or country;

38 (ii) Was stationed for military purposes in such state,  
39 territory, possession or country; and

40 (iii) Maintained legal residence in West Virginia while  
41 stationed in such state, territory, possession or country.

42 (b) This section may not be construed to alter, amend or  
43 extend any application deadlines or other requirements estab-  
44 lished by law or policy.

45 (c) The provisions of this section expire on the thirtieth day  
46 of June, two thousand ten.



## CHAPTER 79

**(H. B. 4049 — By Delegates Campbell, Williams, Perry, Paxton,  
Spencer, Crosier, Fragale, Eldridge, Wysong, Leggett and Tansill)**

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[Passed March 11, 2006; in effect July 1, 2006.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to repeal §18B-14-9 of the Code of West Virginia, 1931, as amended; to repeal §18C-5-8 of said code; to repeal §18C-7-9 of said code; to repeal §18C-8-1, §18C-8-2 and §18C-8-3 of said code; to amend and reenact §18-30-6 of said code; to amend and

reenact §18B-1B-2 of said code; to amend and reenact §18B-4-1 of said code; to amend and reenact §18B-10-1 of said code; to amend and reenact §18C-1-1, §18C-1-3 and §18C-1-4 of said code; to amend said code by adding thereto a new section, designated §18C-1-5; to amend and reenact §18C-5-1, §18C-5-2, §18C-5-3, §18C-5-4, §18C-5-5 and §18C-5-6 of said code; and to amend and reenact §18C-7-2, §18C-7-3, §18C-7-4 §18C-7-5, §18C-7-6 and §18C-7-7 of said code, all relating to higher education generally; the Higher Education Policy Commission; student financial aid programs; need-based and merit-based student financial aid programs; West Virginia Prepaid Tuition Trust Program; PROMISE Scholarship Program; Higher Education Grant Program; increasing amount to be transferred annually to Prepaid Tuition Trust Escrow Fund; establishing additional eligibility requirements for Higher Education Policy Commission members; requiring coordination among certain public education entities; deleting certain requirement relating to supervision of Higher Education Policy Commission staff; establishing conditions limiting tuition and fee increases for certain students at certain state institutions of higher education; providing exceptions to cap on tuition and fee increases; requiring state institutions of higher education to provide certain information; requiring report to Legislative Oversight Commission on Education Accountability annually; expanding certain legislative findings; establishing certain legislative intent; defining purposes of state-supported financial aid programs; expanding eligibility for PROMISE scholarship awards to certain students attending high school outside the state; creating the Student Financial Aid Advisory Board; providing for membership of advisory board; specifying powers, duties and responsibilities of advisory board; providing for reimbursement of member expenses; continuing Higher Education Grant Program; specifying purposes of grant program; requiring consultation among entities for student financial aid administration; creating the “higher education grant fund” special revenue fund; establishing legislative intent regarding increased levels of appropriation to the Higher Education Grant Fund and

the PROMISE Scholarship Fund; modifying PROMISE Scholarship eligibility requirements; clarifying flexibility to change PROMISE eligibility requirements; expanding membership of PROMISE Scholarship Board of Control; establishing additional eligibility requirements for members of PROMISE Board; encouraging PROMISE Board to use certain staff for administrative and technical support; specifying additional duties of PROMISE Board; requiring PROMISE Board to report annually to Joint Standing Committee on Education; specifying limits on certain grant awards; defining purposes of PROMISE Scholarship Program; modifying the calculation for determining student financial aid award levels for certain higher education grant recipients; defining terms and clarifying the definitions of certain terms; requiring promulgation of legislative rules and emergency rule; limiting authority of PROMISE Board to require scholarship recipients to repay all or part of scholarship amount; modifying definition of “eligible institution” for purpose of participating in PROMISE scholarship program; making technical corrections; and repealing obsolete provisions.

*Be it enacted by the Legislature of West Virginia:*

That §18B-14-9 of the Code of West Virginia, 1931, as amended, be repealed; that §18C-5-8 of said code be repealed; that §18C-7-9 of said code be repealed; that §18C-8-1, §18C-8-2 and §18C-8-3 of said code be repealed; that §18-30-6 of said code be amended and reenacted; that §18B-1B-2 of said code be amended and reenacted; that §18B-4-1 of said code be amended and reenacted; that §18B-10-1 of said code be amended and reenacted; that §18C-1-1, §18C-1-3 and §18C-1-4 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18C-1-5; that §18C-5-1, §18C-5-2, §18C-5-3, §18C-5-4, §18C-5-5 and §18C-5-6 of said code be amended and reenacted; and that §18C-7-2, §18C-7-3, §18C-7-4, §18C-7-5, §18C-7-6 and §18C-7-7 of said code be amended and reenacted, all to read as follows:

**Chapter****18. Education.****18B. Higher Education.****18C. Student Loans; Scholarships and State Aid.****CHAPTER 18. EDUCATION.****ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.****§18-30-6. West Virginia prepaid tuition trust.**

1 (a) The “Prepaid Tuition Trust Fund” is continued within  
2 the accounts held by the State Treasurer for administration by  
3 the board.

4 (b) The Prepaid Tuition Trust Fund shall continue to  
5 receive all payments from account owners on behalf of benefi-  
6 ciaries of prepaid tuition contracts or from any other source,  
7 public or private. Earnings derived from the investment of  
8 moneys in the Prepaid Tuition Trust Fund shall remain in the  
9 Prepaid Tuition Trust Fund held in trust in the same manner as  
10 payments, except as refunded, applied for purposes of the  
11 beneficiaries, and applied for purposes of maintaining and  
12 administering the prepaid tuition plan.

13 (c) The corpus, assets and earnings of the Prepaid Tuition  
14 Trust Fund do not constitute public funds of the state and are  
15 available solely for carrying out the purposes of this article.  
16 Any contract entered into by or any obligation of the board on  
17 behalf of and for the benefit of the prepaid tuition plan does not  
18 constitute a debt of the state, but is solely an obligation of the  
19 Prepaid Tuition Trust Fund. The state has no obligation to any  
20 designated beneficiary or any other person as a result of the  
21 prepaid tuition plan. All amounts payable from the Prepaid  
22 Tuition Trust Fund are limited to amounts available in the  
23 Prepaid Tuition Trust Fund.

24 (d) Nothing in this article or in any prepaid tuition contract  
25 is a promise or guarantee of admission to, continued enrollment  
26 in, or graduation from an eligible educational institution.

27 (e) The requirements of the provisions of chapter thirty-two  
28 of this code do not apply to the sale of a prepaid tuition contract  
29 by the board, its employees and agents.

30 (f) The prepaid tuition plan and the Prepaid Tuition Trust  
31 Fund shall continue in existence until terminated by the  
32 Legislature as it determines or by the board upon determining  
33 that continued operation is infeasible. Upon termination of the  
34 plan and after payment of all fees, charges, expenses and  
35 penalties, the assets of the Prepaid Tuition Trust Fund are paid  
36 to current account owners, to the extent possible, on a pro rata  
37 basis as their interests may appear, and any assets presumed  
38 abandoned are reported and remitted to the unclaimed property  
39 administrator in accordance with the Uniform Unclaimed  
40 Property Act in article eight, chapter thirty-six of this code. Any  
41 assets then remaining in the Prepaid Tuition Trust Fund shall  
42 revert to the state General Revenue Fund.

43 (g) Effective the eighth day of March, two thousand three,  
44 the prepaid tuition plan is closed to new contracts until the  
45 Legislature authorizes the plan to reopen. Closing the plan to  
46 new contracts shall not mean the prepaid tuition plan is closed  
47 and shall not affect any prepaid tuition plan contracts in effect  
48 on the eighth day of March, two thousand three. All contract  
49 owners shall continue to pay any amounts due, including  
50 without limitation monthly installments, penalties and fees.  
51 Earnings derived from the investment of moneys in the Prepaid  
52 Tuition Trust Fund shall continue to accrue to the fund until the  
53 fund is closed in accordance with this article.

54 (h) The board shall continue to have the actuarial soundness  
55 of the Prepaid Tuition Trust Fund evaluated annually.

56 (i)(1) On or before the first day of December, two thousand  
57 three, and each year thereafter, the chairman of the board shall  
58 submit to the Governor, the President of the Senate, the Speaker  
59 of the House of Delegates, Joint Committee on Government and  
60 Finance and the unclaimed property administrator a report  
61 certified by an actuary of the actuarial status of the Prepaid  
62 Tuition Trust Fund at the end of the fiscal year immediately  
63 preceding the date of the report. In the event the report for fiscal  
64 year two thousand three states there is a projected unfunded  
65 liability in the Prepaid Tuition Trust Fund, the report shall also  
66 state the amount needed for the next fiscal year to eliminate the  
67 projected unfunded liability in equal payments over a period of  
68 ten fiscal years, concluding the thirtieth day of June, two  
69 thousand thirteen. In the event the projected unfunded liability  
70 of the Prepaid Tuition Trust Fund increases in subsequent  
71 reports, the actuary shall calculate the amount needed, less any  
72 amount in the prepaid tuition trust escrow fund, to eliminate the  
73 projected unfunded liability over a period the actuary deter-  
74 mines is fiscally responsible.

75 (2) The Prepaid Tuition Trust Escrow Fund is hereby  
76 created in the State Treasury to guarantee payment of prepaid  
77 tuition plan contracts. The board shall invest the Prepaid  
78 Tuition Trust Escrow Fund in accordance with the provisions  
79 of this article in fixed income securities, and all earnings of the  
80 escrow fund shall remain in the escrow fund.

81 (3) In the event the actuary determines an unfunded liability  
82 exists in the Prepaid Tuition Trust Fund, the report shall certify  
83 the amount of money needed for the next fiscal year to elimi-  
84 nate the projected unfunded liability pursuant to the provisions  
85 of subdivision (1) of this subsection. The certified amount may  
86 not exceed one million dollars each year. On or before the  
87 fifteenth day of December in which the chairman submitted a  
88 report stating the amount needed for the next fiscal year to  
89 eliminate a projected unfunded liability, the unclaimed property



90 administrator shall transfer the amount requested, not to exceed  
91 one million dollars each year, from the Unclaimed Property  
92 Trust Fund to the Prepaid Tuition Trust Escrow Fund.

93 (4) In the event the money in the Prepaid Tuition Trust  
94 Fund is insufficient to cover the amount of money needed to  
95 meet the current obligations of the Prepaid Tuition Trust Fund,  
96 the board may withdraw from the Prepaid Tuition Trust Escrow  
97 Fund the amount of money needed to meet current obligations  
98 of the Prepaid Tuition Trust Fund.

99 (5) Notwithstanding any provision of this code to the  
100 contrary, the Governor, after consultation with the budget office  
101 of the Department of Revenue, may request an appropriation to  
102 the board in the amount of the deficiency to meet the current  
103 obligations of the Prepaid Tuition Trust Fund, in the budget  
104 presented to the next session of the Legislature for its consider-  
105 ation. The Legislature is not required to make any appropriation  
106 pursuant to this subsection, and the amount of the deficiency is  
107 not a debt or a liability of the state.

108 (6) As used in this section, “current obligations of the  
109 Prepaid Tuition Trust Fund” means amounts required for the  
110 payment of contract distributions or other obligations of the  
111 Prepaid Tuition Trust Fund, the maintenance of the fund, and  
112 operating expenses for the current fiscal year.

113 (7) Nothing in this subsection creates an obligation of state  
114 general revenue funds or requires any level of funding by the  
115 Legislature.

116 (8) After the Prepaid Tuition Trust Fund has been closed  
117 and all moneys paid in accordance with this section, any  
118 moneys remaining in the prepaid tuition trust escrow fund shall  
119 be transferred to the General Revenue Fund and the account  
120 closed.

121 (j) To fulfill the charitable and public purpose of this  
122 article, neither the earnings nor the corpus of the Prepaid  
123 Tuition Trust Fund is subject to taxation by the state or any of  
124 its political subdivisions.

125 (k) Notwithstanding any provision of this code to the  
126 contrary, money in the Prepaid Tuition Trust Fund is exempt  
127 from creditor process and not subject to attachment, garnish-  
128 ment or other process; is not available as security or collateral  
129 for any loan, or otherwise subject to alienation, sale, transfer,  
130 assignment, pledge, encumbrance or charge; and is not subject  
131 to seizure, taking, appropriation or application by any legal or  
132 equitable process or operation of law to pay any debt or liability  
133 of any account owner, beneficiary or successor in interest.

134 (l) The provisions of this section may not be construed to  
135 interfere with the operation of the savings plan authorized under  
136 this article.

## **CHAPTER 18B. HIGHER EDUCATION.**

### **Article**

**1b. Higher Education Policy Commission.**

**4. General Administration.**

**10. Fees and Other Money Collected at State Institutions of Higher  
Education.**

### **ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**

#### **§18B-1B-2. Composition of commission; terms and qualifications of members; vacancies; eligibility for reappoint- ment; oath of office; removal from office.**

1 (a) The commission is comprised of ten members, all of  
2 whom are entitled to vote. The membership of the commission  
3 is as follows:

4 (1) The Secretary of Education and the Arts, ex officio.

5 (2) The State Superintendent of Schools, ex officio;

6 (3) The chair of the West Virginia Council for Community  
7 and Technical College Education, ex officio.

8 (4) Seven at-large members who are citizens of the state,  
9 appointed by the Governor, by and with the advice and consent  
10 of the Senate: *Provided*, That prior to appointment, the Gover-  
11 nor shall interview each candidate to assure that the person  
12 selected understands and is committed to achieving the goals  
13 and objectives as set forth in the institutional compacts and in  
14 section one-a, article one of this chapter. The Governor shall  
15 invite the President of the Senate, the Speaker of the House of  
16 Delegates, the chairs of the Senate and House of Delegates  
17 Committees on Finance and Education and such other legisla-  
18 tive leaders as the Governor may determine to participate in  
19 interviewing potential candidates.

20 (b) Each of the at-large members appointed by the Gover-  
21 nor shall represent the public interest and shall be committed to  
22 the legislative intent and goals set forth in state law and policy.

23 (c) The Governor may not appoint any person to be a  
24 member of the commission who is an officer, employee or  
25 member of the council or an advisory board of any state college  
26 or university; an officer or member of any political party  
27 executive committee; the holder of any other public office or  
28 public employment under the government of this state or any of  
29 its political subdivisions; an appointee or employee of any  
30 governing board; or an immediate family member of any  
31 employee under the jurisdiction of the commission, the council  
32 or any governing board.

33 (d) Of the seven, at-large members appointed by the  
34 Governor:

35 (1) No more than four may belong to the same political  
36 party;

37 (2) At least two shall be appointed from each congressional  
38 district; and

39 (3) Effective the first day of July, two thousand eight, no  
40 more than one member may serve from the same county.

41 (e) The at-large members appointed by the Governor serve  
42 overlapping terms of four years.

43 (f) The Governor shall appoint a member to fill any  
44 vacancy among the seven at-large members, by and with the  
45 advice and consent of the Senate. Any member appointed to fill  
46 a vacancy serves for the unexpired term of the vacating  
47 member. The Governor shall fill the vacancy within thirty days  
48 of the occurrence of the vacancy.

49 (g) An at-large member appointed by the Governor may not  
50 serve more than two consecutive terms.

51 (h) Before exercising any authority or performing any  
52 duties as a member of the commission, each member shall  
53 qualify as such by taking and subscribing to the oath of office  
54 prescribed by section five, article IV of the Constitution of  
55 West Virginia and the certificate thereof shall be filed with the  
56 Secretary of State.

57 (i) A member of the commission appointed by the Governor  
58 may not be removed from office by the Governor except for  
59 official misconduct, incompetence, neglect of duty or gross  
60 immorality and then only in the manner prescribed by law for  
61 the removal of the state elective officers by the Governor.

#### ARTICLE 4. GENERAL ADMINISTRATION.

##### **§18B-4-1. Employment of chancellors; designation of staff; offices.**

1 (a) The council and commission each shall employ a  
2 chancellor to assist in the performance of their respective duties  
3 and responsibilities subject to the following conditions:

4 (1) Each chancellor serves at the will and pleasure of the  
5 hiring body.

6 (2) Neither chancellor may hold or retain any other  
7 administrative position within the system of higher education  
8 while employed as chancellor.

9 (3) Each chancellor is responsible for carrying out the  
10 directives of the body by whom employed and shall work with  
11 that body in developing policy options.

12 (4) The commission is responsible to the council and the  
13 Chancellor for Community and Technical College Education  
14 for providing services in areas essential to exercising the  
15 powers and duties assigned to the council by law. The commis-  
16 sion may not charge the council any fee for the provision of  
17 these essential services. The service areas include, but are not  
18 limited to, legal services, research, technology, computing,  
19 finance and facilities, academic affairs, telecommunications,  
20 human resources, student services and any other general areas  
21 the council considers to be essential to the exercise of its legal  
22 authority. The services are provided under the general supervi-  
23 sion of the Vice Chancellor for Administration.

24 (5) For the purpose of developing or evaluating policy  
25 options, the chancellors may request the assistance of the  
26 presidents and staff of the institutions under their respective  
27 jurisdictions.

28 (b) In addition to the staff positions designated in subdivi-  
29 sion (4), subsection (a) of this section, the Vice Chancellor for  
30 Administration, employed pursuant to section two of this  
31 article, serves the offices of the chancellors to discharge jointly  
32 the duties and responsibilities of the council and commission.

33 (c) The Vice Chancellor for Health Sciences shall coordi-  
 34 nate the West Virginia University School of Medicine, the  
 35 Marshall University School of Medicine and the West Virginia  
 36 School of Osteopathic Medicine.

37 (d) Suitable offices for the vice chancellor of administration  
 38 and other staff shall be provided in Charleston.

**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.**

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 the tuition and  
 5 fees any one or more of the following as defined in section  
 6 one-b of this article:

7 (1) Tuition and required educational and general fees;

8 (2) Auxiliary and auxiliary capital fees; and

9 (3) Required educational and general capital fees.

10 (b) An institution may establish a single special revenue  
 11 account for each of the following classifications of fees:

12 (1) All tuition and required educational and general fees  
 13 collected;

14 (2) All auxiliary and auxiliary capital fees collected; and

15 (3) All required educational and general capital fees  
 16 collected to support existing systemwide and institutional debt

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\* **CLERK'S NOTE:** This section was also amended by H. B. 4690 (Chapter 85) and S. B. 792 (Chapter 84), which passed subsequent to this act.

17 service and future systemwide and institutional debt service,  
18 capital projects and campus renewal for educational and general  
19 facilities.

20 (4) Subject to any covenants or restrictions imposed with  
21 respect to revenue bonds payable from such accounts, an  
22 institution may expend funds from each such special revenue  
23 account for any purpose for which funds were collected within  
24 that account regardless of the original purpose for which the  
25 funds were collected.

26 (c) The purposes for which tuition and fees may be  
27 expended include, but are not limited to, health services, student  
28 activities, recreational, athletic and extracurricular activities.  
29 Additionally, tuition and fees may be used to finance a stu-  
30 dent's attorney to perform legal services for students in civil  
31 matters at the institutions: Provided, That the legal services are  
32 limited only to those types of cases, programs or services  
33 approved by the administrative head of the institution where the  
34 legal services are to be performed.

35 (d) The commission and council jointly shall propose a rule  
36 for legislative approval in accordance with the provisions of  
37 article three-a, chapter twenty-nine-a of this code to govern the  
38 fixing, collection and expenditure of tuition and other fees.

39 (e) The Legislature finds that an emergency exists and,  
40 therefore, the commission and council jointly shall file the rule  
41 required by subsection (d) of this section as an emergency rule  
42 pursuant to the provisions of article three-a, chapter  
43 twenty-nine-a of this code, subject to the prior approval of the  
44 Legislative Oversight Commission on Education Accountabil-  
45 ity.

46 (f) The schedule of all tuition and fees, and any changes  
47 therein, shall be entered in the minutes of the meeting of the  
48 appropriate governing board and the board shall file with the

49 commission or council, or both, as appropriate, and the  
50 Legislative Auditor a certified copy of such schedule and  
51 changes.

52 (g) The boards shall establish the rates to be charged  
53 full-time students, as defined in section one-b of this article,  
54 who are enrolled during a regular academic term.

55 (1) Undergraduate students taking fewer than twelve credit  
56 hours in a regular term shall have their fees reduced pro rata  
57 based upon one twelfth of the full-time rate per credit hour and  
58 graduate students taking fewer than nine credit hours in a  
59 regular term shall have their fees reduced pro rata based upon  
60 one ninth of the full-time rate per credit hour.

61 (2) Fees for students enrolled in summer terms or other  
62 nontraditional time periods shall be prorated based upon the  
63 number of credit hours for which the student enrolls in accor-  
64 dance with the above provisions.

65 (h) All fees are due and payable by the student upon  
66 enrollment and registration for classes except as provided in  
67 this subsection:

68 (1) The governing boards shall permit fee payments to be  
69 made in installments over the course of the academic term. All  
70 fees shall be paid prior to the awarding of course credit at the  
71 end of the academic term.

72 (2) The governing boards also shall authorize the accep-  
73 tance of credit cards or other payment methods which may be  
74 generally available to students for the payment of fees. The  
75 governing boards may charge the students for the reasonable  
76 and customary charges incurred in accepting credit cards and  
77 other methods of payment.

78 (3) If a governing board determines that a student's  
79 finances are affected adversely by a legal work stoppage, it may



80 allow the student an additional six months to pay the fees for  
81 any academic term. The governing board shall determine on a  
82 case-by-case basis if the finances of a student are affected  
83 adversely.

84 (4) The commission and council jointly shall propose a rule  
85 in accordance with the provisions of article three-a, chapter  
86 twenty-nine-a of this code, defining conditions under which an  
87 institution may offer tuition and fee deferred payment plans  
88 through the institution or through third parties.

89 (5) An institution may charge interest or fees for any  
90 deferred or installment payment plans.

91 (i) In addition to the other fees provided in this section,  
92 each governing board may impose, collect and distribute a fee  
93 to be used to finance a nonprofit, student-controlled public  
94 interest research group if the students at the institution demon-  
95 strate support for the increased fee in a manner and method  
96 established by that institution's elected student government.  
97 The fee may not be used to finance litigation against the  
98 institution.

99 (j) Institutions shall retain tuition and fee revenues not  
100 pledged for bonded indebtedness or other purposes in accor-  
101 dance with the tuition rule proposed by the commission and  
102 council jointly pursuant to this section. The tuition rule shall:

103 (1) Provide a basis for establishing nonresident tuition and  
104 fees;

105 (2) Allow institutions to charge different tuition and fees for  
106 different programs;

107 (3) Provide that a board of governors may propose to the  
108 commission, council or both, as appropriate, a mandatory  
109 auxiliary fee under the following conditions:

110 (A) The fee shall be approved by the commission, council  
111 or both, as appropriate, and either the students below the senior  
112 level at the institution or the Legislature before becoming  
113 effective;

114 (B) Increases may not exceed previous state subsidies by  
115 more than ten percent;

116 (C) The fee may be used only to replace existing state funds  
117 subsidizing auxiliary services such as athletics or bookstores;

118 (D) If the fee is approved, the amount of the state subsidy  
119 shall be reduced annually by the amount of money generated  
120 for the institution by the fees. All state subsidies for the  
121 auxiliary services shall cease five years from the date the  
122 mandatory auxiliary fee is implemented;

123 (E) The commission, council or both, as appropriate, shall  
124 certify to the Legislature by the first day of October in the fiscal  
125 year following implementation of the fee, and annually  
126 thereafter, the amount of fees collected for each of the five  
127 years;

128 (4) Establish methodology, where applicable, to ensure that,  
129 within the appropriate time period under the compact, commu-  
130 nity and technical college tuition rates for community and  
131 technical college students in all independently accredited  
132 community and technical colleges will be commensurate with  
133 the tuition and fees charged by their peer institutions.

134 (k) A penalty may not be imposed by the commission or  
135 council upon any institution based upon the number of nonresi-  
136 dents who attend the institution unless the commission or  
137 council determines that admission of nonresidents to any  
138 institution or program of study within the institution is imped-  
139 ing unreasonably the ability of resident students to attend the  
140 institution or participate in the programs of the institution. The

141 institutions shall report annually to the commission or council  
142 on the numbers of nonresidents and such other enrollment  
143 information as the commission or council may request.

144 (1) Tuition and fee increases of the governing boards, except  
145 for the governing boards of the state institutions of higher  
146 education known as Marshall University and West Virginia  
147 University, are subject to rules adopted by the commission and  
148 council jointly pursuant to this section and in accordance with  
149 the provisions of article three-a, chapter twenty-nine-a of this  
150 code.

151 (1) Subject to the provisions of subdivisions (4) and (8) of  
152 this subsection, a governing board of an institution under the  
153 jurisdiction of the commission may propose tuition and fee  
154 increases of up to nine and one-half percent for undergraduate  
155 resident students for any fiscal year. The nine and one-half  
156 percent total includes the amount of increase over existing  
157 tuition and fees, combined with the amount of any newly  
158 established, specialized fee which may be proposed by a  
159 governing board.

160 (2) A governing board of an institution under the jurisdic-  
161 tion of the council may propose tuition and fee increases of up  
162 to four and three quarters percent for undergraduate resident  
163 students for any fiscal year. The four and three-quarters percent  
164 total includes the amount of increase over existing tuition and  
165 fees, combined with the amount of any newly established,  
166 specialized fee which may be proposed by a governing board.

167 (3) The commission or council, as appropriate, shall  
168 examine individually each request from a governing board for  
169 an increase.

170 (4) Subject to the provisions of subdivision (8) of this  
171 subsection, the governing boards of Marshall University and  
172 West Virginia University, as these provisions relate to the state

173 institutions of higher education known as Marshall University  
174 and West Virginia University, each may annually:

175 (A) Increase tuition and fees for undergraduate resident  
176 students to the maximum allowed by this section without  
177 seeking approval from the commission; and

178 (B) Set tuition and fee rates for post-baccalaureate resident  
179 students and for all nonresident students, including establishing  
180 regional tuition and fee rates, reciprocity agreements or both.

181 (C) The provisions of this subdivision do not apply to  
182 tuition and fee rates of the administratively linked institution  
183 known as Marshall Community and Technical College, the  
184 administratively linked institution known as the Community  
185 and Technical College at West Virginia University Institute of  
186 Technology, the regional campus known as West Virginia  
187 University at Parkersburg and, until the first day of July, two  
188 thousand seven, the regional campus known as West Virginia  
189 University Institute of Technology.

190 (5) Any proposed tuition and fee increase for state institu-  
191 tions of higher education other than the state institutions of  
192 higher education known as Marshall University and West  
193 Virginia University requires the approval of the commission or  
194 council, as appropriate. In determining whether to approve or  
195 deny the governing board's request, the commission or council  
196 shall determine the progress the institution has made toward  
197 meeting the conditions outlined in this subdivision and shall  
198 make this determination the predominate factor in its decision.  
199 The commission or council shall consider the degree to which  
200 each institution has met the following conditions:

201 (A) Has maximized resources available through nonresident  
202 tuition and fee charges to the satisfaction of the commission or  
203 council;

204 (B) Is consistently achieving the benchmarks established in  
205 the compact of the institution pursuant to the provisions of  
206 article one-a of this chapter;

207 (C) Is continuously pursuing the statewide goals for  
208 post-secondary education and the statewide compact established  
209 in articles one and one-a of this chapter;

210 (D) Has demonstrated to the satisfaction of the commission  
211 or council that an increase will be used to maintain high-quality  
212 programs at the institution;

213 (E) Has demonstrated to the satisfaction of the commission  
214 or council that the institution is making adequate progress  
215 toward achieving the goals for education established by the  
216 southern regional education board; and

217 (F) To the extent authorized, will increase by up to five  
218 percent the available tuition and fee waivers provided by the  
219 institution. The increased waivers may not be used for athletics.

220 (6) This section does not require equal increases among  
221 institutions or require any level of increase at an institution.

222 (7) The commission and council shall report to the Legisla-  
223 tive Oversight Commission on Education Accountability  
224 regarding the basis for each approval or denial as determined  
225 using the criteria established in subdivision (5) of this subsec-  
226 tion.

227 (8) Notwithstanding the provisions of subdivisions (1) and  
228 (4) of this subsection, tuition and fee increases at state institu-  
229 tions of higher education which are under the jurisdiction of the  
230 commission, including the state institutions of higher education  
231 known as Marshall University and West Virginia University,  
232 are subject to the following conditions:

233 (A) Institutions may increase tuition and fees for resident,  
234 undergraduate students by no more than an average of seven  
235 and one-half percent per year during any period covering four  
236 consecutive fiscal years, with the first fiscal year of the first  
237 four-fiscal year cycle beginning on the first day of July, two  
238 thousand seven;

239 (B) The seven and one-half percent average cap does not  
240 apply to an institution for any fiscal year in which the total state  
241 base operating budget appropriations to that institution are less  
242 than the total state base operating budget appropriations in the  
243 fiscal year immediately preceding;

244 (C) A new capital fee or an increase in an existing capital  
245 fee is excluded from the tuition and fee increase calculation in  
246 this subdivision:

247 (i) If the new fee or fee increase is approved by an institu-  
248 tional governing board or by a referendum of an institution's  
249 undergraduate students, or both, on or before the first day of  
250 February, two thousand six; or

251 (ii) If the following conditions are met:

252 (I) The new fee or fee increase was approved by an  
253 institutional governing board or by a referendum of an institu-  
254 tion's undergraduate students, or both, on or before the first day  
255 of July, two thousand six;

256 (II) The institution for which the capital fee is approved has  
257 been designated a university pursuant to the provisions of  
258 section six, article two-a of this chapter by the effective date of  
259 this section; and

260 (III) The institutional board of governors previously  
261 oversaw a community and technical college that achieved  
262 independent accreditation and consequently acquired its own  
263 board of governors;

264 (D) Institutions shall provide, in a timely manner, any data  
265 on tuition and fee increases requested by the staff of the  
266 commission. The commission has the power and the duty to:

267 (i) Collect such data from any institution under its jurisdic-  
268 tion; and

269 (ii) Annually by the first day of July, provide a detailed  
270 analysis of the institutions' compliance with the provisions of  
271 this subdivision to the Legislative Oversight Commission on  
272 Education Accountability.

## **CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.**

### **Article**

**1. Financial Assistance Generally.**

**5. Higher Education Grant Program.**

**7. West Virginia Providing Real Opportunities for Maximizing In-State  
Student Excellence Scholarship Program.**

### **ARTICLE 1. FINANCIAL ASSISTANCE GENERALLY.**

§18C-1-1. Legislative findings; purpose; administration generally.

§18C-1-3. Additional legislative findings; purpose of financial aid programs.

§18C-1-4. Eligibility of commuting students and children of military personnel for  
state funded student financial aid, grants and scholarships.

§18C-1-5. Higher Education Student Financial Aid Advisory Board.

#### **§18C-1-1. Legislative findings; purpose; administration generally.**

1 (a) The Legislature finds:

2 (1) That although enrollments in institutions of higher  
3 education in this state and throughout the nation continue to  
4 increase at a rapid pace there continues to exist an underdevel-  
5 opment of the state's human talent and resources because of the  
6 inability of many able, but needy, students to finance a higher  
7 education program;

8       (2) That the state can achieve its full economic and social  
9 potential only when the following elements are in place:

10       (A) Every individual has the opportunity to contribute to  
11 the full extent of his or her capability; and

12       (B) The state assists in removing such financial barriers to  
13 the individual's education goals as may remain after he or she  
14 has utilized all resources and work opportunities available;

15       (b) The ultimate state goal in providing student financial aid  
16 is to create a culture that values education, to improve the  
17 quality of the state's workforce, and thereby to enhance the  
18 quality of life for the citizens of West Virginia.

19       (c) The Vice Chancellor for Administration jointly em-  
20 ployed by the commission and the council has a ministerial duty  
21 to administer, oversee or monitor all state and federal student  
22 loan, scholarship and state aid programs which are administered  
23 at the state level in accordance with established guidelines  
24 under the direction of the commission and council and in  
25 consultation with the Higher Education Student Financial Aid  
26 Advisory Board.

27       (d) Such programs include, but are not limited to, the  
28 following programs pursuant to the provisions of this chapter:

29       (1) The Guaranteed Student Loan Program, which may be  
30 administered by a private nonprofit agency;

31       (2) The Medical Student Loan Program;

32       (3) The Underwood-Smith Teacher Scholarship Program;

33       (4) The Engineering, Science and Technology Scholarship  
34 Program;

35       (5) The West Virginia Higher Education Grant Program;



36 (6) The Higher Education Adult Part-time Student Grant  
37 Program;

38 (7) The Higher Education Student Assistance Loan Program  
39 under article twenty-two-d, chapter eighteen of this code;

40 (8) The West Virginia College Prepaid Tuition and Savings  
41 Program under article thirty, chapter eighteen of this code,  
42 which is administered by the State Treasurer;

43 (9) The state aid programs for students of optometry,  
44 pursuant to article three of this chapter;

45 (10) The state aid programs for students of veterinary  
46 medicine pursuant to section six-a, article eleven, chapter  
47 eighteen of this code;

48 (11) Any reciprocal program and contract program for  
49 student aid under sections three and four, article four, chapter  
50 eighteen-b of this code;

51 (12) Any other state level student aid program in this code;  
52 and

53 (13) Any federal grant or contract student assistance or  
54 support programs administered at the state level.

**§18C-1-3. Additional legislative findings; purpose of financial aid programs.**

1 (a) *Legislative findings:*

2 (1) Education attainment is inextricably linked to economic  
3 development, and, in the current global economy, the state is  
4 competing not only with other states, but also with other  
5 countries;

6 (2) The federal government no longer funds student  
7 financial aid as generously as it has in the past. Therefore, the  
8 state must commit to increase both access and affordability to  
9 higher education opportunities for its citizens;

10 (3) In recent years the state has substantially increased  
11 appropriations to both merit-based and need-based student  
12 financial aid programs;

13 (4) The ultimate state goal in providing student financial aid  
14 is to create a culture that values education and improves the  
15 quality of the state's workforce, thereby enhancing the quality  
16 of life for its citizens;

17 (5) The state can provide a successful system of student  
18 financial aid only by balancing the needs of students from all  
19 levels of financial need and academic ability;

20 (6) A comprehensive system of student financial aid will  
21 yield the maximum return on the state's investment by increas-  
22 ing the skills, qualifications and education achievement of  
23 citizens from all backgrounds; and

24 (7) Sources of student financial aid can be distinguished as  
25 providing either access or affordability to higher education  
26 opportunities;

27 (8) Access refers to a student's financial ability to pursue  
28 post-secondary education. Affordability refers a student's  
29 freedom to choose where to attend college based on available  
30 resources;

31 (9) West Virginia is committed to making post-secondary  
32 education both accessible and affordable for its citizens. To this  
33 end, it is essential that the state provide multiple financial aid  
34 programs which accomplish different goals;

35 (b) *Purposes of financial aid programs:*

36 (1) The West Virginia Higher Education Grant Program is  
37 a need-based program that provides funding primarily to  
38 traditional college-age students who do not have sufficient  
39 financial resources to attempt post-secondary education. This  
40 grant program is a vitally important source of financial assis-  
41 tance for needy residents of the state and should continue to  
42 receive strong financial support.

43 (2) The HEAPS Grant Program is a need-based program  
44 that provides funding primarily to non-traditional college  
45 students, including:

46 (A) Adult students who desire to pursue post-secondary  
47 education on a part-time basis and who do not qualify for other  
48 forms of financial assistance;

49 (B) Place-bound students, often parents employed full-time,  
50 who require evening and weekend access to college courses;  
51 and

52 (C) Individuals pursuing workforce training or skill  
53 development training necessary to enter the job market quickly.

54 (3) The Underwood-Smith Teacher Scholarship Program is  
55 a merit-based program that encourages students who have  
56 demonstrated outstanding academic abilities to pursue teaching  
57 careers. This program serves to meet West Virginia's statewide,  
58 geographic and discipline-specific needs for highly qualified  
59 teachers.

60 (4) The West Virginia Engineering, Science and Technol-  
61 ogy Scholarship Program is a merit-based program that  
62 encourages talented students to pursue baccalaureate degrees in  
63 engineering, science and technology-related disciplines. This  
64 program serves to increase the size and quality of the pool of

65 individuals pursuing careers in engineering, science and  
66 technology-related fields.

67 (5) The PROMISE Scholarship Program is a merit-based  
68 program that enhances student achievement by encouraging  
69 high school students to work harder to attain the necessary  
70 grades and test scores to qualify for a PROMISE scholarship  
71 and provides an incentive for the most capable students to  
72 attend college in the state. PROMISE provides affordability to  
73 traditional college-age students.

74 (c) An appropriate blend of student financial aid programs  
75 provides the state with the necessary tools to educate its  
76 citizenry for a broad range of economic opportunities:

77 (1) Without proper funding for need-based programs, lower  
78 income students may not be able to realize their full potential;

79 (2) Adults may not obtain the training they need to compete  
80 in the current and future job market;

81 (3) High-achieving students may not pursue rigorous  
82 courses in high school or attend college in West Virginia, all of  
83 which contribute to devaluing post-secondary education and  
84 perpetuating the culture of educational underachievement; and

85 (4) The state must continue to strive to support equally the  
86 need-based and merit-based student financial aid programs.

**\*§18C-1-4. Eligibility of commuting students and children of  
military personnel for state funded student finan-  
cial aid, grants and scholarships.**

1 (a) Notwithstanding any other provision of this code or rule  
2 to the contrary, a student who attended a public or private high

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\* CLERK'S NOTE: This section was also amended by S. B. 32 (Chapter 78), which passed prior to this act.

3 school outside the state is eligible for state funded student  
4 financial aid, grants and scholarships if:

5 (1) The student meets all other eligibility requirements for  
6 the aid, grant or scholarship; and either

7 (2) The student resided in West Virginia while attending  
8 high school in another state, and:

9 (A) The student resided with his or her parent or legal  
10 guardian who:

11 (i) Was a resident of this state; and

12 (ii) Had been a resident of this state for at least two years  
13 immediately preceding the student's attendance at the school;

14 (B) The student commuted during the school term on a  
15 daily basis from this state to the school;

16 (C) The student is a dependent of the parent or legal  
17 guardian upon which eligibility is based;

18 (D) The student has not established domicile outside the  
19 state; and

20 (E) At the discretion of the State Superintendent of Schools,  
21 as defined in section one, article one, chapter eighteen of this  
22 code:

23 (i) The school is fully accredited in that state to the degree  
24 acceptable to the State Superintendent of Schools; and

25 (ii) The school's curriculum requirements for graduation  
26 are equivalent to the curriculum requirements for graduation in  
27 this state, or sufficiently similar to those requirements, as  
28 determined by the State Superintendent of Schools; or

29 (3) The student resided and attended high school in another  
30 state or a United States territory, United States possession or  
31 foreign country and:

32 (A) The student resided with his or her parent or legal  
33 guardian; and

34 (B) The student's parent or legal guardian:

35 (i) Served in the United States armed forces while the  
36 student attended high school in such state, territory, possession  
37 or country;

38 (ii) Was stationed for military purposes in such state,  
39 territory, possession or country; and

40 (iii) Maintained legal residence in West Virginia while  
41 stationed in such state, territory, possession or country.

42 (b) This section may not be construed to alter, amend or  
43 extend any application deadlines or other requirements estab-  
44 lished by law or policy.

45 (c) The provisions of this section expire on the thirtieth day  
46 of June, two thousand ten.

**§18C-1-5. Higher Education Student Financial Aid Advisory  
Board.**

1 (a) The Higher Education Student Financial Aid Advisory  
2 Board is established.

3 (b) The purpose of the board is to provide financial aid  
4 expertise and policy guidance to the commission, the council,  
5 the PROMISE Scholarship Board, the Vice Chancellor for  
6 Administration and the Executive Director of the PROMISE  
7 Scholarship Program on all matters related to federal, state and  
8 private student financial aid resources and programs.

9 (c) It is the intent of the Legislature that the advisory board  
10 have the following responsibilities:

11 (1) Recommend methods to balance the needs of state  
12 students from all levels of financial need and academic ability  
13 by focusing attention on multiple financial aid programs which  
14 meet a variety of state objectives;

15 (2) Recommend methods for achieving a comprehensive  
16 system of student financial aid:

17 (A) To maximize the return on the state's investment in  
18 such programs by increasing the skills, qualifications and  
19 education achievement of the citizens receiving the benefits;  
20 and

21 (B) To establish methods for coordinating administration  
22 among state-funded student financial aid programs so that the  
23 state achieves the appropriate blend of student financial aid  
24 programs to expand the range of economic opportunities  
25 available to state citizens;

26 (d) The advisory board consists of twelve members as  
27 follows:

28 (1) The chair of the Higher Education Policy Commission  
29 or a designee who is a member of the commission;

30 (2) The chair of the West Virginia Council for Community  
31 and Technical College Education or a designee who is a  
32 member of the council;

33 (3) The State Superintendent of Schools or a designee;

34 (4) The Secretary of Education and the Arts or a designee;

35 (5) The State Treasurer or a designee;

36 (6) A member of the PROMISE Scholarship Board selected  
37 by that board;

38 (7) Three financial aid administrators, excluding the  
39 president of the West Virginia Association of Student Financial  
40 Aid Administrators.

41 (A) All financial aid administrators are appointed by the  
42 Vice Chancellor for Administration in consultation with the  
43 commission and the council, as appropriate. Of the initial  
44 appointments, the vice chancellor shall appoint one member to  
45 a two-year term, one member to a three-year term and one  
46 member to a four-year term. Thereafter, all terms are for four  
47 years.

48 (B) It is the duty of the Vice Chancellor for Administration  
49 to select financial aid administrators so that the following types  
50 of institutions have representatives serving on the board on a  
51 rotating basis:

52 (i) State institutions of higher education which are doc-  
53 toral-degree granting research universities;

54 (ii) State institutions of higher education which primarily  
55 grant baccalaureate degrees;

56 (iii) State institutions of higher education which are  
57 free-standing community and technical colleges;

58 (iv) State institutions of higher education which are  
59 administratively linked community and technical colleges; and

60 (v) Private institutions of higher education which are  
61 regionally accredited and located within the state.

62 (8) Three at-large private sector members who are ap-  
63 pointed jointly by the commission and the council. Of the initial



64 appointments, the commission and the council jointly shall  
65 appoint one member to a two-year term, one member to a  
66 three-year term and one member to a four-year term. Thereaf-  
67 ter, all terms are for four years.

68 (A) At-large members shall:

69 (i) Be representative of the state's business and economic  
70 community;

71 (ii) Demonstrate knowledge, skill and experience in an  
72 academic, business or financial field; and

73 (iii) Reside within this state.

74 (B) An at-large member may not be:

75 (i) A member of a governing board or institutional board of  
76 advisors of any public or private institution of higher education;  
77 nor

78 (ii) A publicly elected official or an employee of any state,  
79 county or municipal agency.

80 (e) No more than two of the at-large members may be from  
81 the same political party and no more than one may reside in any  
82 congressional district.

83 (1) After the initial appointments, each appointed member  
84 serves a term of four years and may be reappointed upon  
85 expiration of the term.

86 (2) In the event of a vacancy among appointed members,  
87 the commission and the council shall appoint a person for the  
88 remainder of the unexpired term to represent the same interests  
89 as those of the original appointee. A person appointed to fill a  
90 vacancy is eligible for reappointment. Unless a vacancy occurs  
91 due to death or resignation, an appointed member continues to

92 serve until a successor has been appointed and qualified as  
93 provided in this section.

94 (f) Members of the advisory board serve without compensa-  
95 tion, but are entitled to reimbursement by the commission for  
96 expenses, including travel expenses, which are actually incurred  
97 by the member in the official conduct of the business of the  
98 advisory board. Members are reimbursed in a manner consistent  
99 with rules of the Higher Education Policy Commission.

#### **ARTICLE 5. HIGHER EDUCATION GRANT PROGRAM.**

§18C-5-1. Grant program established; legislative purpose and intent; rule required.

§18C-5-2. Definitions.

§18C-5-3. Grant program administered by Vice Chancellor for Administration;  
Higher Education Grant Fund created.

§18C-5-4. Powers and duties of Vice Chancellor for Administration.

§18C-5-5. Eligibility for a grant.

§18C-5-6. Recipients, awards and distribution of grant awards; authority of vice  
chancellor to enter into reciprocal agreements with other states  
concerning grants.

#### **§18C-5-1. Grant program established; legislative purpose and intent; rule required.**

1 (a) The Higher Education Grant Program is continued.

2 (b) It is the policy of the Legislature and the purpose of this  
3 article to continue the Higher Education Grant Program within  
4 the limits of appropriations made therefor from time to time for  
5 such purpose by the Legislature.

6 (1) The Grant Program is designed to guarantee that the  
7 most able and needy students from all sectors of the state are  
8 given the opportunity to continue their program of  
9 self-improvement in an approved institution of higher education  
10 of their choice located in this state.

11 (2) The Grant Program is a vitally important source of  
12 financial assistance for needy residents of the state; and

13 (3) The Grant Program aids lower income students to  
14 realize their full academic potential;

15 (c) Therefore, in recent years the state has substantially  
16 increased appropriations to need-based student financial aid  
17 programs.

18 (d) The commission, in consultation with the council and  
19 the advisory board, shall propose a legislative rule in accor-  
20 dance with the provisions of article three-a, chapter  
21 twenty-nine-a of this code, to implement the provisions of this  
22 article. The commission shall file the rule with the Legislative  
23 Oversight Commission on Education Accountability no later  
24 than the first day of September, two thousand six. The rule shall  
25 address administration of the grant program, including, but not  
26 limited to, the following:

27 (1) Eligibility criteria for awards;

28 (2) Coordination with other student financial aid programs;  
29 and

30 (3) Appeal procedures.

#### **§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 University, Salem International Univer-  
7 sity, the University of Charleston, West Virginia Wesleyan  
8 College and Wheeling Jesuit University, all in West Virginia;  
9 and

10 (2) Any other regionally or nationally accredited institution  
11 of higher education in this state, public or private, approved by  
12 the vice chancellor if the institution has been licensed for a  
13 minimum of fifteen years subject to the provisions of section  
14 nine, article two-b, chapter eighteen-b of this code and section  
15 six, article two-b of said chapter.

16 (b) “Grant” or “grant program” means a higher education  
17 grant or the higher education grant program authorized and  
18 established by the provisions of this article.

19 (c) “Senior administrator” and “vice chancellor” mean the  
20 Vice Chancellor for Administration, as provided in section two,  
21 article four, chapter eighteen-b of this code.

**§18C-5-3. Grant program administered by Vice Chancellor for  
Administration; Higher Education Grant Fund  
created.**

1 (a) The grant program established in this article is adminis-  
2 tered by the Vice Chancellor for Administration.

3 (b) There is hereby created a special revenue fund in the  
4 state treasury which is designated and known as the “Higher  
5 Education Grant Fund”.

6 (1) The fund consists of:

7 (A) All appropriations by the Legislature for the higher  
8 education grant program;

9 (B) Any gifts, grants or contributions received for the  
10 higher education grant program; and

11 (C) All interest or other income earned from investment of  
12 the fund.

13       (2) The fund does not consist of federal funds received nor  
14 higher education resource assessment funds received pursuant  
15 to section two, article ten, chapter eighteen-b of this code.

16       (3) Any moneys remaining in the fund at the close of the  
17 fiscal year are carried forward for use in the next fiscal year.

18       (4) The allocations to the fund are subject to appropriation  
19 by the Legislature.

20       (5) Nothing in this article requires any specific level of  
21 funding by the Legislature nor guarantees nor entitles any  
22 individual to any benefit or grant of funds.

23       (c) For the fiscal year beginning the first day of July, two  
24 thousand six, it is the intent of the Legislature to appropriate  
25 twenty-five million dollars for the grant program. For each  
26 fiscal year thereafter until and including the fiscal year ending  
27 the thirtieth day of June, two thousand eleven, it is the intent of  
28 the Legislature to appropriate two percent more than each prior  
29 year's appropriation for the grant program. For the fiscal year  
30 beginning the first day of July, two thousand eleven, and in  
31 each fiscal year thereafter, it is the intent of the Legislature to  
32 appropriate an amount for the grant program equal to the  
33 amount appropriated for the fiscal year beginning the first day  
34 of July, two thousand eleven.

35       (d) The vice chancellor may expend the moneys in the fund  
36 to implement the provisions of this article.

**§18C-5-4. Powers and duties of Vice Chancellor for Administration.**

1       Subject to the provisions of this article and within the limits  
2 of appropriations made by the Legislature, the vice chancellor  
3 may:

- 4 (1) Prepare and supervise the issuance of public informa-  
5 tion concerning the grant program;
- 6 (2) Prescribe the form and regulate the submission of  
7 applications for grants;
- 8 (3) Select qualified recipients of grants;
- 9 (4) Award grants;
- 10 (5) Accept grants, gifts, bequests and devises of real and  
11 personal property for the purposes of the grant program;
- 12 (6) Administer federal and state financial loan programs;
- 13 (7) Cooperate with approved institutions of higher educa-  
14 tion in the state and their governing boards in the administration  
15 of the grant program;
- 16 (8) Make the final decision pertaining to residency of an  
17 applicant for grant or renewal of grant;
- 18 (9) Employ, fix the duties of and compensate such employ-  
19 ees as may be necessary to assist the vice chancellor in the  
20 performance of his or her duties; and
- 21 (10) Administer the higher education adult part-time  
22 student grant program established in section seven of this  
23 article.

**§18C-5-5. Eligibility for a grant.**

- 1 A person is eligible for consideration for a grant if the  
2 person:
  - 3 (1) Is a citizen of the United States;
  - 4 (2) Has been a resident of the state for one year immedi-  
5 ately preceding the date of application for a grant;

6 (3) Meets the admission requirements of, and is admitted  
7 into, the approved institution of higher education to which  
8 admission is sought; and

9 (4) Satisfactorily meets the qualifications of financial need,  
10 academic promise and academic achievement established by the  
11 vice chancellor.

**§18C-5-6. Recipients, awards and distribution of grant awards;  
authority of vice chancellor to enter into reciprocal  
agreements with other states concerning  
grants.**

1 (a) A grant recipient may attend any approved institution of  
2 higher education. An institution is not required to accept a grant  
3 recipient for enrollment, but may exact compliance with its own  
4 admission requirements, standards and policies.

5 (b) Grants may only be awarded to undergraduate students.

6 (c) Each grant is renewable until the course of study is  
7 completed, but not to exceed an additional three academic years  
8 beyond the first year of the award. The academic years are not  
9 required to be consecutive years, and the grant will be termi-  
10 nated if the student receives a bachelor's degree in a shorter  
11 period of time.

12 (d) Qualifications for renewal include the following, as  
13 determined by the vice chancellor:

14 (1) Maintaining satisfactory academic standing;

15 (2) Making normal progress toward completion of the  
16 course of study; and

17 (3) Continued eligibility.

18 (e) Grants are awarded:

19 (1) Without regard to the applicant's race, creed, color, sex,  
20 national origin or ancestry; and

21 (2) In accordance with the provisions of this article.

22 (f) The vice chancellor shall treat all approved institutions  
23 of higher education in a fair and equitable manner when  
24 awarding grants.

25 (g) The vice chancellor periodically shall identify areas of  
26 professional, vocational and technical expertise that are, or will  
27 become, of critical need in this state. To the extent feasible the  
28 vice chancellor may direct grants to students who are pursuing  
29 instruction in those areas.

30 (h) The vice chancellor may enter into reciprocal agree-  
31 ments with state grant and grant program agencies in other  
32 states which provide financial assistance to their residents  
33 attending institutions of higher education located in West  
34 Virginia. In connection therewith, the vice chancellor may  
35 authorize residents of West Virginia to use financial assistance  
36 under this article to attend institutions of higher education in  
37 such other states. Residents of West Virginia requesting  
38 financial assistance to attend institutions of higher education  
39 located in any such state must meet all of the eligibility  
40 standards set forth in section five of this article.

41 (i) Grant awards may not exceed the cost of the tuition and  
42 those related compulsory fees charged by an institution to all  
43 West Virginia undergraduate students.

44 (j) Grant payments are made directly to the institution.

45 (k) In the event that a grant recipient transfers from one  
46 approved institution of higher education to another, the grant is  
47 transferable only with the approval of the vice chancellor.



48 (1) If a recipient terminates enrollment for any reason  
49 during the academic year, the unused portion of the grant shall  
50 be returned by the institution to the commission in accordance  
51 with the commission's policy for issuing refunds. The commis-  
52 sion shall transfer such funds to the appropriate account for  
53 allocation and expenditure pursuant to the provisions of this  
54 article.

**ARTICLE 7. WEST VIRGINIA PROVIDING REAL OPPORTUNITIES FOR  
MAXIMIZING IN-STATE STUDENT EXCELLENCE  
SCHOLARSHIP PROGRAM.**

§18C-7-2. Legislative findings and purpose.

§18C-7-3. Definitions.

§18C-7-4. Appointment of the PROMISE Scholarship Board; compensation;  
proceedings generally.

§18C-7-5. Powers and duties of the West Virginia PROMISE Scholarship Board.

§18C-7-6. PROMISE Scholarship Program requirements; legislative rule.

§18C-7-7. West Virginia PROMISE Scholarship Fund created.

**§18C-7-2. Legislative findings and purpose.**

1 (a) The Legislature finds and declares that:

2 (1) West Virginia must have an educated work force in  
3 order to attract and retain the high wage, high skill jobs of the  
4 twenty-first century;

5 (2) A large percentage of West Virginia residents who  
6 graduate from the state's colleges and universities do not work  
7 in the state following graduation;

8 (3) The percentage of West Virginia's adult population over  
9 the age of twenty-five with at least a baccalaureate degree is  
10 less than fifteen percent and does not compare favorably with  
11 the member states of the Southern Regional Education Board  
12 average nor with the national average of twenty-five percent;

13 (4) Higher levels of education attainment result in higher  
14 levels of personal income over a lifetime;

15 (5) Students who acquire a baccalaureate degree will earn  
16 an estimated one million dollars more over their lifetimes than  
17 those who attain only a high school diploma. This translates  
18 into an increased tax base and economic development for West  
19 Virginia and more discretionary income for its citizens;

20 (6) Students at all education levels should have an incentive  
21 to perform at a high academic level;

22 (7) There is a need to provide parents with all tools possible  
23 to aid them in helping their children understand the importance  
24 of high academic achievement in high school and college;

25 (8) The PROMISE Scholarship Program is highly success-  
26 ful and should be maintained with merit as its strongest  
27 component. The merit component:

28 (A) Provides an incentive for students to set high academic  
29 standards in high school;

30 (B) Encourages students to increase their high school  
31 achievement levels;

32 (C) Encourages students to enroll in more rigorous courses;

33 (D) Effects a culture change in West Virginia towards  
34 increased education attainment;

35 (E) Results in improved ACT scores in the state since the  
36 inception of the program; and

37 (F) Influences increased numbers of students, including  
38 those students who are the highest academic achievers, to  
39 remain in West Virginia to attend college.

40 (b) It is the purpose of this article to continue the West  
41 Virginia PROMISE Scholarship Program to deal effectively  
42 with the findings set forth in this section.

43 (c) Nothing in this article guarantees:

44 (1) A PROMISE scholarship award or any specific amount  
45 of a PROMISE scholarship award to any student; or

46 (2) That the requirements necessary for a student to qualify  
47 for a PROMISE scholarship will not be changed by legislation  
48 or rule before the student is eligible to receive an award.

### §18C-7-3. Definitions.

1 (a) "Eligible institution" means:

2 (1) A state institution of higher education as defined in  
3 section two, article one, chapter eighteen-b of this code;

4 (2) Alderson-Broaddus College, Appalachian Bible  
5 College, Bethany College, Davis and Elkins College, Mountain  
6 State University, Ohio Valley University, the University of  
7 Charleston, West Virginia Wesleyan College and Wheeling  
8 Jesuit University, all in West Virginia. Any institution listed in  
9 this subdivision ceases to be an eligible institution if it:

10 (A) Loses regional accreditation; or

11 (B) Changes its status as a private, not for profit institution.

12 (3) Any other regionally accredited institution in this state,  
13 public or private, approved by the board.

14 (b) "Board" means the West Virginia PROMISE Scholar-  
15 ship Board of the West Virginia PROMISE Scholarship  
16 Program as provided for in section four of this article.

17 (c) "Tuition" means the quarter, semester or term charges  
18 imposed by a state institution of higher education and all  
19 mandatory fees required as a condition of enrollment by all  
20 students.

21 (d) "Enrolled" means either currently enrolled or in the  
22 process of enrolling in an eligible institution.

**§18C-7-4. Appointment of the PROMISE Scholarship Board;  
compensation; proceedings generally.**

1 (a) The West Virginia PROMISE Scholarship Board is  
2 comprised of fifteen members. Any member appointed by the  
3 Governor prior to the effective date of this section may continue  
4 to serve the term for which the member has been appointed:  
5 *Provided*, That by the first day of April, two thousand seven,  
6 and thereafter, the membership of the board is comprised as  
7 follows:

8 (1) The chairperson of the commission or a designee who  
9 is a member of the commission;

10 (2) The chancellor of the commission or his or her  
11 designee;

12 (3) The State Superintendent of Schools or his or her  
13 designee;

14 (4) The Secretary of Education and the Arts;

15 (5) The State Treasurer or his or her designee;

16 (6) The President of the West Virginia Association of  
17 Student Financial Aid Administrators;

18 (7) The Executive Director of the Governor's Workforce  
19 Investment Division;

20 (8) Eight at-large members, appointed by the Governor with  
21 the advice and consent of the Senate:

22 (A) One of the eight at-large members has knowledge, skill  
23 and expertise in state and federal student financial aid policy  
24 and management;

25 (B) Seven of the eight at-large members represent the  
26 state's business and economic community and have knowledge,  
27 skill and experience in an academic, business or financial field.

28 (C) The eight at-large members shall be residents of the  
29 state. No more than five of the eight at-large members may be  
30 from the same political party. No more than three of the eight  
31 at-large members may be from the same congressional district.

32 (b) At-large members serve a term of four years and may be  
33 reappointed at the expiration of their terms. In the event of a  
34 vacancy among at-large members, the Governor shall appoint  
35 a person representing the same interests to fill the unexpired  
36 term. A person appointed to fill a vacancy shall be appointed  
37 only for the remainder of that term and is eligible for reappoint-  
38 ment. Unless a vacancy occurs due to death, resignation or  
39 removal pursuant to subsection (e) of this section, an at-large  
40 member of the board shall continue to serve until a successor  
41 has been appointed and qualified as provided in subsection (a)  
42 of this section. All terms are for four years.

43 (c) Members of the board shall serve without compensation,  
44 but shall be reimbursed by the Office of the Secretary of  
45 Education and the Arts for expenses, including travel expenses,  
46 actually incurred by a member in the official conduct of the  
47 business of the board at the same rate as is paid the employees  
48 of the state.

49 (d) The Secretary of Education and the Arts is the chairper-  
50 son and presiding officer of the board. A majority of the  
51 members of the board constitute a quorum for the transaction of  
52 business.

53 (e) The at-large members appointed by the Governor may  
54 be removed by the Governor for official misconduct, incompete-  
55 nce, neglect of duty or gross immorality and then only in the  
56 manner prescribed by law for the removal by the Governor of

57 the state elective officers in accordance with section five, article  
58 six, chapter six of this code.

**§18C-7-5. Powers and duties of the West Virginia PROMISE  
Scholarship Board.**

1 (a) *Powers of board* –

2 In addition to the powers granted by any other provision of  
3 this article, the board has the powers necessary or convenient to  
4 carry out the purposes and provisions of this article including,  
5 but not limited to, the following express powers:

6 (1) To adopt and amend bylaws;

7 (2) To propose legislative rules to the commission for  
8 promulgation in accordance with the provisions of article  
9 three-a, chapter twenty-nine-a of this code to effectuate the  
10 purposes of this article;

11 (3) To invest any of its funds at the board's discretion, with  
12 the West Virginia Investment Management Board in accor-  
13 dance with the provisions of article six, chapter twelve of this  
14 code. Any investments made under this article shall be made  
15 with the care, skill, prudence and diligence under the circum-  
16 stances then prevailing that a prudent person acting in a like  
17 capacity and familiar with such matters would use in the  
18 conduct of an enterprise of a like character and with like aims.  
19 Fiduciaries shall diversify plan investments to the extent  
20 permitted by law so as to minimize the risk of large losses,  
21 unless under the circumstances it is clearly prudent not to do so;

22 (4) To execute contracts and other necessary instruments;

23 (5) To impose reasonable requirements for residency for  
24 students applying for the PROMISE scholarship. Except as  
25 provided in section four, article one of this chapter, the require-

26 ments shall include that an eligible student must have met the  
27 following requirements:

28 (A) Completed at least one half of the credits required for  
29 high school graduation in a public or private high school in this  
30 state; or

31 (B) Received instruction in the home or other approved  
32 place pursuant to Exemption B, section one, article eight,  
33 chapter eighteen of this code for the two years immediately  
34 preceding application.

35 (C) This subdivision may not be construed to establish  
36 residency requirements for matriculation or fee payment  
37 purposes at state institutions of higher education;

38 (6) To contract for necessary goods and services, to employ  
39 necessary personnel and to engage the services of private  
40 persons for administrative and technical assistance in carrying  
41 out the responsibilities of the scholarship program;

42 (A) The board is encouraged to utilize the employees of the  
43 Vice Chancellor for Administration to provide administrative  
44 and technical assistance.

45 (B) Any services provided for the board by such employees  
46 remain under the direction and authority of the vice chancellor.

47 (7) To solicit and accept gifts, including bequests or other  
48 testamentary gifts made by will, trust or other disposition,  
49 grants, loans and other aid from any source and to participate in  
50 any federal, state or local governmental programs in carrying  
51 out the purposes of this article;

52 (8) To define the terms and conditions under which  
53 scholarships are awarded with the minimum requirements being  
54 set forth in section six of this article; and

55 (9) To establish other policies, procedures and criteria  
56 necessary to implement and administer the provisions of this  
57 article.

58 (b) *Duties of board* —

59 In addition to any duty required by any other provision of  
60 this article, the board has the following responsibilities:

61 (1) To operate the program in a fiscally responsible manner  
62 and within the limits of available funds;

63 (2) To operate the PROMISE Scholarship Program as a  
64 merit-based program;

65 (3) To raise academic eligibility requirements before taking  
66 any other steps to limit student awards should projections  
67 indicate that available funds will not be sufficient to cover  
68 future costs; and

69 (4) To maintain contact with graduates who have received  
70 PROMISE scholarships and to provide a written statement of  
71 intent to recipients who are selected to receive a PROMISE  
72 scholarship after the effective date of this section notifying  
73 them that acceptance of the scholarship entails a responsibility  
74 to supply:

75 (A) Information requested by the board to determine the  
76 number and percentage of recipients who:

77 (i) Continue to live in West Virginia after graduation;

78 (ii) Obtain employment in West Virginia after graduation;  
79 and

80 (iii) Enroll in post-graduate education programs and the  
81 name of the state in which each post-graduate institution is  
82 located; and



83 (B) Such other relevant information as the board may  
84 reasonably request to implement the provisions of this subdivi-  
85 sion.

86 (5) To analyze the data collected pursuant to subdivision (4)  
87 of this subsection, and:

88 (A) Report the findings to the Joint Standing Committee on  
89 Education by the tenth day of January, two thousand seven, and  
90 annually thereafter; and

91 (B) Make recommendations annually to the Joint Standing  
92 Committee on Education regarding any actions the board  
93 considers necessary or expedient to encourage PROMISE  
94 recipients to live and work in the state after graduation.

**§18C-7-6. PROMISE Scholarship Program requirements; legisla-  
tive rule.**

1 (a) A PROMISE scholarship annual award meets the  
2 following conditions:

3 (1) Equals but does not exceed the cost of tuition for a  
4 student enrolled in a state institution of higher education;

5 (2) Equals an amount determined by the board, but not to  
6 exceed the cost of tuition at state institutions of higher educa-  
7 tion, for a student enrolled in an eligible institution that is not  
8 a state institution of higher education; and

9 (3) Is used by an eligible institution to supplement, but not  
10 to supplant, a tuition and fee waiver for which the individual is  
11 eligible pursuant to sections five, six-a or seven, article ten,  
12 chapter eighteen-b of this code.

13 (b) The total cost of all scholarships awarded by the board  
14 in any year may not exceed the amount of funds available to the  
15 board during that fiscal year.

16 (c) An individual shall meet the following conditions in  
17 order to be eligible to receive a PROMISE scholarship award:

18 (1) Submit a scholarship award application to the board:

19 (A) Within two years of graduating from high school or  
20 within two years of acquiring a General Equivalency Degree if  
21 provided instruction in the home or other approved place  
22 pursuant to Exemption B, section one, article eight, chapter  
23 eighteen of this code; or

24 (B) Within seven years of initially entering military service,  
25 and within one year of discharge from such military service, if  
26 the individual has entered the United States armed services  
27 within two years after graduating from high school;

28 (2) Apply for and submit to the board a Free Application  
29 for Federal Student Aid;

30 (3) Maintain a grade point average of at least 3.0 on a 4.0  
31 grading scale in the required core and elective course work  
32 necessary to prepare students for success in post-secondary  
33 education at the associate and baccalaureate degree levels as  
34 determined by the board, if the individual has completed not  
35 more than one semester or term at an institution of higher  
36 education, excluding credits earned in advanced placement,  
37 international baccalaureate, dual credit and comparable courses  
38 while the student is enrolled in high school;

39 (4) Maintain appropriate academic progress toward the  
40 completion of a degree at the undergraduate education level as  
41 determined by the board if the individual has completed more  
42 than one semester or term at an institution of higher education,  
43 excluding credits earned in advanced placement, international  
44 baccalaureate, dual credit and comparable courses while the  
45 student is enrolled in high school;

46       (5) Meet additional objective standards as the board  
47 considers necessary to promote academic excellence and to  
48 maintain the financial stability of the fund;

49       (6) Enroll in an eligible institution. Any student enrolled at  
50 an eligible institution who receives a PROMISE scholarship  
51 award may retain and renew the scholarship to complete his or  
52 her undergraduate education at that institution, or any other  
53 eligible institution:

54       (A) If the institution at which the student is enrolled loses  
55 its status as an eligible institution pursuant to the provisions of  
56 subdivision (2), subsection (a), section three of this article; and

57       (B) If the student meets all other renewal requirements of  
58 this code and of board rules.

59       (7) It is the intent of the Legislature that the board shall  
60 strongly encourage prospective candidates for the PROMISE  
61 scholarship to perform at least twenty hours of unpaid commu-  
62 nity service while in high school to help prepare them for  
63 success in post-graduate education. The community service  
64 may include, but is not limited to, participation with nonprofit,  
65 governmental or community-based organizations designed to:

66       (A) Improve the quality of life for community residents;

67       (B) Meet the needs of community residents; or

68       (C) Foster civic responsibility.

69       (d) The board shall recommend a legislative rule to the  
70 commission to implement the provisions of this article. The  
71 commission shall promulgate a legislative rule in accordance  
72 with the provisions of article three-a, chapter twenty-nine-a of  
73 this code.

74       (1) The rule shall include at least the following provisions:

75 (A) The amount of a PROMISE scholarship award may not  
76 exceed the cost of tuition at state institutions of higher educa-  
77 tion;

78 (B) The amount of a PROMISE scholarship award in  
79 combination with aid from all other sources may not exceed the  
80 cost of education at the institution the recipient is attending.  
81 This provision does not apply to members of the West Virginia  
82 National Guard, recipients of an Underwood-Smith teacher  
83 scholarship, and recipients of a West Virginia engineering,  
84 science and technology scholarship;

85 (C) Additional objective standards as the board considers  
86 necessary:

87 (i) To promote academic excellence;

88 (ii) To maintain the financial stability of the fund; and

89 (iii) To operate the program within the limits of available  
90 funds.

91 (D) Provisions for making the highest and best use of the  
92 PROMISE Scholarship Program in conjunction with the West  
93 Virginia Prepaid Tuition Trust Act set forth in article thirty,  
94 chapter eighteen of this code;

95 (E) A provision defining the relationship of PROMISE  
96 scholarship awards to all other sources of student financial aid  
97 to ensure maximum coordination. The provision shall include  
98 the following:

99 (i) Methods to maximize student eligibility for federal  
100 student financial aid;

101 (ii) A requirement that PROMISE scholarship awards not  
102 supplant tuition and fee waivers; and

103 (iii) Clarification of the relationship between the PROMISE  
104 Scholarship Program, tuition savings plans and other state  
105 funded student financial aid programs;

106 (F) A method for awarding scholarships within the limits of  
107 available appropriations, including circumstances when  
108 program funds are not sufficient to provide awards to all  
109 eligible applicants. The board may not utilize any of the  
110 following methods:

111 (i) Making a scholarship award for an amount less than the  
112 cost of full tuition for a student enrolled in a state institution of  
113 higher education; or

114 (ii) Eliminating any current recipient from eligibility;

115 (G) A method for applicants to appeal determinations of  
116 eligibility and renewal.

117 (2) The rule may provide for or require the following at the  
118 board's discretion:

119 (A) Requiring repayment of the amount of the scholarship,  
120 in whole or in part, if a scholarship recipient chooses to work  
121 outside the state after graduation: *Provided*, That the rule may  
122 not require a recipient to repay a scholarship, in whole or in  
123 part, unless the prospective recipient has been informed of this  
124 requirement in writing before initial acceptance of the PROM-  
125 ISE scholarship award.

126 (B) Targeting a portion of the scholarship funds to be used  
127 for applicants enrolled in an engineering, science, technology  
128 or other designated program;

129 (C) Determining what other sources of funding for higher  
130 education are to be deducted from the PROMISE scholarship  
131 award; and

132 (D) Providing additional criteria as determined by the  
133 board.

134 (3) The Legislature finds that an emergency exists and,  
135 therefore, the board shall file a rule to implement the provisions  
136 of this section as an emergency rule pursuant to the provisions  
137 of article three-a, chapter twenty-nine-a of this code. The rule  
138 is subject to the prior approval of the Legislative Oversight  
139 Commission on Education Accountability.

**§18C-7-7. West Virginia PROMISE Scholarship Fund created.**

1 (a) The special revenue fund in the state treasury designated  
2 and known as the “PROMISE Scholarship Fund” is continued.  
3 The fund consists of:

4 (1) All appropriations to the fund from the West Virginia  
5 lottery, video lottery and taxes on amusement devices;

6 (2) All appropriations by the Legislature for the PROMISE  
7 Scholarship Fund;

8 (3) Any gifts, grants or contributions received for the  
9 PROMISE Scholarship Program; and

10 (4) All interest or other income earned from investment of  
11 the fund.

12 (b) The allocations to the fund are subject to appropriation  
13 by the Legislature. Nothing in this article requires any specific  
14 level of funding by the Legislature nor guarantees nor entitles  
15 any individual to any benefit or grant of funds.

16 (c) For the fiscal year beginning the first day of July, two  
17 thousand six, it is the intent of the Legislature that the aggregate  
18 of the amount of moneys transferred to the fund pursuant to  
19 section eighteen-a, article twenty-two, chapter twenty-nine of  
20 this code, and such other amounts of public moneys that may be

21 transferred to the fund by appropriation of the Legislature, shall  
22 equal but may not exceed forty million dollars. For each fiscal  
23 year thereafter until and including the fiscal year ending the  
24 thirtieth day of June, two thousand eleven, it is the intent of the  
25 Legislature that this aggregate be an amount two percent greater  
26 than the aggregate established by this subsection for the prior  
27 fiscal year. For the fiscal year beginning the first day of July,  
28 two thousand eleven, and in each fiscal year thereafter, it is the  
29 intent of the Legislature that this aggregate not exceed the  
30 aggregate established by this subsection for the fiscal year  
31 beginning the first day of July, two thousand eleven.

32 (d) The board may expend the moneys in the fund to  
33 implement the provisions of this article.



## CHAPTER 80

**(H. B. 4406 — By Delegates Perry, Pino, Beach,  
Williams, Duke, Campbell, Poling and Sumner)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §18A-2-12 of the Code of West Virginia, 1931, as amended, relating to professional evaluations of classroom teachers; limiting the frequency of requiring an evaluation or a professional growth and development plan for certain classroom teachers; and making technical changes.

*Be it enacted by the Legislature of West Virginia:*

That §18A-2-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. SCHOOL PERSONNEL.****§18A-2-12. Performance evaluations of school personnel; professional personnel evaluation process.**

1 (a) The state board shall adopt a written system for the  
2 evaluation of the employment performance of personnel, which  
3 system shall be applied uniformly by county boards of educa-  
4 tion in the evaluation of the employment performance of  
5 personnel employed by the board.

6 (b) The system adopted by the state board for evaluating the  
7 employment performance of professional personnel shall be in  
8 accordance with the provisions of this section.

9 (c) For purposes of this section, “professional personnel”,  
10 “professional” or “professionals”, means professional personnel  
11 as defined in section one, article one of this chapter.

12 (d) In developing the professional personnel performance  
13 evaluation system, and amendments thereto, the state board  
14 shall consult with the Center for Professional Development  
15 created in article three-a of this chapter. The center shall  
16 participate actively with the state board in developing written  
17 standards for evaluation which clearly specify satisfactory  
18 performance and the criteria to be used to determine whether  
19 the performance of each professional meets such standards.

20 (e) The performance evaluation system shall contain, but  
21 shall not be limited to, the following information:

22 (1) The professional personnel positions to be evaluated,  
23 whether they be teachers, substitute teachers, administrators,  
24 principals or others;

25 (2) The frequency and duration of the evaluations, which  
26 shall be on a regular basis and of such frequency and duration  
27 as to insure the collection of a sufficient amount of data from



28 which reliable conclusions and findings may be drawn:  
29 *Provided*, That for school personnel with five or more years of  
30 experience, who have not received an unsatisfactory rating,  
31 evaluations shall be conducted no more than once every three  
32 years unless the principal determines an evaluation for a  
33 particular school employee is needed more frequently: *Pro-*  
34 *vided, however*, That for classroom teachers with five or more  
35 years of experience who have not received an unsatisfactory  
36 rating, an evaluation shall be conducted or professional growth  
37 and development plan required only when the principal  
38 determines it to be necessary for a particular classroom teacher,  
39 or when a classroom teacher exercises the option of being  
40 evaluated at more frequent intervals;

41 (3) The evaluation shall serve the following purposes:

42 (A) Serve as a basis for the improvement of the perfor-  
43 mance of the personnel in their assigned duties;

44 (B) Provide an indicator of satisfactory performance for  
45 individual professionals;

46 (C) Serve as documentation for a dismissal on the grounds  
47 of unsatisfactory performance; and

48 (D) Serve as a basis for programs to increase the profes-  
49 sional growth and development of professional personnel;

50 (4) The standards for satisfactory performance for profes-  
51 sional personnel and the criteria to be used to determine  
52 whether the performance of each professional meets such  
53 standards and other criteria for evaluation for each professional  
54 position evaluated. Effective the first day of July, two thousand  
55 three and thereafter, professional personnel, as appropriate,  
56 shall demonstrate competency in the knowledge and implemen-  
57 tation of the technology standards adopted by the state board.  
58 If a professional fails to demonstrate competency, in the

59 knowledge and implementation of these standards, he or she  
60 will be subject to an improvement plan to correct the deficiencies;  
61 and

62 (5) Provisions for a written improvement plan, which shall  
63 be specific as to what improvements, if any, are needed in the  
64 performance of the professional and shall clearly set forth  
65 recommendations for improvements, including recommendations  
66 for additional education and training during the professional's  
67 recertification process.

68 (f) A professional whose performance is considered to be  
69 unsatisfactory shall be given notice of deficiencies. A  
70 remediation plan to correct deficiencies shall be developed by  
71 the employing county board of education and the professional.  
72 The professional shall be given a reasonable period of time for  
73 remediation of the deficiencies and shall receive a statement of  
74 the resources and assistance available for the purposes of  
75 correcting the deficiencies.

76 (g) No person may evaluate professional personnel for the  
77 purposes of this section unless the person has an administrative  
78 certificate issued by the state superintendent and has successfully  
79 completed education and training in evaluation skills  
80 through the center for professional development, or equivalent  
81 education training approved by the state board, which will  
82 enable the person to make fair, professional, and credible  
83 evaluations of the personnel whom the person is responsible for  
84 evaluating. After the first day of July, one thousand nine  
85 hundred ninety-four, no person may be issued an administrative  
86 certificate or have an administrative certificate renewed unless  
87 the state board determines that the person has successfully  
88 completed education and training in evaluation skills through  
89 the center for professional development, or equivalent education  
90 and training approved by the state board.

91 (h) Any professional whose performance evaluation  
92 includes a written improvement plan shall be given an opportu-  
93 nity to improve his or her performance through the implementa-  
94 tion of the plan. If the next performance evaluation shows that  
95 the professional is now performing satisfactorily, no further  
96 action may be taken concerning the original performance  
97 evaluation. If the evaluation shows that the professional is still  
98 not performing satisfactorily, the evaluator either shall make  
99 additional recommendations for improvement or may recom-  
100 mend the dismissal of the professional in accordance with the  
101 provisions of section eight of this article.

102 (i) Lesson plans are intended to serve as a daily guide for  
103 teachers and substitutes for the orderly presentation of the  
104 curriculum. Lesson plans may not be used as a substitute for  
105 observations by an administrator in the performance evaluation  
106 process. A classroom teacher, as defined in section one, article  
107 one of this chapter, may not be required to post his or her lesson  
108 plans on the internet or otherwise make them available to  
109 students and parents or to include in his or her lesson plans any  
110 of the following:

111 (1) Teach and re-teach strategies;

112 (2) Write to learn activities;

113 (3) Cultural diversity;

114 (4) Color coding; or

115 (5) Any other similar items which are not required to serve  
116 as a guide to the teacher or substitute for daily instruction; and

117 (j) The Legislature finds that classroom teachers must be  
118 free of unnecessary paper work so that they can focus their time  
119 on instruction. Therefore, classroom teachers may not be  
120 required to keep records or logs of routine contacts with parents  
121 or guardians.

122 (k) Nothing in this section may be construed to prohibit  
123 classroom teachers from voluntarily posting material on the  
124 internet.

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## CHAPTER 81

(Com. Sub. for H. B. 4626 — By Mr. Speaker, Mr. Kiss)

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[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to amend and reenact §18A-3-1 of the Code of West Virginia, 1931, as amended, relating to educator preparation programs generally; adding requirements for the student teaching experience agreement; and providing for an alternate student teaching experience in a nonpublic school setting in lieu of the student teaching experience required in a public school setting.

*Be it enacted by the Legislature of West Virginia:*

That §18A-3-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.**

**§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.**

1 (a) The education of professional educators in the state is  
2 under the general direction and control of the state board after  
3 consultation with the Secretary of Education and the Arts and  
4 the Chancellor for Higher Education who shall represent the

5 interests of educator preparation programs within the institu-  
6 tions of higher education in this state as those institutions are  
7 defined in section two, article one, chapter eighteen-b of this  
8 code.

9 The education of professional educators in the state  
10 includes all programs leading to certification to teach or serve  
11 in the public schools including:

12 (1) Those programs in all institutions of higher education,  
13 including student teaching as provided in this section;

14 (2) Beginning teacher internship programs;

15 (3) The granting of West Virginia certification to persons  
16 who received their preparation to teach outside the boundaries  
17 of this state, except as provided in subsection (b) of this section;

18 (4) Any alternative preparation programs in this state  
19 leading to certification, including programs established  
20 pursuant to the provisions of section one-a of this article and  
21 programs which are in effect on the effective date of this  
22 section; and

23 (5) Any continuing professional education, professional  
24 development and in-service training programs for professional  
25 educators employed in the public schools in the state.

26 (b) The state board, after consultation with the Secretary of  
27 Education and the Arts and the Chancellor for Higher Educa-  
28 tion, shall adopt standards for the education of professional  
29 educators in the state and for awarding certificates valid in the  
30 public schools of this state. The standards shall include, but not  
31 be limited to, the following:

32 (1) A provision for the study of multicultural education. As  
33 used in this section, multicultural education means the study of  
34 the pluralistic nature of American society including its values,

35 institutions, organizations, groups, status positions and social  
36 roles;

37 (2) A provision for the study of classroom management  
38 techniques, including methods of effective management of  
39 disruptive behavior which shall include societal factors and  
40 their impact on student behavior; and

41 (3) Subject to the provisions of section ten of this article, a  
42 teacher from another state shall be awarded a teaching certifi-  
43 cate for a comparable grade level and subject area valid in the  
44 public schools of this state, if he or she:

45 (A) Holds a valid teaching certificate or a certificate of  
46 eligibility issued by another state;

47 (B) Has graduated from an educator preparation program at  
48 a regionally accredited institution of higher education;

49 (C) Possesses the minimum of a bachelor's degree; and

50 (D) Meets all of the requirements of the state for full  
51 certification except employment.

52 (c) To give prospective teachers the teaching experience  
53 needed to demonstrate competence as a prerequisite to certifica-  
54 tion to teach in the West Virginia public schools, the state board  
55 may enter into an agreement with county boards for the use of  
56 the public schools.

57 (d) An agreement established pursuant to subsection (c) of  
58 this section shall recognize student teaching as a joint responsi-  
59 bility of the educator preparation institution and the cooperating  
60 public schools and shall include:

61 (1) The minimum qualifications for the employment of  
62 public school teachers selected as supervising teachers,

63 including the requirement that field-based and clinical experi-  
64 ences be supervised by a teacher fully certified in the state in  
65 which that teacher is supervising;

66 (2) The remuneration to be paid public school teachers by  
67 the state board, in addition to their contractual salaries, for  
68 supervising student teachers;

69 (3) Minimum standards to guarantee the adequacy of the  
70 facilities and program of the public school selected for student  
71 teaching;

72 (4) That the student teacher, under the direction and  
73 supervision of the supervising teacher, shall exercise the  
74 authority of a substitute teacher; and

75 (5) A provision requiring any higher education institution  
76 with an educator preparation program to document that the  
77 student teacher's field-based and clinical experiences include  
78 participation and instruction with multicultural, at-risk and  
79 exceptional children at each programmatic level for which the  
80 student teacher seeks certification.

81 (e) Beginning the fall, two thousand six – two thousand  
82 seven academic term, in lieu of the student teaching experience  
83 in a public school setting required by this section, an institution  
84 of higher education may provide an alternate student teaching  
85 experience in a nonpublic school setting if the institution of  
86 higher education:

87 (1) Complies with the provisions of this section;

88 (2) Has a state board approved educator preparation  
89 program; and

90 (3) Enters into an agreement pursuant to subdivisions (f)  
91 and (g) of this section.

92 (f) At the discretion of the higher education institution, an  
93 agreement for an alternate student teaching experience between  
94 an institution of higher education and a nonpublic school shall  
95 require that either:

96 (1) The student teacher complete at least one half of the  
97 clinical experience in a public school; or

98 (2) The educator preparation program include a requirement  
99 that any student performing student teaching in a nonpublic  
100 school complete at least:

101 (A) Two hundred clock hours of field-based training in a  
102 public school; and

103 (B) A course, which is a component of the institution's state  
104 board approved educator preparation program, that provides to  
105 prospective teachers information that is equivalent to the  
106 teaching experience needed to demonstrate competence as a  
107 prerequisite to certification to teach in the public schools in  
108 West Virginia. The course shall include instruction on at least  
109 the following elements:

110 (i) State board policy and provisions of this code governing  
111 public education;

112 (ii) Requirements for federal and state accountability,  
113 including the mandatory reporting of child abuse;

114 (iii) Federal and state mandated curriculum and assessment  
115 requirements, including multicultural education, safe schools  
116 and student code of conduct;

117 (iv) Federal and state regulations for the instruction of  
118 exceptional students as defined by the Individuals with Disabili-  
119 ties Education Act, 20 U.S.C. §1400 *et seq.*;



120 (v) Varied approaches for effective instruction for students  
121 who are at-risk;

122 (g) In addition to the requirements set forth in subsection (f)  
123 of this section, an agreement for an alternate student teaching  
124 experience between an institution of higher education and a  
125 nonpublic school shall:

126 (1) Require that the higher education institution with an  
127 educator preparation program document that the student  
128 teacher's field-based and clinical experiences include participa-  
129 tion and instruction with multicultural, at-risk and exceptional  
130 children at each programmatic level for which the student  
131 teacher seeks certification; and

132 (2) Include the minimum qualifications for the employment  
133 of school teachers selected as supervising teachers, including  
134 the requirement that field-based and clinical experiences be  
135 supervised by a teacher fully certified in the state in which that  
136 teacher is supervising.

137 (h) The state superintendent may issue certificates to  
138 graduates of educator preparation programs and alternative  
139 educator preparation programs approved by the state board. The  
140 certificates are issued in accordance with this section and rules  
141 adopted by the state board after consultation with the Secretary  
142 of Education and the Arts and the Chancellor for Higher  
143 Education.

144 (1) A certificate to teach may be granted only to any person  
145 who is:

146 (A) A citizen of the United States, except as provided in  
147 subdivision (2) of this subsection;

148 (B) Is of good moral character;

149 (C) Physically, mentally and emotionally qualified to  
150 perform the duties of a teacher; and

151 (D) At least eighteen years on or before the first day of  
152 October of the year in which his or her certificate is issued.

153 (2) A permit to teach in the public schools of this state may  
154 be granted to a person who is an exchange teacher from a  
155 foreign country, or an alien person who meets the requirements  
156 to teach.

157 (i) In consultation with the Secretary of Education and the  
158 Arts and the Chancellor for Higher Education, institutions of  
159 higher education approved for educator preparation may  
160 cooperate with each other, with the center for professional  
161 development and with one or more county boards to organize  
162 and operate centers to provide selected phases of the educator  
163 preparation program. The phases include, but are not limited to:

164 (1) Student teaching;

165 (2) Beginning teacher internship programs;

166 (3) Instruction in methodology; and

167 (4) Seminar programs for college students, teachers with  
168 provisional certification, professional support team members  
169 and supervising teachers.

170 The institutions of higher education, the center for profes-  
171 sional development and county boards may by mutual agree-  
172 ment budget and expend funds to operate the centers through  
173 payments to the appropriate fiscal office of the participating  
174 institutions, the center for professional development and the  
175 county boards.

176 (j) The provisions of this section do not require discontinua-  
177 tion of an existing student teacher training center or school  
178 which meets the standards of the state board.

179 (k) All institutions of higher education approved for  
180 educator preparation in the one thousand nine hundred  
181 sixty-two—sixty-three school year shall continue to hold that  
182 distinction so long as they meet the minimum standards for  
183 educator preparation. Nothing in this section infringes upon the  
184 rights granted to any institution by charter given according to  
185 law previous to the adoption of this code.

186 (l) Notwithstanding any other provision of this section, nor  
187 any other provision of rule, law or this code to the contrary, an  
188 institution of higher education may enter into an agreement  
189 with a nonpublic school:

190 (1) For the purposes of this section regarding student  
191 teaching;

192 (2) For the spring, two thousand six academic term only;

193 (3) If the institution is approved for educator preparation by  
194 the state board; and

195 (4) If the institution had entered into the agreement for that  
196 academic term prior to the effective date of this section.

197 (m) As used in this section:

198 (1) “Nonpublic school” means a private school, parochial  
199 school, church school, school operated by a religious order or  
200 other nonpublic school that elects to:

201 (A) Comply with the provisions of article twenty-eight,  
202 chapter eighteen of this code;

203 (B) Participate on a voluntary basis in a state operated or  
204 state sponsored program provided to such schools pursuant to  
205 this section; and

206 (C) Comply with the provisions of this section;

207 (2) “At-risk” means having the potential for academic  
208 failure, including, but not limited to, the risk of dropping out of  
209 school, involvement in delinquent activity or poverty as  
210 indicated by free or reduced lunch status; and

211 (3) “Exceptional children” has the meaning ascribed  
212 pursuant to section one, article twenty, chapter eighteen of this  
213 code, but does not include gifted students.

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## CHAPTER 82

**(S. B. 783 — By Senators Plymale, Edgell, Dempsey,  
Oliverio, Boley, Guills and Sprouse)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §18A-4-2a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §18A-4-2b, all relating to defining completion of the National Board for Professional Teaching Standards certification; establishing state minimum salary supplement for professional personnel holding certain advanced certification in speech-language pathology, audiology or counseling; reimbursement for certain expenses; limitations; applicability; and state board rule.

*Be it enacted by the Legislature of West Virginia:*

That §18A-4-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §18A-4-2b, all to read as follows:

**ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

§18A-4-2a. State minimum salary bonus for classroom teachers with national board certification.

§18A-4-2b. State minimum salary supplement for professional personnel with recognized national certification in speech-language pathology, audiology or counseling.

**§18A-4-2a. State minimum salary bonus for classroom teachers with national board certification.**

1 (a) The Legislature hereby finds and declares that the  
2 rigorous standards and processes for certification by the  
3 National Board for Professional Teaching Standards (NBPTS)  
4 helps to promote the quality of teaching and learning. There-  
5 fore, classroom teachers in the public schools of West Virginia  
6 should be encouraged to achieve national board certification  
7 through a reimbursement of expenses and an additional salary  
8 bonus which reflects their additional certification, to be paid in  
9 accordance with the provisions of this section.

10 (b) Two thousand five hundred dollars shall be paid  
11 annually to each classroom teacher who holds a valid certificate  
12 issued by the National Board of Professional Teaching Stan-  
13 dards for the life of the certification, but in no event more than  
14 ten years for any one certification.

15 (c) The payments:

16 (1) Shall be in addition to any amounts prescribed in the  
17 applicable state minimum salary schedule;

18 (2) Shall be paid in equal monthly installments; and

19 (3) Shall be considered a part of the state minimum salaries  
20 for teachers.

21 (d) One-half the certification fee shall be paid for reim-  
22 bursement once to each teacher who enrolls in the program for

23 the National Board for Professional Teaching Standards  
24 certification and one-half the certification fee shall be paid for  
25 reimbursement once to each teacher who completes the  
26 National Board for Professional Teaching Standards certifica-  
27 tion. Completion shall be defined as the completion of ten  
28 scorable entries, as verified by the National Board for Profes-  
29 sional Teaching Standards. Teachers who achieve National  
30 Board for Professional Teaching Standards certification may be  
31 reimbursed a maximum of six hundred dollars for expenses  
32 actually incurred while obtaining the National Board for  
33 Professional Teaching Standards certification.

34 (e) The state board shall limit the number of teachers who  
35 receive the initial reimbursements of the certification fees set  
36 forth in subsection (d) to two hundred teachers annually. The  
37 state board shall establish selection criteria for the teachers by  
38 the legislative rule required pursuant to subsection (g) of this  
39 section.

40 (f) Subject to the provisions of subsection (e) of this  
41 section, funding for reimbursement of the certification fee and  
42 expenses actually incurred while obtaining the National Board  
43 for Professional Teaching Standards certifications shall be  
44 administered by the state department of education from an  
45 appropriation established for that purpose by the Legislature. If  
46 funds appropriated by the Legislature to accomplish the  
47 purposes of this subsection are insufficient, the state department  
48 shall prorate the reimbursements for expenses and shall request  
49 of the Legislature, at its next regular session, funds sufficient to  
50 accomplish the purposes of this subsection, including needed  
51 retroactive payments.

52 (g) The state board shall promulgate legislative rules  
53 pursuant to article three-b, chapter twenty-nine-a of this code to  
54 implement the provisions of this section.

**§18A-4-2b. State minimum salary supplement for professional personnel with recognized national certification in speech-language pathology, audiology or counseling.**

1           (a) (1) The Legislature finds that achieving a nationally  
2 recognized professional certification in speech-language  
3 pathology or audiology involves a rigorous process of demon-  
4 strating both knowledge and skills and results in highly trained  
5 and capable employees. Individuals who attain the national  
6 professional certification by the American  
7 Speech-Language-Hearing Association (ASHA) provide needed  
8 and essential services to the school students of this state and,  
9 consequently, should be encouraged to achieve and maintain the  
10 national board certification through reimbursement of expenses  
11 and a salary bonus which reflects their additional certification,  
12 to be paid in accordance with subsection (b) of this section.

13           (2) The Legislature further finds and declares that the  
14 rigorous standards and processes for advanced certification by  
15 either the National Board of Certified Counselors (NBCC) or  
16 the West Virginia Board of Examiners in Counseling  
17 (WVBEC) helps to promote the quality of counseling in  
18 schools. Counselors in the public schools of West Virginia  
19 should be encouraged to achieve and maintain the advanced  
20 certification through reimbursement of expenses and a salary  
21 bonus that reflects their additional certification, to be paid in  
22 accordance with subsection (b) of this section.

23           (3) Therefore, the purpose of this section is to provide a  
24 statewide salary supplement for certain professional personnel  
25 employed in the public schools who hold a nationally recog-  
26 nized professional certification in speech-language pathology,  
27 audiology or counseling, to treat the professional certification  
28 equally, to encourage others to attain such a certification and to  
29 help school systems with recruitment of these highly qualified  
30 professionals.

31 (b) In addition to any amounts prescribed in the applicable  
32 state minimum salary schedule, effective the first day of July,  
33 two thousand six, any professional personnel who hold national  
34 certification or other credential as provided in this section must  
35 be paid an annual salary supplement of two thousand five  
36 hundred dollars. The payment is:

37 (1) To be made in equal monthly installments;

38 (2) To be considered a part of the state minimum salaries  
39 for teachers; and

40 (3) To continue for the life of the certification, or for ten  
41 years for any one certification, whichever first expires.

42 (c) Effective the first day of July, two thousand six,  
43 professional personnel employed as speech-language patholo-  
44 gists, audiologists or counselors are eligible upon enrollment  
45 for reimbursement for one-half of the fee for certification in  
46 accordance with this section. In addition, these personnel are  
47 eligible upon attainment of the certification for reimbursement  
48 of the remainder of the application fee plus other expenses  
49 actually incurred toward attainment of the certification, not  
50 exceeding six hundred dollars, upon approval by the Depart-  
51 ment of Education. No more than one hundred speech-language  
52 pathologists, audiologists and counselors, combined total, are  
53 eligible for reimbursement in any one fiscal year.

54 (d) Notwithstanding subsection (b) of this section, no more  
55 than one hundred speech-language pathologists, audiologists  
56 and counselors, combined total, shall be paid the annual salary  
57 supplement provided for in said subsection during the first year  
58 of implementation. The number of speech-language patholo-  
59 gists, audiologists and counselors paid the annual salary  
60 supplement provided for in said subsection may not exceed an  
61 additional one hundred qualified recipients in each of the  
62 subsequent fiscal years. The state board shall promulgate a



63 legislative rule establishing criteria for selection of the individ-  
64 uals eligible for reimbursement and a salary supplement in  
65 accordance with this section. The selection criteria shall  
66 prioritize the length of time the certification has been held and  
67 the years of experience of the holder in determining eligibility.

68 (e) The board shall report the rule to the Legislative  
69 Oversight Commission on Education Accountability by the  
70 January, two thousand seven, legislative interim meeting period  
71 and shall report on its progress in developing the rule to the  
72 commission during each prior interim meeting period.

73 (f) Payment of the supplement and reimbursement provided  
74 in this section is subject to legislative appropriation; therefore  
75 nothing in this section requires any appropriation, or any  
76 specific level of appropriation, by the Legislature.

77 (g) Notwithstanding any other provision of this section or  
78 the provisions of section two-a of this article, professional  
79 personnel may not be paid a salary supplement pursuant to the  
80 provisions of both said sections.

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## CHAPTER 83

**(Com. Sub. for H. B. 4625 — By Delegates Campbell,  
Williams and Spencer)**

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[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to amend and reenact §18A-5-1 and §18A-5-1a of the Code of West Virginia, 1931, as amended, all relating to authority over pupils and discipline; defining principal to include principal,

assistant principal, vice principal, administrative head of school or professional personnel designee of school principal or administrative head.

*Be it enacted by the Legislature of West Virginia:*

That §18A-5-1 and §18A-5-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.**

§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; corporal punishment abolished.

§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.

**§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; corporal punishment abolished.**

1           (a) The teacher shall stand in the place of the parent(s),  
 2 guardian(s) or custodian(s) in exercising authority over the  
 3 school and shall have control of all pupils enrolled in the school  
 4 from the time they reach the school until they have returned to  
 5 their respective homes, except that where transportation of  
 6 pupils is provided, the driver in charge of the school bus or  
 7 other mode of transportation shall exercise such authority and  
 8 control over the children while they are in transit to and from  
 9 the school.

10           (b) Subject to the rules of the State Board of Education, the  
 11 teacher shall exclude from the school any pupil or pupils known

12 to have or suspected of having any infectious disease, or any  
13 pupil or pupils who have been exposed to any infect-  
14 ous disease, and shall immediately notify the proper health  
15 officer or medical inspector of the exclusion. Any pupil so  
16 excluded shall not be readmitted to the school until the pupil  
17 has complied with all the requirements of the rules governing  
18 those cases or has presented a certificate of health signed by the  
19 medical inspector or other proper health officer.

20 (c) The teacher may exclude from his or her classroom or  
21 school bus any pupil who is guilty of disorderly conduct; who  
22 in any manner interferes with an orderly educational process;  
23 who threatens, abuses or otherwise intimidates or attempts to  
24 intimidate a school employee or a pupil; who willfully disobeys  
25 a school employee; or who uses abusive or profane language  
26 directed at a school employee. Any pupil excluded shall be  
27 placed under the control of the principal of the school or a  
28 designee. The excluded pupil may be admitted to the classroom  
29 or school bus only when the principal, or a designee, provides  
30 written certification to the teacher that the pupil may be  
31 readmitted and specifies the specific type of disciplinary action,  
32 if any, which was taken. If the principal finds that disciplinary  
33 action is warranted, he or she shall provide written and, if  
34 possible, telephonic notice of the action to the parent(s),  
35 guardian(s) or custodian(s). When a teacher excludes the same  
36 pupil from his or her classroom or from a school bus three  
37 times in one school year, and after exhausting all reasonable  
38 methods of classroom discipline provided in the school  
39 discipline plan, the pupil may be readmitted to the teacher's  
40 classroom only after the principal, teacher and, if possible, the  
41 parent(s), guardian(s) or custodian(s) of the pupil have held a  
42 conference to discuss the pupil's disruptive behavior patterns,  
43 and the teacher and the principal agree on a course of discipline  
44 for the pupil and inform the parent(s), guardian(s) or custo-  
45 dian(s) of the course of action. Thereafter, if the pupil's  
46 disruptive behavior persists, upon the teacher's request, the

47 principal may, to the extent feasible, transfer the pupil to  
48 another setting.

49 (d) The Legislature finds that suspension from school is not  
50 appropriate solely for a pupil's failure to attend class. There-  
51 fore, no pupil may be suspended from school solely for not  
52 attending class. Other methods of discipline may be used for the  
53 pupil which may include, but are not limited to, detention, extra  
54 class time or alternative class settings.

55 (e) Corporal punishment of any pupil by a school employee  
56 is prohibited.

57 (f) Each county board is solely responsible for the adminis-  
58 tration of proper discipline in the public schools of the county  
59 and shall adopt policies consistent with the provisions of this  
60 section to govern disciplinary actions. These policies shall  
61 encourage the use of alternatives to corporal punishment,  
62 providing for the training of school personnel in alternatives to  
63 corporal punishment and for the involvement of parent(s),  
64 guardian(s) or custodian(s) in the maintenance of school  
65 discipline. The county boards of education shall provide for the  
66 immediate incorporation and implementation in the schools of  
67 a preventive discipline program which may include the  
68 responsible student program and a student involvement  
69 program which may include the peer mediation program,  
70 devised by the West Virginia Board of Education. Each board  
71 may modify those programs to meet the particular needs of the  
72 county. The county boards shall provide in-service training for  
73 teachers and principals relating to assertive discipline proce-  
74 dures and conflict resolution. The county boards of education  
75 also may establish cooperatives with private entities to provide  
76 middle educational programs which may include programs  
77 focusing on developing individual coping skills, conflict  
78 resolution, anger control, self-esteem issues, stress management

79 and decision making for students and any other program related  
80 to preventive discipline.

81 (g) For the purpose of this section:

82 (1) "Pupil or student" includes any child, youth or adult  
83 who is enrolled in any instructional program or activity  
84 conducted under board authorization and within the facilities of  
85 or in connection with any program under public school direc-  
86 tion: *Provided*, That, in the case of adults, the pupil-teacher  
87 relationship shall terminate when the pupil leaves the school or  
88 other place of instruction or activity;

89 (2) "Teacher" means all professional educators as defined  
90 in section one, article one of this chapter and shall include the  
91 driver of a school bus or other mode of transportation; and

92 (3) "Principal" means the principal, assistant principal, vice  
93 principal or the administrative head of the school or a profes-  
94 sional personnel designee of the principal or the administrative  
95 head of the school.

96 (h) Teachers shall exercise other authority and perform  
97 other duties prescribed for them by law or by the rules of the  
98 State Board not inconsistent with the provisions of this chapter  
99 and chapter eighteen of this code.

**§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.**

1 (a) A principal shall suspend a pupil from school or from  
2 transportation to or from the school on any school bus if the

3 pupil, in the determination of the principal after an informal  
4 hearing pursuant to subsection (d) of this section, has: (i)  
5 Violated the provisions of subsection (b), section fifteen, article  
6 two, chapter sixty-one of this code; (ii) violated the provisions  
7 of subsection (b), section eleven-a, article seven of said chapter;  
8 or (iii) sold a narcotic drug, as defined in section one hundred  
9 one, article one, chapter sixty-a of this code, on the premises of  
10 an educational facility, at a school-sponsored function or on a  
11 school bus. If a student has been suspended pursuant to this  
12 subsection, the principal shall, within twenty-four hours,  
13 request that the county superintendent recommend to the county  
14 board that the student be expelled. Upon such a request by a  
15 principal, the county superintendent shall recommend to the  
16 county board that the student be expelled. Upon such recom-  
17 mendation, the county board shall conduct a hearing in accor-  
18 dance with subsections (e), (f) and (g) of this section to  
19 determine if the student committed the alleged violation. If the  
20 county board finds that the student did commit the alleged  
21 violation, the county board shall expel the student.

22 (b) A principal shall suspend a pupil from school, or from  
23 transportation to or from the school on any school bus, if the  
24 pupil, in the determination of the principal after an informal  
25 hearing pursuant to subsection (d) of this section, has: (i)  
26 Committed an act or engaged in conduct that would constitute  
27 a felony under the laws of this state if committed by an adult;  
28 or (ii) unlawfully possessed on the premises of an educational  
29 facility or at a school-sponsored function a controlled substance  
30 governed by the uniform controlled substances act as described  
31 in chapter sixty-a of this code. If a student has been suspended  
32 pursuant to this subsection, the principal may request that the  
33 superintendent recommend to the county board that the student  
34 be expelled. Upon such recommendation by the county  
35 superintendent, the county board may hold a hearing in  
36 accordance with the provisions of subsections (e), (f) and (g) of  
37 this section to determine if the student committed the alleged

38 violation. If the county board finds that the student did commit  
39 the alleged violation, the county board may expel the student.

40 (c) A principal may suspend a pupil from school, or  
41 transportation to or from the school on any school bus, if the  
42 pupil, in the determination of the principal after an informal  
43 hearing pursuant to subsection (d) of this section: (i) Threatened  
44 to injure, or in any manner injured, a pupil, teacher, administra-  
45 tor or other school personnel; (ii) willfully disobeyed a teacher;  
46 (iii) possessed alcohol in an educational facility, on school  
47 grounds, a school bus or at any school-sponsored function; (iv)  
48 used profane language directed at a school employee or pupil;  
49 (v) intentionally defaced any school property; (vi) participated  
50 in any physical altercation with another person while under the  
51 authority of school personnel; or (vii) habitually violated school  
52 rules or policies. If a student has been suspended pursuant to  
53 this subsection, the principal may request that the superinten-  
54 dent recommend to the county board that the student be  
55 expelled. Upon such recommendation by the county superinten-  
56 dent, the county board may hold a hearing in accordance with  
57 the provisions of subsections (e), (f) and (g) of this section to  
58 determine if the student committed the alleged violation. If the  
59 county board finds that the student did commit the alleged  
60 violation, the county board may expel the student.

61 (d) The actions of any pupil which may be grounds for his  
62 or her suspension or expulsion under the provisions of this  
63 section shall be reported immediately to the principal of the  
64 school in which the pupil is enrolled. If the principal determines  
65 that the alleged actions of the pupil would be grounds for  
66 suspension, he or she shall conduct an informal hearing for the  
67 pupil immediately after the alleged actions have occurred. The  
68 hearing shall be held before the pupil is suspended unless the  
69 principal believes that the continued presence of the pupil in the  
70 school poses a continuing danger to persons or property or an  
71 ongoing threat of disrupting the academic process, in which

72 case the pupil shall be suspended immediately and a hearing  
73 held as soon as practicable after the suspension.

74 The pupil and his or her parent(s), guardian(s) or custo-  
75 dian(s), as the case may be, shall be given telephonic notice, if  
76 possible, of this informal hearing, which notice shall briefly  
77 state the grounds for suspension.

78 At the commencement of the informal hearing, the principal  
79 shall inquire of the pupil as to whether he or she admits or  
80 denies the charges. If the pupil does not admit the charges, he  
81 or she shall be given an explanation of the evidence possessed  
82 by the principal and an opportunity to present his or her version  
83 of the occurrence. At the conclusion of the hearing or upon the  
84 failure of the noticed student to appear, the principal may  
85 suspend the pupil for a maximum of ten school days, including  
86 the time prior to the hearing, if any, for which the pupil has  
87 been excluded from school.

88 The principal shall report any suspension the same day it  
89 has been decided upon, in writing, to the parent(s), guardian(s)  
90 or custodian(s) of the pupil by regular United States mail. The  
91 suspension also shall be reported to the county superintendent  
92 and to the faculty senate of the school at the next meeting after  
93 the suspension.

94 (e) Prior to a hearing before the county board, the county  
95 board shall cause a written notice which states the charges and  
96 the recommended disposition to be served upon the pupil and  
97 his or her parent(s), guardian(s) or custodian(s), as the case may  
98 be. The notice shall state clearly whether the board will attempt  
99 at hearing to establish the student as a dangerous student, as  
100 defined by section one, article one of this chapter. The notice  
101 also shall include any evidence upon which the board will rely  
102 in asserting its claim that the student is a dangerous student.  
103 The notice shall set forth a date and time at which the hearing  
104 shall be held, which date shall be within the ten-day period of  
105 suspension imposed by the principal.



106 (f) The county board shall hold the scheduled hearing to  
107 determine if the pupil should be reinstated or should or, under  
108 the provisions of this section, must be expelled from school. If  
109 the county board determines that the student should or must be  
110 expelled from school, it also may determine whether the student  
111 is a dangerous student pursuant to subsection (g) of this section.  
112 At this, or any hearing before a county board conducted  
113 pursuant to this section, the pupil may be represented by  
114 counsel, may call his or her own witnesses to verify his or her  
115 version of the incident and may confront and cross-examine  
116 witnesses supporting the charge against him or her. The  
117 hearing shall be recorded by mechanical means unless recorded  
118 by a certified court reporter. The hearing may be postponed for  
119 good cause shown by the pupil but he or she shall remain under  
120 suspension until after the hearing. The state board may adopt  
121 other supplementary rules of procedure to be followed in these  
122 hearings. At the conclusion of the hearing the county board  
123 shall either: (1) Order the pupil reinstated immediately at the  
124 end of his or her initial suspension; (2) suspend the pupil for a  
125 further designated number of days; or (3) expel the pupil from  
126 the public schools of the county.

127 (g) A county board that did not intend prior to a hearing to  
128 assert a dangerous student claim, that did not notify the student  
129 prior to the hearing that a dangerous student determination  
130 would be considered and that determines through the course of  
131 the hearing that the student may be a dangerous student shall  
132 schedule a second hearing within ten days to decide the issue.  
133 The hearing may be postponed for good cause shown by the  
134 pupil, but he or she remains under suspension until after the  
135 hearing.

136 A county board that expels a student, and finds that the  
137 student is a dangerous student, may refuse to provide alternative  
138 education. However, after a hearing conducted pursuant to this  
139 section for determining whether a student is a dangerous

140 student, when the student is found to be a dangerous student, is  
141 expelled and is denied alternative education, a hearing shall be  
142 conducted within three months after the refusal by the board to  
143 provide alternative education to reexamine whether or not the  
144 student remains a dangerous student and whether the student  
145 shall be provided alternative education. Thereafter, a hearing  
146 for the purpose of reexamining whether or not the student  
147 remains a dangerous student and whether the student shall be  
148 provided alternative education shall be conducted every three  
149 months for so long as the student remains a dangerous student  
150 and is denied alternative education. During the initial hearing,  
151 or in any subsequent hearing, the board may consider the  
152 history of the pupil's conduct as well as any improvements  
153 made subsequent to the expulsion. If it is determined during any  
154 of the hearings that the student is no longer a dangerous student  
155 or should be provided alternative education, the student shall be  
156 provided alternative education during the remainder of the  
157 expulsion period.

158 (h) The superintendent may apply to a circuit judge or  
159 magistrate for authority to subpoena witnesses and documents,  
160 upon his or her own initiative, in a proceeding related to a  
161 recommended student expulsion or dangerous student determi-  
162 nation, before a county board conducted pursuant to the  
163 provisions of this section. Upon the written request of any other  
164 party, the superintendent shall apply to a circuit judge or  
165 magistrate for the authority to subpoena witnesses, documents  
166 or both on behalf of the other party in a proceeding related to a  
167 recommended student expulsion or dangerous student determi-  
168 nation before a county board. If the authority to subpoena is  
169 granted, the superintendent shall subpoena the witnesses,  
170 documents or both requested by the other party. Furthermore,  
171 if the authority to subpoena is granted, it shall be exercised in  
172 accordance with the provisions of section one, article five,  
173 chapter twenty-nine-a of this code.

174 Any hearing conducted pursuant to this subsection may be  
175 postponed: (1) For good cause shown by the pupil; (2) when  
176 proceedings to compel a subpoenaed witness to appear must be  
177 instituted; or (3) when a delay in service of a subpoena hinders  
178 either party's ability to provide sufficient notice to appear to a  
179 witness. A pupil remains under suspension until after the  
180 hearing in any case where a postponement occurs.

181 The county boards are directed to report the number of  
182 pupils determined to be dangerous students to the State Board  
183 of Education. The state board will compile the county boards'  
184 statistics and shall report its findings to the Legislative Over-  
185 sight Commission on Education Accountability.

186 (i) Pupils may be expelled pursuant to the provisions of this  
187 section for a period not to exceed one school year, except that  
188 if a pupil is determined to have violated the provisions of  
189 subsection (a) of this section the pupil shall be expelled for a  
190 period of not less than twelve consecutive months: *Provided,*  
191 That the county superintendent may lessen the mandatory  
192 period of twelve consecutive months for the expulsion of the  
193 pupil if the circumstances of the pupil's case demonstrably  
194 warrant. Upon the reduction of the period of expulsion, the  
195 county superintendent shall prepare a written statement setting  
196 forth the circumstances of the pupil's case which warrant the  
197 reduction of the period of expulsion. The county superintendent  
198 shall submit the statement to the county board, the principal, the  
199 faculty senate and the local school improvement council for the  
200 school from which the pupil was expelled. The county superin-  
201 tendent may use the following factors as guidelines in determin-  
202 ing whether or not to reduce a mandatory twelve-month  
203 expulsion:

204 (1) The extent of the pupil's malicious intent;

205 (2) The outcome of the pupil's misconduct;

206 (3) The pupil's past behavior history; and

207 (4) The likelihood of the pupil's repeated misconduct.

208 (j) In all hearings under this section, facts shall be found by  
209 a preponderance of the evidence.

210 (k) For purposes of this section, nothing herein may be  
211 construed to be in conflict with the federal provisions of the  
212 Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et*  
213 *seq.*

214 (l) Each suspension or expulsion imposed upon a pupil  
215 under the authority of this section shall be recorded in the  
216 uniform integrated regional computer information system  
217 (commonly known as the West Virginia Education Information  
218 System) described in subsection (f), section twenty-six, article  
219 two, chapter eighteen of this code.

220 (1) The principal of the school at which the pupil is enrolled  
221 shall create an electronic record within twenty-four hours of the  
222 imposition of the suspension or expulsion.

223 (2) Each record of a suspension or expulsion shall include  
224 the pupil's name and identification number, the reason for the  
225 suspension or expulsion, and the beginning and ending dates of  
226 the suspension or expulsion.

227 (3) The State Board of Education shall collect and dissemi-  
228 nate data so that any principal of a public school in West  
229 Virginia can review the complete history of disciplinary actions  
230 taken by West Virginia public schools against any pupil  
231 enrolled or seeking to enroll at that principal's school. The  
232 purposes of this provision are to allow every principal to fulfill  
233 his or her duty under subsection (b), section fifteen-f, article  
234 five, chapter eighteen of this code to determine whether a pupil  
235 requesting to enroll at a public school in West Virginia is

236 currently serving a suspension or expulsion from another public  
237 school in West Virginia and to allow principals to obtain  
238 general information about pupils' disciplinary histories.

239 (m) Principals may exercise any other authority and  
240 perform any other duties to discipline pupils consistent with  
241 state and federal law, including policies of the State Board of  
242 Education.

243 (n) Each county board is solely responsible for the adminis-  
244 tration of proper discipline in the public schools of the county  
245 and shall adopt policies consistent with the provisions of this  
246 section to govern disciplinary actions.

247 (o) For the purpose of this section, "principal" means the  
248 principal, assistant principal, vice principal or the administra-  
249 tive head of the school or a professional personnel designee of  
250 the principal or the administrative head of the school.

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## CHAPTER 84

**(S. B. 792 — By Senator Oliverio)**

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[Passed March 11, 2006; in effect July 1, 2006.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to repeal 18B-2-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-1-2 of said code; to amend said code by adding thereto a new section, designated §18B-1-7; to amend and reenact §18B-1B-6 of said code; to amend and reenact §18B-2A-1 of said code; to amend and reenact §18B-3C-4 and §18B-3C-8 of said code; to amend said code by adding thereto a new section, designated §18B-3C-7; to amend and

reenact §18B-6-1 and §18B-6-1a of said code; and to amend and reenact §18B-10-1 of said code, all relating to making Fairmont State Community and Technical College a division of Fairmont State University and changing its name to Pierpont Community and Technical College; clarifying definitions; dissolving certain advisory board; clarifying process for delivery of community and technical college education in certain location; providing exception to process for achieving independent accreditation for community and technical colleges; designating Community and Technical College of Shepherd as Blue Ridge Community and Technical College; establishing the responsibilities of Pierpont Community and Technical College; maintaining a board of advisors for the delivery of community and technical college education at Fairmont State University; eliminating the requirement that the governing board chairs of Shepherd University and the community and technical college of Shepherd, whose name is changed to Blue Ridge Community and Technical College, and Bluefield State College and New River Community and Technical college, serve on each other's boards of governors; establishing an evaluation process for the relationship between Fairmont State University and Pierpont Community and Technical College; establishing a sunset date of the first day of July, two thousand nine; providing for establishing independent accreditation for certain community and technical colleges under certain circumstances; providing for fee increases for certain institutions under certain conditions; clarifying definitions; making technical corrections; and repealing obsolete provisions.

*Be it enacted by the Legislature of West Virginia:*

That §18B-2-9 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-1-2 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1-7; that §18B-1B-6 of said code be amended and reenacted; that §18B-2A-1 of said code be amended and reenacted; that §18B-3C-4 and §18B-3C-8 of said code be amended and reenacted;

that said code be amended by adding thereto a new section, designated §18B-3C-7; that §18B-6-1 and §18B-6-1a of said code be amended and reenacted; and that §18B-10-1 of said code be amended and reenacted, all to read as follows:

#### Article

1. **Governance.**
- 1B. **Higher Education Policy Commission.**
- 2A. **Institutional Boards of Governors.**
- 3C. **Community and Technical College System.**
6. **Advisory Councils.**
10. **Fees and Other Money Collected at State Institutions of Higher Education.**

#### ARTICLE 1. GOVERNANCE.

§18B-1-2. Definitions.

§18B-1-7. Fairmont State Community and Technical College merged.

#### **\*§18B-1-2. Definitions.**

1       The following words when used in this chapter and chapter  
2 eighteen-c of this code have the meanings ascribed to them  
3 unless the context clearly indicates a different meaning:

4       (a) Effective the first day of July, two thousand seven,  
5 “regional campus” means West Virginia University at  
6 Parkersburg;

7       (b) “Governing boards” or “boards” means the institutional  
8 boards of governors created pursuant to section one, article  
9 two-a of this chapter;

10       (c) “Free-standing community and technical colleges”  
11 means Southern West Virginia Community and Technical  
12 College, West Virginia Northern Community and Technical  
13 College and Eastern West Virginia Community and Technical

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\* **CLERK’S NOTE:** This section was also amended by H. B. 4690 (Chapter 85), which passed prior to this act.

14 College which may not be operated as branches or off-campus  
15 locations of any other state institution of higher education;

16 (d) “Community college” or “community colleges” means  
17 community and technical college or colleges as those terms are  
18 defined in this section;

19 (e) “Community and technical college”, in the singular or  
20 plural, means the free-standing community and technical  
21 colleges and other state institutions of higher education which  
22 deliver community and technical college education. This  
23 definition includes Southern West Virginia Community and  
24 Technical College, West Virginia Northern Community and  
25 Technical College, Eastern West Virginia Community and  
26 Technical College, New River Community and Technical  
27 College, West Virginia University at Parkersburg, The Commu-  
28 nity and Technical College at West Virginia University Institute  
29 of Technology, Blue Ridge Community and Technical College,  
30 Marshall Community and Technical College and West Virginia  
31 State Community and Technical College;

32 (f) “Community and technical college education” means the  
33 programs, faculty, administration and funding associated with  
34 the delivery of community and technical college education  
35 programs;

36 (g) “Essential conditions” means those conditions which  
37 shall be met by community and technical colleges as provided  
38 in section three, article three-c of this chapter;

39 (h) “Higher education institution” means any institution as  
40 defined by Sections 401(f), (g) and (h) of the federal Higher  
41 Education Facilities Act of 1963, as amended;

42 (i) “Higher Education Policy Commission”, “policy  
43 commission” or “commission” means the commission created  
44 pursuant to section one, article one-b of this chapter;



45 (j) “Chancellor for Higher Education” means the chief  
46 executive officer of the Higher Education Policy Commission  
47 employed pursuant to section five, article one-b of this chapter;

48 (k) “Chancellor for Community and Technical College  
49 Education” means the chief executive officer of the West  
50 Virginia Council for Community and Technical College  
51 Education employed pursuant to section three, article two-b of  
52 this chapter;

53 (l) “Chancellor” means the Chancellor for Higher Educa-  
54 tion where the context refers to a function of the Higher  
55 Education Policy Commission. “Chancellor” means Chancellor  
56 for Community and Technical College Education where the  
57 context refers to a function of the West Virginia Council for  
58 Community and Technical College Education;

59 (m) “Institutional operating budget” or “operating budget”  
60 means for any fiscal year an institution’s total unrestricted  
61 education and general funding from all sources in the prior  
62 fiscal year, including, but not limited to, tuition and fees and  
63 legislative appropriation, and any adjustments to that funding  
64 as approved by the commission or council based on compari-  
65 sons with peer institutions or to reflect consistent components  
66 of peer operating budgets;

67 (n) “Community and technical college education program”  
68 means any college-level course or program beyond the high  
69 school level provided through a public institution of higher  
70 education resulting in or which may result in a two-year  
71 associate degree award including an associate of arts, an  
72 associate of science and an associate of applied science;  
73 certificate programs and skill sets; developmental education;  
74 continuing education; collegiate credit and noncredit workforce  
75 development programs; and transfer and baccalaureate parallel  
76 programs. All such programs are under the jurisdiction of the  
77 council. Any reference to “post-secondary vocational education

78 programs” means community and technical college education  
79 programs as defined in this subsection;

80 (o) “Rule” or “rules” means a regulation, standard, policy  
81 or interpretation of general application and future effect;

82 (p) “Senior administrator” means the vice chancellor for  
83 administration employed in accordance with section two, article  
84 four of this chapter;

85 (q) “State college” means Bluefield State College, Concord  
86 University, Fairmont State University, Glenville State College,  
87 Shepherd University, West Liberty State College or West  
88 Virginia State University;

89 (r) “State institution of higher education” means any  
90 university, college or community and technical college under  
91 the jurisdiction of a governing board as that term is defined in  
92 this section;

93 (s) Until the first day of July, two thousand seven, “regional  
94 campus” means West Virginia University at Parkersburg and  
95 West Virginia University Institute of Technology;

96 (t) The advisory board previously appointed for the West  
97 Virginia Graduate College is known as the “Board of Visitors”  
98 and shall provide guidance to the Marshall University Graduate  
99 College;

100 (u) “Institutional compact” means the compact between the  
101 commission or council and a state institution of higher educa-  
102 tion under its jurisdiction, as described in section two, article  
103 one-a of this chapter;

104 (v) “Peer institutions”, “peer group” or “peers” means  
105 public institutions of higher education used for comparison  
106 purposes and selected by the commission pursuant to section  
107 three, article one-a of this chapter;

108 (w) “Administratively linked community and technical  
109 college” means a community and technical college created  
110 pursuant to section eight, article three-c of this chapter;

111 (x) “Sponsoring institution” means a state institution of  
112 higher education that maintains an administrative link to a  
113 community and technical college pursuant to section eight,  
114 article three-c of this chapter;

115 (y) “Collaboration” means entering into an agreement with  
116 one or more providers of education services in order to enhance  
117 the scope, quality or efficiency of education services;

118 (z) “Broker” or “brokering” means serving as an agent on  
119 behalf of students, employers, communities or responsibility  
120 areas to obtain education services not offered at that institution.  
121 These services include courses, degree programs or other  
122 services contracted through an agreement with a provider of  
123 education services either in-state or out-of-state;

124 (aa) “Council” means the West Virginia Council for  
125 Community and Technical College Education created pursuant  
126 to article two-b of this chapter; and

127 (bb) “West Virginia Consortium for Undergraduate  
128 Research and Engineering” or “West Virginia CURE” means  
129 the collaborative planning group established pursuant to article  
130 one-c of this chapter.

**§18B-1-7. Fairmont State Community and Technical College  
merged.**

1 (a) Notwithstanding any other provision of this code to the  
2 contrary, on the first day of July, two thousand six, Fairmont  
3 State Community and Technical College shall be known as  
4 Pierpont Community and Technical College and shall merge  
5 and consolidate with Fairmont State University and become a

6 fully integrated division of the university. All administrative  
7 and academic units shall be consolidated with primary responsi-  
8 bility for direction and support assigned to Fairmont State  
9 University.

10 (1) Fairmont State Community and Technical College  
11 ceases to be an individual higher education institution, as  
12 defined by subsection (h), section two of this article.

13 (2) The advisory board previously appointed for Fairmont  
14 State Community and Technical College is continued as the  
15 advisory board for Pierpont Community and Technical College.  
16 The advisory board:

17 (A) Serves to advise the Fairmont State University Board  
18 of Governors and president on issues regarding the delivery of  
19 community and technical college education; and

20 (B) Continues to function pursuant to the provisions of  
21 section one, article six of this chapter.

22 (b) Any reference in this code to Fairmont State Commu-  
23 nity and Technical College means Pierpont Community and  
24 Technical College, a division of Fairmont State University.

25 (c) In the delivery of community and technical college  
26 education and programs, Fairmont State University shall adhere  
27 to all provisions set forth in this code and rules promulgated by  
28 the council for the delivery of such education and programs,  
29 including, but not limited to, council review and approval of  
30 academic programs, institutional compacts, master plans,  
31 charge-back agreements and tuition and fee rates, including  
32 capital fees. The only provision of this code that Fairmont State  
33 University is not required to adhere to is the requirement related  
34 to independent accreditation of community and technical  
35 colleges.

36 (d) Pierpont Community and Technical College shall  
37 continue to exist as an administrative division of Fairmont State  
38 University, pursuant to the provisions of article ten, chapter  
39 four of this code, until the first day of July, two thousand nine,  
40 unless sooner terminated, continued or reestablished pursuant  
41 to the provisions of that article.

42 (e) During the time period Pierpont Community and  
43 Technical College exists as an administrative division of  
44 Fairmont State University pursuant to subsection (d) of this  
45 section, the council shall determine if the following conditions  
46 are being met:

47 (1) Pierpont Community and Technical College meets or  
48 exceeds all of the benchmarks contained in its approved  
49 compact required by section two, article one-a of this chapter;

50 (2) Pierpont Community and Technical College has  
51 established and is meeting or exceeding the goals of its  
52 approved consortium compact pursuant to section four, article  
53 three-c of this chapter;

54 (3) Pierpont Community and Technical College meets or  
55 exceeds the service needs of its consortium planning district  
56 according to its approved consortium compact;

57 (4) Pierpont Community and Technical College meets or  
58 exceeds Council goals as defined in the community and  
59 technical college performance indicators and institutional  
60 compacts established pursuant to section two, article one-a of  
61 this chapter and national averages for the delivery of compre-  
62 hensive community and technical college education in the  
63 following areas:

64 (A) Providing access to the following groups of students in  
65 the community and technical college's consortium planning  
66 district:

67 (i) Traditional students eighteen to twenty-four years of  
68 age;

69 (ii) Nontraditional students twenty-five to forty-four years  
70 of age; and

71 (iii) High school students seeking college credit through  
72 early entrance and earn-a-degree-graduate-early (EDGE)  
73 courses;

74 (B) Serving the state's workforce development goals by:

75 (i) Increasing the number of graduates with career technical  
76 certificates and associate degrees;

77 (ii) Ensuring that students who earn certificates and degrees  
78 are placed in the workforce;

79 (iii) Providing workforce education and training programs  
80 for employers; and

81 (iv) Maintaining community and technical college student  
82 freshman-to-sophomore retention rates and graduation rates that  
83 equal or exceed state and national averages;

84 (5) The costs of operating Pierpont Community and  
85 Technical College as an independently accredited community  
86 and technical college administratively linked to Fairmont State  
87 University exceed the benefits of such an arrangement to the  
88 achievement of community and technical college system goals;

89 (6) A consortia arrangement, centralized processing  
90 alternative or other cost-saving measure is not available to  
91 offset the costs determined to be excessive pursuant to subdivi-  
92 sion (5) of this subsection; and

93 (7) Fairmont State University and Pierpont Community and  
94 Technical College demonstrate that they are required:

95 (A) By the United States Department of Education to  
96 operate separate offices for student financial aid processing;  
97 and

98 (B) By the Higher Learning Commission of the North  
99 Central Association of Colleges and Schools to maintain a  
100 separate library for each institution.

101 (f) The council shall report to the Legislative Oversight  
102 Commission on Education Accountability concerning its  
103 findings and its final recommendations. The report shall be  
104 filed by the first day of December, two thousand nine.

105 (g) If the council determines that the merger of Fairmont  
106 State University and Pierpont Community and Technical  
107 College has not resulted in enabling the community and  
108 technical college to meet the conditions established in this  
109 section, the community and technical college shall pursue  
110 independent accreditation status. If Pierpont Community and  
111 Technical College fails to achieve independent accreditation by  
112 the first day of January, two thousand eleven, the council shall  
113 choose one of the following options:

114 (1) Create the administratively linked institution as a free-  
115 standing community and technical college under the jurisdiction  
116 of its own institutional board of governors established pursuant  
117 to section one, article two-a of this chapter; or

118 (2) Assign the responsibility for obtaining independent  
119 accreditation to another state institution of higher education.

#### **ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**

##### **\*§18B-1B-6. Appointment of institutional presidents; evaluation.**

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\* **CLERK'S NOTE:** This section was also amended by H. B. 4690 (Chapter 85), which passed prior to this act.

1       (a) *Appointment of institutional presidents.* — Appointment  
2 of presidents of the state institutions of higher education shall  
3 be made as follows:

4       (1) Subject to the approval of the commission, the govern-  
5 ing board of the institution appoints a president for Bluefield  
6 State College, Concord University, Fairmont State University,  
7 Glenville State College, Marshall University, Shepherd  
8 University, West Liberty State College, West Virginia School  
9 of Osteopathic Medicine, West Virginia State University and  
10 West Virginia University.

11       (2) Subject to the approval of the council and to the  
12 provisions of article three-c of this chapter, the Governing  
13 Board of West Virginia University appoints the president of the  
14 regional campus known as West Virginia University at  
15 Parkersburg. The president serves at the will and pleasure of the  
16 governing board. When selecting candidates for consideration  
17 to fill the office of president, the governing board shall use the  
18 search and screening process provided in section one, article six  
19 of this chapter.

20       Until the first day of July, two thousand seven, and subject  
21 to the approval of the commission, the Governing Board of  
22 West Virginia University appoints the president of the regional  
23 campus known as West Virginia University Institute of  
24 Technology. The president of the regional campus serves at the  
25 will and pleasure of the appointing governing board.

26       (3) Subject to the approval of the council, the governing  
27 board of the community and technical college appoints a  
28 president for Eastern West Virginia Community and Technical  
29 College, Southern West Virginia Community and Technical  
30 College and West Virginia Northern Community and Technical  
31 College.



32       (4) Subject to the approval of the council, the governing  
33 board of the sponsoring institution appoints a president for each  
34 administratively linked community and technical college which  
35 shares a physical campus location with the sponsoring institu-  
36 tion, including Pierpont Community and Technical College, a  
37 division of Fairmont State University, Marshall Community and  
38 Technical College, the Community and Technical College at  
39 West Virginia University Institute of Technology and West  
40 Virginia State Community and Technical College. The presi-  
41 dent of the administratively linked community and technical  
42 college serves at the will and pleasure of the appointing  
43 governing board.

44       (5) Subject to the approval of the council, the governing  
45 board of the community and technical college appoints a  
46 president for each administratively linked community and  
47 technical college which does not share a physical campus  
48 location with the sponsoring institution, including New River  
49 Community and Technical College and Blue Ridge Community  
50 and Technical College.

51       (b) *Other appointments.* — The institutional president  
52 appoints a provost to be the administrative head of the Potomac  
53 campus of West Virginia University and, effective the first day  
54 of July, two thousand seven, for West Virginia University  
55 Institute of Technology.

56       (c) *Evaluation of presidents.* — The appointing governing  
57 board shall conduct written performance evaluations of each  
58 institution's president, including the presidents of administra-  
59 tively linked community and technical colleges. Evaluations  
60 shall be done in every fourth year of employment as president,  
61 recognizing unique characteristics of the institution and  
62 utilizing institutional personnel, institutional boards of advisors  
63 as appropriate, staff of the appropriate governing board and  
64 persons knowledgeable in higher education matters who are not

65 otherwise employed by a governing board. A part of the  
66 evaluation shall be a determination of the success of the  
67 institution in meeting the requirements of its institutional  
68 compact.

#### ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

##### **\*§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.**

1 (a) A board of governors is continued at each of the  
2 following institutions: Bluefield State College, Blue Ridge  
3 Community and Technical College, Concord University,  
4 Eastern West Virginia Community and Technical College,  
5 Fairmont State University, Glenville State College, Marshall  
6 University, New River Community and Technical College,  
7 Shepherd University, Southern West Virginia Community and  
8 Technical College, West Liberty State College, West Virginia  
9 Northern Community and technical College, the West Virginia  
10 School of Osteopathic Medicine, West Virginia State Univer-  
11 sity and West Virginia University.

12 (b) The institutional board of governors for Marshall  
13 University consists of sixteen persons and the institutional  
14 board of governors for West Virginia University consists of  
15 eighteen persons. Each other board of governors consists of  
16 twelve persons.

17 (c) Each board of governors includes the following  
18 members:

19 (1) A full-time member of the faculty with the rank of  
20 instructor or above duly elected by the faculty of the respective  
21 institution;

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\* **CLERK'S NOTE:** This section was also amended by H. B. 4690 (Chapter 85), which passed subsequent to this act.

22 (2) A member of the student body in good academic  
23 standing, enrolled for college credit work and duly elected by  
24 the student body of the respective institution;

25 (3) A member from the institutional classified employees  
26 duly elected by the classified employees of the respective  
27 institution; and

28 (4) For the institutional board of governors at Marshall  
29 University, twelve lay members appointed by the Governor, by  
30 and with the advice and consent of the Senate, pursuant to this  
31 section and, additionally, the chairperson of the institutional  
32 board of advisors of Marshall Community and Technical  
33 College serving as an ex officio, voting member.

34 (5) For the institutional board of governors at West Virginia  
35 University, twelve lay members appointed by the Governor, by  
36 and with the advice and consent of the Senate, pursuant to this  
37 section and, additionally, the chairpersons of the following  
38 boards serving as ex officio, voting members:

39 (A) The institutional board of advisors of:

40 (i) The Community and Technical College at West Virginia  
41 University Institute of Technology; and

42 (ii) West Virginia University at Parkersburg; and

43 (B) The Board of Visitors of West Virginia University  
44 Institute of Technology.

45 (6) For each institutional board of governors of an institu-  
46 tion that does not have an administratively linked community  
47 and technical college under its jurisdiction, nine lay members  
48 appointed by the Governor, by and with the advice and consent  
49 of the Senate, pursuant to this section.

50 (7) For each institutional board of governors which has an  
51 administratively linked community and technical college under  
52 its jurisdiction:

53 (A) Eight lay members appointed by the Governor, by and  
54 with the advice and consent of the Senate, pursuant to this  
55 section and, additionally, the chairperson of the institutional  
56 board of advisors of the administratively linked community and  
57 technical college; and

58 (B) Of the eight lay members appointed by the Governor,  
59 one shall be the superintendent of a county board of education  
60 from the area served by the institution.

61 (d) Of the eight or nine members appointed by the Gover-  
62 nor, no more than five may be of the same political party. Of  
63 the twelve members appointed by the Governor to the govern-  
64 ing boards of Marshall University and West Virginia Univer-  
65 sity, no more than seven may be of the same political party. Of  
66 the eight or nine members appointed by the Governor, at least  
67 six shall be residents of the state. Of the twelve members  
68 appointed by the Governor to the governing boards of Marshall  
69 University and West Virginia University, at least eight shall be  
70 residents of the state.

71 (e) The student member serves for a term of one year. Each  
72 term begins on the first day of July.

73 (f) The faculty member serves for a term of two years. Each  
74 term begins on the first day of July. Faculty members are  
75 eligible to succeed themselves for three additional terms, not to  
76 exceed a total of eight consecutive years.

77 (g) The member representing classified employees serves  
78 for a term of two years. Each term begins on the first day of  
79 July. Members representing classified employees are eligible to  
80 succeed themselves for three additional terms, not to exceed a  
81 total of eight consecutive years.

82 (h) The appointed lay citizen members serve terms of four  
83 years each and are eligible to succeed themselves for no more  
84 than one additional term.

85 (i) A vacancy in an unexpired term of a member shall be  
86 filled for the unexpired term within thirty days of the occur-  
87 rence of the vacancy in the same manner as the original  
88 appointment or election. Except in the case of a vacancy, all  
89 elections shall be held and all appointments shall be made no  
90 later than the thirtieth day of June preceding the commence-  
91 ment of the term. Each board of governors shall elect one of its  
92 appointed lay members to be chairperson in June of each year.  
93 A member may not serve as chairperson for more than two  
94 consecutive years.

95 (j) The appointed members of the institutional boards of  
96 governors serve staggered terms of four years.

97 (k) A person is ineligible for appointment to membership  
98 on a board of governors of a state institution of higher educa-  
99 tion under the following conditions:

100 (1) For a baccalaureate institution or university, a person is  
101 ineligible for appointment who is an officer, employee or  
102 member of any other board of governors, a member of an  
103 institutional board of advisors of any public institution of higher  
104 education, an employee of any institution of higher education,  
105 an officer or member of any political party executive commit-  
106 tee, the holder of any other public office or public employment  
107 under the government of this state or any of its political  
108 subdivisions or a member of the council or commission. This  
109 subsection does not prevent the representative from the faculty,  
110 classified employees, students or chairpersons of the boards of  
111 advisors or the superintendent of a county board of education  
112 from being members of the governing boards.

113 (2) For a community and technical college, a person is  
114 ineligible for appointment who is an officer, employee or  
115 member of any other board of governors; a member of an  
116 institutional board of advisors of any public institution of higher  
117 education; an employee of any institution of higher education;  
118 an officer or member of any political party executive commit-  
119 tee; the holder of any other public office, other than an elected  
120 county office, or public employment, other than employment by  
121 the county board of education, under the government of this  
122 state or any of its political subdivisions; or a member of the  
123 council or commission. This subsection does not prevent the  
124 representative from the faculty, classified employees, students  
125 or chairpersons of the boards of advisors from being members  
126 of the governing boards.

127 (l) Before exercising any authority or performing any duties  
128 as a member of a governing board, each member shall qualify  
129 as such by taking and subscribing to the oath of office pre-  
130 scribed by section five, article IV of the Constitution of West  
131 Virginia and the certificate thereof shall be filed with the  
132 Secretary of State.

133 (m) A member of a governing board appointed by the  
134 Governor may not be removed from office by the Governor  
135 except for official misconduct, incompetence, neglect of duty  
136 or gross immorality and then only in the manner prescribed by  
137 law for the removal of the state elective officers by the Gover-  
138 nor.

139 (n) The president of the institution shall make available  
140 resources of the institution for conducting the business of its  
141 board of governors. The members of the board of governors  
142 serve without compensation, but are reimbursed for all reason-  
143 able and necessary expenses actually incurred in the perfor-  
144 mance of official duties under this article upon presentation of  
145 an itemized sworn statement of expenses. All expenses incurred

146 by the board of governors and the institution under this section  
147 are paid from funds allocated to the institution for that purpose.

**ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.**

§18B-3C-4. Community and technical college consortia planning districts.

§18B-3C-7. Blue Ridge Community and Technical College.

§18B-3C-8. Statewide network of independently accredited community and technical colleges.

**\*§18B-3C-4. Community and technical college consortia planning districts.**

1 (a) Unless otherwise designated, the president of each  
2 community and technical college facilitates the formation of  
3 community and technical college consortia in the state, which  
4 includes representatives of community and technical colleges,  
5 public vocational-technical education centers, and public  
6 baccalaureate institutions offering associate degrees. The  
7 community and technical college consortium shall:

8 (1) Complete a comprehensive assessment of the district to  
9 determine what education and training programs are necessary  
10 to meet the short- and long-term workforce development needs  
11 of the district;

12 (2) Coordinate efforts with regional labor market informa-  
13 tion systems to identify the ongoing needs of business and  
14 industry, both current and projected, and to provide information  
15 to assist in an informed program of planning and  
16 decisionmaking;

17 (3) Plan and develop a unified effort between the commu-  
18 nity and technical colleges and public vocational-technical  
19 education to meet the documented workforce development  
20 needs of the district through individual and cooperative

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\* **CLERK'S NOTE:** This section was also amended by H. B. 4690 (Chapter 85), which passed prior to this act.

21 programs, shared facilities, faculty, staff, equipment and other  
22 resources and the development and use of distance learning and  
23 other education technologies;

24 (4) Regularly review and revise curricula to ensure that the  
25 workforce needs are met, develop new programs and phase out  
26 or modify existing programs as appropriate to meet such needs,  
27 streamline procedures for designing and implementing custom-  
28 ized training programs;

29 (5) Increase the integration of secondary and  
30 post-secondary curriculum and programs that are targeted to  
31 meet regional labor market needs, including implementation of  
32 seamless curricula projects in all major career pathways and the  
33 West Virginia EDGE, Earn a Degree, Graduate Early Program;

34 (6) Plan and implement integrated professional develop-  
35 ment activities for secondary and post-secondary faculty, staff  
36 and administrators;

37 (7) Ensure that program graduates have attained the  
38 competencies required for successful employment through the  
39 involvement of business, industry and labor in establishing  
40 student credentialing;

41 (8) Performance assessment of student knowledge and  
42 skills which may be gained from multiple sources so that  
43 students gain credit toward program completion and advance  
44 more rapidly without repeating course work in which they  
45 already possess competency;

46 (9) Cooperate with workforce investment boards in  
47 establishing one-stop-shop career centers with integrated  
48 employment and training and labor market information systems  
49 that enable job seekers to assess their skills, identify and secure  
50 needed education training and secure employment and employ-  
51 ers to locate available workers;



52 (10) Increase the integration of adult literacy, adult basic  
53 education, federal Work Force Investment Act and community  
54 and technical college programs and services to expedite the  
55 transition of adults from welfare to gainful employment; and

56 (11) Establish a single point of contact for employers and  
57 potential employers to access education and training programs  
58 throughout the district.

59 (b) The community and technical college education  
60 consortium shall cooperate with the regional workforce  
61 investment board in the district and shall participate in any  
62 development or amendment to the regional workforce invest-  
63 ment plan.

64 (c) To carry out the provisions of this section, community  
65 and technical college consortia planning districts are established  
66 and defined as follows:

67 (1) Northern Panhandle Community and Technical College  
68 District includes Hancock, Brooke, Ohio, Marshall and Wetzel  
69 counties.

70 (A) The facilitating institution is West Virginia Northern  
71 Community and Technical College.

72 (B) Participating institutions include West Virginia  
73 Northern Community and Technical College; John Marshall  
74 High School; Cameron High School; John D. Rockefeller  
75 Center; and other public vocational technical schools offering  
76 post-secondary programs.

77 (2) North Central West Virginia Community and Technical  
78 College District includes Monongalia, Marion, Preston, Taylor,  
79 Barbour, Randolph, Doddridge, Harrison, Braxton, Lewis,  
80 Calhoun, Gilmer and Upshur counties.

81 (A) The facilitating institution is Pierpont Community and  
82 Technical College, a division of Fairmont State University.

83 (B) Participating institutions include Pierpont Community  
84 and Technical College, a division of Fairmont State University;  
85 Glenville State College; Randolph County Vocational-Technical  
86 Center; Monongalia County Technical  
87 Education Center; United Technical Center; Marion County  
88 Technical Center; Fred W. Eberly Technical Center; and other  
89 public vocational-technical schools offering post-secondary  
90 programs.

91 (3) Mid-Ohio Valley Community and Technical College  
92 District includes Tyler, Pleasants, Ritchie, Wood, Wirt, Jackson  
93 and Roane counties.

94 (A) The facilitating institution is West Virginia University  
95 at Parkersburg.

96 (B) Participating institutions include West Virginia  
97 University at Parkersburg; West Virginia Northern Community  
98 and Technical College; Roane-Jackson Technical Center;  
99 Gaston Caperton Center; Wood County Technical Center; and  
100 other public vocational-technical schools offering  
101 post-secondary programs.

102 (4) Potomac Highlands Community and Technical College  
103 District includes Tucker, Pendleton, Grant, Hardy, Mineral and  
104 Hampshire counties.

105 (A) The facilitating institution is Eastern West Virginia  
106 Community and Technical College.

107 (B) Participating institutions include Eastern West Virginia  
108 Community and Technical College; South Branch Career and  
109 Technical Center; Mineral County Technical Center; and other  
110 public vocational-technical schools offering post-secondary  
111 programs.

112 (5) Shenandoah Valley Community and Technical College  
113 District includes Berkeley, Jefferson and Morgan counties.

114 (A) The facilitating institution is Blue Ridge Community  
115 and Technical College.

116 (B) Participating institutions include Blue Ridge Commu-  
117 nity and Technical College; James Rumsey Technical Institute;  
118 and other public vocational-technical schools offering  
119 post-secondary programs.

120 (6) Advantage Valley Community and Technical College  
121 District includes Fayette, Kanawha, Clay, Putnam, Cabell,  
122 Mason and Wayne counties.

123 (A) The facilitating institution is Marshall Community and  
124 Technical College.

125 (B) Every five years the council shall:

126 (i) Evaluate the progress of the Advantage Valley Consortia  
127 toward achieving the goals and benchmarks of its compact;

128 (ii) Evaluate the progress of each community and technical  
129 college in the district toward achieving the goals and  
130 benchmarks of its institutional compact;

131 (iii) Determine which community and technical college in  
132 the district would best serve the needs of the district for the  
133 following five-year period if serving as the facilitating institu-  
134 tion; and

135 (iv) Designate the community and technical college  
136 selected pursuant to subparagraph (iii) of this paragraph to  
137 serve as the facilitating institution for the following five-year  
138 period.

139 (C) Participating institutions include Marshall Community  
140 and Technical College; the Community and Technical College

141 at West Virginia University Institute of Technology; West  
142 Virginia State Community and Technical College; Carver  
143 Career Center; Garnet Career Center; Ben Franklin Career  
144 Center; Putnam County Vocational-Technical-Occupational  
145 Center; Cabell County Career-Technical Center; and other  
146 public vocational-technical schools offering post-secondary  
147 programs.

148 (7) Southern Mountains Community and Technical College  
149 District includes Lincoln, Boone, Logan, Mingo, Wyoming and  
150 McDowell counties.

151 (A) The facilitating institution is Southern West Virginia  
152 Community and Technical College.

153 (B) Participating institutions include Southern West  
154 Virginia Community and Technical College; New River  
155 Community and Technical College; Boone County Career and  
156 Technical Center; Wyoming County Vocational-Technical  
157 Center; Ralph R. Willis Career and Technical Center;  
158 McDowell County Career and Technology Center; Mingo  
159 County Vocation-Technical Center; Charles Yeager Technical  
160 Center; and other public vocational-technical schools offering  
161 post-secondary programs.

162 (8) Southeastern Community and Technical College  
163 District includes Raleigh, Summers, Fayette, Nicholas, Web-  
164 ster, Pocahontas, Greenbrier, Monroe and Mercer counties.

165 (A) The facilitating institution is New River Community  
166 and Technical College.

167 (B) Participating institutions include New River Commu-  
168 nity and Technical College; Southern West Virginia Commu-  
169 nity and Technical College; the Community and Technical  
170 College at West Virginia University Institute of Technology;  
171 Bluefield State College; Academy of Careers and Technology;

172 Fayette Plateau Vocation-Technology Center; Summers County  
173 High School; Monroe County Technical Center; Mercer County  
174 Technical Center; and other public vocational-technical schools  
175 offering post-secondary programs.

176 (d) In the role of the facilitating institution of the commu-  
177 nity and technical college district, the college:

178 (1) Communicates to the council;

179 (2) Facilitates the delivery of comprehensive community  
180 and technical college education in the region, which includes  
181 the seven areas of comprehensive community and technical  
182 college education delivery as required by section six of this  
183 article; and

184 (3) Facilitates development of statement of commitment  
185 signed by all participating institutions in the region as to how  
186 community and technical college education will be delivered.

187 (e) Participating institutions are not subordinate to the  
188 facilitating institution but will sign the statement of commit-  
189 ment to participate.

190 (f) The council shall:

191 (1) Maintain guidelines for community and technical  
192 college consortia development;

193 (2) Set goals for each consortium based upon legislative  
194 goals for the delivery of comprehensive community and  
195 technical college education; and

196 (3) Maintain a format for developing and revising a  
197 consortium compact outlining plans for achieving stated goals  
198 to be submitted to the council annually for approval.

199 (g) On or before the fifteenth day of November each year  
200 each consortium shall submit to the council for approval a  
201 compact which outlines plans for obtaining the stated goals.  
202 Each compact shall include the implementation of seamless  
203 curricula and the West Virginia EDGE, Earn a Degree, Gradu-  
204 ate Early Program.

205 (h) The council annually shall evaluate the progress made  
206 in meeting the compact goals for each community and technical  
207 college consortia through the development and collection of  
208 performance indicator data.

**§18B-3C-7. Blue Ridge Community and Technical College.**

1 The Community and Technical College of Shepherd is  
2 hereafter named “Blue Ridge Community and Technical  
3 College”. Any reference in this code to the Community and  
4 Technical College of Shepherd means Blue Ridge Community  
5 and Technical College.

**\*§18B-3C-8. Statewide network of independently accredited  
community and technical colleges.**

1 (a) There is continued a statewide network of independently  
2 accredited community and technical colleges serving every  
3 region of the state. This section does not apply to the free-  
4 standing community and technical colleges or West Virginia  
5 University at Parkersburg.

6 (b) To be eligible for funds appropriated to develop  
7 independently accredited community and technical colleges, a  
8 state institution of higher education shall demonstrate the  
9 following:

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\* **CLERK’S NOTE:** This section was also amended by H. B. 4690 (Chapter 85), which passed prior to this act.

10 (1) That it has as a part of its institutional compact ap-  
11 proved by the council a step-by-step plan with measurable  
12 benchmarks for developing an independently accredited  
13 community and technical college that meets the essential  
14 conditions set forth in section three of this article;

15 (2) That it is able to offer evidence to the satisfaction of the  
16 council that it is making progress toward accomplishing the  
17 benchmarks established in its institutional compact for develop-  
18 ing an independently accredited community and technical  
19 college; and

20 (3) That it has submitted an expenditure schedule approved  
21 by the council which sets forth a proposed plan of expenditures  
22 for funds allocated to it from the fund.

23 (c) The statewide network of independently accredited  
24 community and technical colleges is comprised of the free-  
25 standing community and technical colleges, West Virginia  
26 University at Parkersburg and the following state institutions of  
27 higher education:

28 (1) *New River Community and Technical College.* —

29 (A) There is continued the multicampus entity known as  
30 New River Community and Technical College, administratively  
31 linked to Bluefield State College. New River Community and  
32 Technical College is headquartered in the Beckley Higher  
33 Education Center and incorporates the campuses of Greenbrier  
34 Community College Center of New River Community and  
35 Technical College and Nicholas Community College Center of  
36 New River Community and Technical College. New River  
37 Community and Technical College is an independently  
38 accredited community and technical college.

39 (B) Bluefield State College may continue associate degree  
40 programs in areas of particular institutional strength which are

41 closely articulated to its baccalaureate programs and missions  
42 or which are of a high-cost nature and can best be provided  
43 through direct coordination with a baccalaureate institution.  
44 Any such program shall be delivered under the authority of the  
45 council and through contract with the community and technical  
46 college. The terms of the contract shall be negotiated between  
47 the council and the governing board of the sponsoring institu-  
48 tion. The final contract is approved by the council. Such a  
49 program shall be evaluated according to the benchmarks and  
50 indicators for community and technical college education  
51 developed by the council. If the council determines that the  
52 program is making insufficient progress toward accomplishing  
53 the benchmarks, the program shall thereafter be delivered by  
54 the community and technical college.

55 (C) Bluefield State College may continue the associate of  
56 science degree in nursing which is an existing nationally  
57 accredited associate degree program in an area of particular  
58 institutional strength and which is closely articulated to the  
59 baccalaureate program and mission. The program is of a high-  
60 cost nature and can best be provided through direct administra-  
61 tion by a baccalaureate institution. This program may not be  
62 transferred to New River Community and Technical College or  
63 any other community and technical college as long as the  
64 program maintains national accreditation and is seamlessly  
65 coordinated into the baccalaureate program at the institution.

66 (D) As an independently accredited community and  
67 technical college, New River also serves as a higher education  
68 center for its region by brokering with other colleges, universi-  
69 ties and providers, in-state and out-of-state, both public and  
70 private, to ensure the coordinated access of students, employers  
71 and other clients to needed programs and services.

72 (E) New River Community and Technical College partici-  
73 pates in the planning and development of a unified effort



74 involving multiple providers to meet the documented education  
75 and workforce development needs in the region. Nothing in this  
76 subdivision prohibits or limits any existing, or the continuation  
77 of any existing, affiliation between Mountain State University,  
78 West Virginia University Institute of Technology and West  
79 Virginia University. The objective is to assure students and  
80 employers in the area that there is coordination and efficient use  
81 of resources among the separate programs and facilities,  
82 existing and planned, in the Beckley area.

83       (2) *Marshall Community and Technical College.* —  
84 Marshall Community and Technical College is an independ-  
85 ently accredited community and technical college. The new  
86 community and technical college is developed on the base of  
87 the component community and technical college of Marshall  
88 university. Subject to the provisions of this section, the  
89 president and the governing board of Marshall university are  
90 responsible, according to a plan approved by the council, for  
91 step-by-step implementation of the new independently accred-  
92 ited community and technical college which adheres to the  
93 essential conditions pursuant to section three of this article.  
94 Subject to the provisions of section twelve of this article, the  
95 community and technical college remains administratively  
96 linked to Marshall University. Marshall University may  
97 continue associate degree programs in areas of particular  
98 institutional strength which are closely articulated to its  
99 baccalaureate programs and missions or which are of a  
100 high-cost nature and can best be provided in direct coordination  
101 with a baccalaureate institution. Any such program shall be  
102 delivered under the authority of the council and through  
103 contract with the community and technical college. The terms  
104 of the contract shall be negotiated between the council and the  
105 governing board of the sponsoring institution. The final contract  
106 is approved by the council. Such a program shall be evaluated  
107 according to the benchmarks and indicators for community and  
108 technical college education developed by the council. If the

109 council determines that the program is making insufficient  
110 progress toward accomplishing the benchmarks, the program  
111 shall thereafter be delivered by the community and technical  
112 college.

113       (3) *Blue Ridge Community and Technical College.* — Blue  
114 Ridge Community and Technical College is an independently  
115 accredited community and technical college. Subject to the  
116 provisions of section twelve of this article, the community and  
117 technical college remains administratively linked to Shepherd  
118 University. Shepherd University may continue associate degree  
119 programs in areas of particular institutional strength which are  
120 closely articulated to its baccalaureate programs and missions  
121 or which are of a high-cost nature and can best be provided in  
122 direct coordination with a baccalaureate institution. Any such  
123 program shall be delivered under the authority of the council  
124 and through contract with the community and technical college.  
125 The terms of the contract shall be negotiated between the  
126 council and the governing board of the sponsoring institution.  
127 The final contract is approved by the council. Such a program  
128 shall be evaluated according to the benchmarks and indicators  
129 for community and technical college education developed by  
130 the council. If the council determines that the program is  
131 making insufficient progress toward accomplishing the  
132 benchmarks, the program shall thereafter be delivered by the  
133 community and technical college.

134       (4) *West Virginia State Community and Technical College.*  
135 — West Virginia State Community and Technical College is an  
136 independently accredited community and technical college. The  
137 new community and technical college is developed on the base  
138 of the component community and technical college of West  
139 Virginia state college. Subject to the provisions of this section,  
140 the president and the Governing Board of West Virginia State  
141 College are responsible, according to a plan approved by the  
142 council, for step-by-step implementation of the new independ-

143 ently accredited community and technical college which  
144 adheres to the essential conditions pursuant to section three of  
145 this article. Subject to the provisions of section twelve of this  
146 article, the community and technical college remains adminis-  
147 tratively linked to West Virginia State University. West  
148 Virginia State University may continue associate degree  
149 programs in areas of particular institutional strength which are  
150 closely articulated to its baccalaureate programs and missions  
151 or which are of a high-cost nature and can best be provided in  
152 direct coordination with a baccalaureate institution. Any such  
153 program shall be delivered under the authority of the council  
154 and through contract with the community and technical college.  
155 The terms of the contract shall be negotiated between the  
156 council and the governing board of the sponsoring institution.  
157 The final contract is approved by the council. Such a program  
158 shall be evaluated according to the benchmarks and indicators  
159 for community and technical college education developed by  
160 the council. If the council determines that the program is  
161 making insufficient progress toward accomplishing the  
162 benchmarks, the program shall thereafter be delivered by the  
163 community and technical college.

164       (5) *The Community and Technical College at West Virginia*  
165 *University Institute of Technology.* — The Community and  
166 Technical College at West Virginia University Institute of  
167 Technology is an independently accredited community and  
168 technical college. The new community and technical college is  
169 developed on the base of the component community and  
170 technical college of West Virginia University Institute of  
171 Technology. Subject to the provisions of this section, the  
172 president and the governing board of West Virginia University  
173 are responsible, according to a plan approved by the council, for  
174 step-by-step implementation of the new independently accred-  
175 ited community and technical college which adheres to the  
176 essential conditions pursuant to section three of this article.  
177 Subject to the provisions of section twelve of this article, the

178 community and technical college remains administratively  
179 linked to West Virginia University Institute of Technology.  
180 West Virginia University Institute of Technology may continue  
181 associate degree programs in areas of particular institutional  
182 strength which are closely articulated to its baccalaureate  
183 programs and missions or which are of a high-cost nature and  
184 can best be provided in direct coordination with a baccalaureate  
185 institution. Any such program shall be delivered under the  
186 authority of the council and through contract with the commu-  
187 nity and technical college. The terms of the contract shall be  
188 negotiated between the council and the governing board of the  
189 sponsoring institution. The final contract is approved by the  
190 council. Such a program shall be evaluated according to the  
191 benchmarks and indicators for community and technical college  
192 education developed by the council. If the council determines  
193 that the program is making insufficient progress toward  
194 accomplishing the benchmarks, the program shall thereafter be  
195 delivered by the community and technical college.

196 (d) The president and the board of governors of each  
197 sponsoring institution are accountable to the council for  
198 ensuring that the community and technical college adheres to  
199 the essential conditions pursuant to section three of this article.

#### **ARTICLE 6. ADVISORY COUNCILS.**

§18B-6-1. Institutional boards of advisors for regional campuses and certain  
administratively linked community and technical colleges.

§18B-6-1a. Definitions.

#### **\*§18B-6-1. Institutional boards of advisors for regional campuses and certain administratively linked community and technical colleges.**

1 (a) There are continued institutional boards of advisors as  
2 follows:

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\* **CLERK'S NOTE:** This section was also amended by H. B. 4690 (Chapter 85), which passed prior to this act.

3 (1) For each regional campus. The chairperson of the board  
4 of advisors of West Virginia University at Parkersburg serves  
5 as an ex officio, voting member of the Governing Board of  
6 West Virginia University;

7 (2) For administratively linked community and technical  
8 colleges which share a physical location with the sponsoring  
9 institution. This category includes Marshall Community and  
10 Technical College, West Virginia State Community and  
11 Technical College and the Community and Technical College  
12 at West Virginia University Institute of Technology. The  
13 chairperson of the board of advisors of each administratively  
14 linked community and technical college serves as an ex officio,  
15 voting member of the sponsoring institution's board of gover-  
16 nors, or, in the case of the Community and Technical College  
17 at West Virginia University Institute of Technology, the  
18 chairperson of the board of advisors serves as an ex officio  
19 voting member of the Governing Board of West Virginia  
20 University; and

21 (3) For Pierpont Community and Technical College. The  
22 chairperson of the board of advisors of Pierpont Community  
23 and Technical College serves as an ex officio, voting member  
24 of the Fairmont State University Board of Governors.

25 (b) The lay members of the institutional boards of advisors  
26 for the regional campuses are appointed by the board of  
27 governors.

28 (c) The lay members of the institutional boards of advisors  
29 established for the administratively linked community and  
30 technical colleges and Pierpont Community and Technical  
31 College are appointed by the West Virginia Council for  
32 Community and Technical College Education.

33 (d) The board of advisors consists of fifteen members,  
34 including a full-time member of the faculty with the rank of

35 instructor or above duly elected by the faculty of the respective  
36 institution; a member of the student body in good academic  
37 standing, enrolled for college credit work and duly elected by  
38 the student body of the respective institution; a member from  
39 the institutional classified employees duly elected by the  
40 classified employees of the respective institution; and twelve  
41 lay persons appointed pursuant to this section who have  
42 demonstrated a sincere interest in and concern for the welfare  
43 of that institution and who are representative of the population  
44 of its responsibility district and fields of study. At least eight of  
45 the twelve lay persons appointed shall be residents of the state.  
46 Of the lay members who are residents of the state, at least two  
47 shall be alumni of the respective institution and no more than a  
48 simple majority may be of the same political party.

49 (e) The student member serves for a term of one year  
50 beginning on the first day of May. The member from the faculty  
51 and the classified employees, respectively, serves for a term of  
52 two years beginning on the first day of May. The twelve lay  
53 members serve terms of four years each beginning on the first  
54 day of May. All members are eligible to succeed themselves for  
55 no more than one additional term. A vacancy in an unexpired  
56 term of a member shall be filled for the remainder of the  
57 unexpired term within thirty days of the occurrence thereof in  
58 the same manner as the original appointment or election. Except  
59 in the case of a vacancy:

60 (1) All elections shall be held and all appointments shall be  
61 made no later than the thirtieth day of April preceding the  
62 commencement of the term; and

63 (2) Terms of members begin on the first day of May  
64 following election.

65 (f) Each board of advisors shall hold a regular meeting at  
66 least quarterly, commencing in May of each year. Additional  
67 meetings may be held upon the call of the chairperson, presi-

68 dent of the institution or upon the written request of at least five  
69 members. A majority of the members constitutes a quorum for  
70 conducting the business of the board of advisors.

71 (g) One of the twelve lay members shall be elected as  
72 chairperson by the board of advisors in May of each year. A  
73 member may not serve as chairperson for more than two  
74 consecutive years.

75 (h) The president of the institution shall make available  
76 resources of the institution for conducting the business of the  
77 board of advisors. The members of the board of advisors shall  
78 be reimbursed for all reasonable and necessary expenses  
79 actually incurred in the performance of their official duties  
80 under this section upon presentation of an itemized sworn  
81 statement thereof. All expenses incurred by the boards of  
82 advisors and the institutions under this section shall be paid  
83 from funds allocated to the institutions for that purpose.

84 (i) Prior to the submission by the president to its governing  
85 board, the board of advisors shall review all proposals of the  
86 institution in the areas of mission, academic programs, budget,  
87 capital facilities and such other matters as requested by the  
88 president of the institution or its governing board or otherwise  
89 assigned to it by law. The board of advisors shall comment on  
90 each such proposal in writing, with such recommendations for  
91 concurrence therein or revision or rejection thereof as it  
92 considers proper. The written comments and recommendations  
93 shall accompany the proposal to the governing board and the  
94 governing board shall include the comments and recommenda-  
95 tions in its consideration of and action on the proposal. The  
96 governing board shall promptly acknowledge receipt of the  
97 comments and recommendations and shall notify the board of  
98 advisors in writing of any action taken thereon.

99 (j) Prior to their implementation by the president, the board  
100 of advisors shall review all proposals regarding institutionwide

101 personnel policies. The board of advisors may comment on the  
102 proposals in writing.

103 (k) The board of advisors shall provide advice and assis-  
104 tance to the president and the governing board in areas includ-  
105 ing, but not limited to, the following:

106 (1) Establishing closer connections between higher  
107 education and business, labor, government and community and  
108 economic development organizations to give students greater  
109 opportunities to experience the world of work. Examples of  
110 such experiences include business and community service  
111 internships, apprenticeships and cooperative programs;

112 (2) Communicating better and serving the current  
113 workforce and workforce development needs of their service  
114 area, including the needs of nontraditional students for col-  
115 lege-level skills upgrading and retraining and the needs of  
116 employers for specific programs of limited duration; and

117 (3) Assessing the performance of the institution's graduates  
118 and assisting in job placement.

119 (l) When a vacancy occurs in the office of president of the  
120 institution, the board of advisors shall serve as a search and  
121 screening committee for candidates to fill the vacancy under  
122 guidelines established by the council. When serving as a search  
123 and screening committee, the board of advisors and its govern-  
124 ing board are each authorized to appoint up to three additional  
125 persons to serve on the committee as long as the search and  
126 screening process is in effect. The three additional appointees  
127 of the board of advisors shall be faculty members of the  
128 institution. For the purposes of the search and screening process  
129 only, the additional members shall possess the same powers and  
130 rights as the regular members of the board of advisors, includ-  
131 ing reimbursement for all reasonable and necessary expenses  
132 actually incurred. Following the search and screening process,



133 the committee shall submit the names of at least three candi-  
134 dates to the appropriate governing board. If the governing board  
135 rejects all candidates submitted, the committee shall submit the  
136 names of at least three additional candidates and this process  
137 shall be repeated until the governing board approves one of the  
138 candidates submitted. In all cases, the governing board shall  
139 make the appointment with the approval of the council or the  
140 commission in the case of West Virginia University Institute of  
141 Technology. The governing board or the council shall provide  
142 all necessary staff assistance to the board of advisors in its role  
143 as a search and screening committee. This subsection does not  
144 apply to Fairmont State University. The president of Fairmont  
145 State University continues to be appointed pursuant to the  
146 provisions of section six, article one-b of this chapter.

147 (m) The boards of advisors shall develop a master plan for  
148 those administratively linked community and technical colleges  
149 which retain boards of advisors. The ultimate responsibility for  
150 developing and updating the master plans at the institutional  
151 level resides with the institutional board of advisors, but the  
152 ultimate responsibility for approving the final version of these  
153 institutional master plans, including periodic updates, resides  
154 with the council. The plan shall include, but not be limited to,  
155 the following:

156 (1) A detailed demonstration of how the master plan will be  
157 used to meet the goals and objectives of the institutional  
158 compact;

159 (2) A well-developed set of goals outlining missions,  
160 degree offerings, resource requirements, physical plant needs,  
161 personnel needs, enrollment levels and other planning  
162 determinates and projections necessary in such a plan to assure  
163 that the needs of the institution's area of responsibility for a  
164 quality system of higher education are addressed;

165 (3) Documentation of the involvement of the commission,  
166 institutional constituency groups, clientele of the institution and  
167 the general public in the development of all segments of the  
168 institutional master plan.

169 The plan shall be established for periods of not less than  
170 three nor more than six years and shall be revised periodically  
171 as necessary, including recommendations on the addition or  
172 deletion of degree programs as, in the discretion of the board of  
173 advisors, may be necessary.

**\*§18B-6-1a. Definitions.**

1 For the purposes of this article, the following words have  
2 the meanings specified unless the context clearly indicates a  
3 different meaning:

4 (a) “Advisory Council of Classified Employees” or  
5 “classified council” means the state advisory organization of  
6 classified employees created pursuant to section five of this  
7 article.

8 (b) “Advisory Council of Faculty” or “faculty council”  
9 means the state advisory organization of faculty created  
10 pursuant to section two of this article.

11 (c) “Advisory Council of Students” or “student advisory  
12 council” means the state advisory organization of students  
13 created pursuant to section four of this article.

14 (d) “Classified employee”, in the singular or plural, means  
15 any regular full-time or regular part-time employee of a  
16 governing board, the commission, the council or the West  
17 Virginia Network for Educational Telecomputing who holds a  
18 position that is assigned a particular job title and pay grade in

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\* **CLERK’S NOTE:** This section was also amended by H. B. 4690 (Chapter 85), which passed prior to this act.

19 accordance with the personnel classification system established  
20 by law.

21 (e) “Community and technical college” means Eastern West  
22 Virginia Community and Technical College, Marshall Commu-  
23 nity and Technical College, New River Community and  
24 Technical College, West Virginia Northern Community and  
25 Technical College, Blue Ridge Community and Technical  
26 College, Southern West Virginia Community and Technical  
27 College, West Virginia State Community and Technical  
28 College, the Community and Technical College at West  
29 Virginia University Institute of Technology, West Virginia  
30 University at Parkersburg and any other community and  
31 technical college so designated by the Legislature.

32 (f) “Council” means the West Virginia Council for Com-  
33 munity and Technical College Education created pursuant to  
34 section three, article two-b of this chapter.

35 (g) “Institutional Classified Employee Council” or “staff  
36 council” means the advisory group of classified employees  
37 formed at a state institution of higher education pursuant to  
38 section six of this article.

39 (h) “Institutional faculty senate”, “faculty senate” or  
40 “faculty assembly” means the advisory group of faculty formed  
41 at a state institution of higher education pursuant to section  
42 three of this article.

43 (i) “State institution of higher education”, in the singular or  
44 plural, means the institutions as defined in section two, article  
45 one of this chapter and, additionally, Pierpont Community and  
46 Technical College, a division of Fairmont State University,  
47 Marshall Community and Technical College, New River  
48 Community and Technical College, Potomac State College of  
49 West Virginia University, Robert C. Byrd Health Sciences  
50 Charleston Division of West Virginia University, Blue Ridge

51 Community and Technical College, West Virginia State  
 52 Community and Technical College, West Virginia University  
 53 at Parkersburg, West Virginia University Institute of Technol-  
 54 ogy, the Community and Technical College at West Virginia  
 55 University Institute of Technology, the Higher Education Policy  
 56 Commission, the West Virginia Council for Community and  
 57 Technical College Education, the West Virginia Network for  
 58 Educational Telecomputing and any other institution so  
 59 designated by the Legislature.

**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.**

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 the tuition and  
 5 fees any one or more of the following as defined in section  
 6 one-b of this article:

7 (1) Tuition and required educational and general fees;

8 (2) Auxiliary and auxiliary capital fees; and

9 (3) Required educational and general capital fees.

10 (b) An institution may establish a single special revenue  
 11 account for each of the following classifications of fees:

12 (1) All tuition and required educational and general fees  
 13 collected;

14 (2) All auxiliary and auxiliary capital fees collected; and

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\* **CLERK'S NOTE:** This section was also amended by H. B. 4049 (Chapter 79) and H. B. 4690 (Chapter 85), which passed prior to this act.

15       (3) All required educational and general capital fees  
16 collected to support existing systemwide and institutional debt  
17 service and future systemwide and institutional debt service,  
18 capital projects and campus renewal for educational and general  
19 facilities.

20       (4) Subject to any covenants or restrictions imposed with  
21 respect to revenue bonds payable from such accounts, an  
22 institution may expend funds from each such special revenue  
23 account for any purpose for which funds were collected within  
24 that account regardless of the original purpose for which the  
25 funds were collected.

26       (c) The purposes for which tuition and fees may be  
27 expended include, but are not limited to, health services, student  
28 activities, recreational, athletic and extracurricular activities.  
29 Additionally, tuition and fees may be used to finance a stu-  
30 dent's attorney to perform legal services for students in civil  
31 matters at the institutions: *Provided*, That the legal services are  
32 limited only to those types of cases, programs or services  
33 approved by the administrative head of the institution where the  
34 legal services are to be performed.

35       (d) The commission and council jointly shall propose a rule  
36 for legislative approval in accordance with the provisions of  
37 article three-a, chapter twenty-nine-a of this code to govern the  
38 fixing, collection and expenditure of tuition and other fees.

39       (e) The Legislature finds that an emergency exists and,  
40 therefore, the commission and council jointly shall file the rule  
41 required by subsection (d) of this section as an emergency rule  
42 pursuant to the provisions of article three-a, chapter  
43 twenty-nine-a of this code, subject to the prior approval of the  
44 Legislative Oversight Commission on Education Accountabil-  
45 ity.

46 (f) The schedule of all tuition and fees, and any changes  
47 therein, shall be entered in the minutes of the meeting of the  
48 appropriate governing board and the board shall file with the  
49 commission or council, or both, as appropriate, and the  
50 Legislative Auditor a certified copy of such schedule and  
51 changes.

52 (g) The boards shall establish the rates to be charged  
53 full-time students, as defined in section one-b of this article,  
54 who are enrolled during a regular academic term.

55 (1) Undergraduate students taking fewer than twelve credit  
56 hours in a regular term shall have their fees reduced pro rata  
57 based upon one twelfth of the full-time rate per credit hour and  
58 graduate students taking fewer than nine credit hours in a  
59 regular term shall have their fees reduced pro rata based upon  
60 one ninth of the full-time rate per credit hour.

61 (2) Fees for students enrolled in summer terms or other  
62 nontraditional time periods shall be prorated based upon the  
63 number of credit hours for which the student enrolls in accor-  
64 dance with the above provisions.

65 (h) All fees are due and payable by the student upon  
66 enrollment and registration for classes except as provided in  
67 this subsection:

68 (1) The governing boards shall permit fee payments to be  
69 made in installments over the course of the academic term. All  
70 fees shall be paid prior to the awarding of course credit at the  
71 end of the academic term.

72 (2) The governing boards also shall authorize the accep-  
73 tance of credit cards or other payment methods which may be  
74 generally available to students for the payment of fees. The  
75 governing boards may charge the students for the reasonable

76 and customary charges incurred in accepting credit cards and  
77 other methods of payment.

78 (3) If a governing board determines that a student's  
79 finances are affected adversely by a legal work stoppage, it may  
80 allow the student an additional six months to pay the fees for  
81 any academic term. The governing board shall determine on a  
82 case-by-case basis if the finances of a student are affected  
83 adversely.

84 (4) The commission and council jointly shall propose a rule  
85 in accordance with the provisions of article three-a, chapter  
86 twenty-nine-a of this code defining conditions under which an  
87 institution may offer tuition and fee deferred payment plans  
88 through the institution or through third parties.

89 (5) An institution may charge interest or fees for any  
90 deferred or installment payment plans.

91 (i) In addition to the other fees provided in this section,  
92 each governing board may impose, collect and distribute a fee  
93 to be used to finance a nonprofit, student-controlled public  
94 interest research group if the students at the institution demon-  
95 strate support for the increased fee in a manner and method  
96 established by that institution's elected student government.  
97 The fee may not be used to finance litigation against the  
98 institution.

99 (j) Institutions shall retain tuition and fee revenues not  
100 pledged for bonded indebtedness or other purposes in accor-  
101 dance with the tuition rule proposed by the commission and  
102 council jointly pursuant to this section. The tuition rule shall:

103 (1) Provide a basis for establishing nonresident tuition and  
104 fees;

105 (2) Allow institutions to charge different tuition and fees  
106 for different programs;

107 (3) Provide that a board of governors may propose to the  
108 commission, council or both, as appropriate, a mandatory  
109 auxiliary fee under the following conditions:

110 (A) The fee shall be approved by the commission, council  
111 or both, as appropriate, and either the students below the senior  
112 level at the institution or the Legislature before becoming  
113 effective;

114 (B) Increases may not exceed previous state subsidies by  
115 more than ten percent;

116 (C) The fee may be used only to replace existing state funds  
117 subsidizing auxiliary services such as athletics or bookstores;

118 (D) If the fee is approved, the amount of the state subsidy  
119 shall be reduced annually by the amount of money generated  
120 for the institution by the fees. All state subsidies for the  
121 auxiliary services shall cease five years from the date the  
122 mandatory auxiliary fee is implemented;

123 (E) The commission, council or both, as appropriate, shall  
124 certify to the Legislature by the first day of October in the fiscal  
125 year following implementation of the fee, and annually  
126 thereafter, the amount of fees collected for each of the five  
127 years;

128 (4) Establish methodology, where applicable, to ensure that,  
129 within the appropriate time period under the compact, commu-  
130 nity and technical college tuition rates for community and  
131 technical college students in all independently accredited  
132 community and technical colleges will be commensurate with  
133 the tuition and fees charged by their peer institutions.

134 (k) A penalty may not be imposed by the commission or  
135 council upon any institution based upon the number of nonresi-  
136 dents who attend the institution unless the commission or



137 council determines that admission of nonresidents to any  
138 institution or program of study within the institution is imped-  
139 ing unreasonably the ability of resident students to attend the  
140 institution or participate in the programs of the institution. The  
141 institutions shall report annually to the commission or council  
142 on the numbers of nonresidents and such other enrollment  
143 information as the commission or council may request.

144 (1) Tuition and fee increases of the governing boards,  
145 except for the governing boards of the state institutions of  
146 higher education known as Marshall University and West  
147 Virginia University, are subject to rules adopted by the commis-  
148 sion and council jointly pursuant to this section and in accor-  
149 dance with the provisions of article three-a, chapter  
150 twenty-nine-a of this code.

151 (1) Subject to the provisions of subdivisions (4) and (8) of  
152 this subsection, a governing board of an institution under the  
153 jurisdiction of the commission may propose tuition and fee  
154 increases of up to nine and one-half percent for undergraduate  
155 resident students for any fiscal year. The nine and one-half  
156 percent total includes the amount of increase over existing  
157 tuition and fees, combined with the amount of any newly  
158 established specialized fee which may be proposed by a  
159 governing board.

160 (2) A governing board of an institution under the jurisdic-  
161 tion of the council may propose tuition and fee increases of up  
162 to four and three quarters percent for undergraduate resident  
163 students for any fiscal year. The four and three-quarters percent  
164 total includes the amount of increase over existing tuition and  
165 fees, combined with the amount of any newly established,  
166 specialized fee which may be proposed by a governing board.

167 (3) The commission or council, as appropriate, shall  
168 examine individually each request from a governing board for  
169 an increase.

170 (4) Subject to the provisions of subdivision (8) of this  
171 subsection the governing boards of Marshall University and  
172 West Virginia University, as these provisions relate to the state  
173 institutions of higher education known as Marshall University  
174 and West Virginia University, each may annually:

175 (A) Increase tuition and fees for undergraduate resident  
176 students to the maximum allowed by this section without  
177 seeking approval from the commission; and

178 (B) Set tuition and fee rates for post-baccalaureate resident  
179 students and for all nonresident students, including establishing  
180 regional tuition and fee rates, reciprocity agreements or both.

181 (C) The provisions of this subdivision do not apply to  
182 tuition and fee rates of the administratively linked institution  
183 known as Marshall Community and Technical College, the  
184 administratively linked institution known as the Community  
185 and Technical College at West Virginia University Institute of  
186 Technology, the regional campus known as West Virginia  
187 University at Parkersburg and, until the first day of July, two  
188 thousand seven, the regional campus known as West Virginia  
189 University Institute of Technology.

190 (5) Any proposed tuition and fee increase for state institu-  
191 tions of higher education other than the state institutions of  
192 higher education known as Marshall University and West  
193 Virginia University requires the approval of the commission or  
194 council, as appropriate. In determining whether to approve or  
195 deny the governing board's request, the commission or council  
196 shall determine the progress the institution has made toward  
197 meeting the conditions outlined in this subdivision and shall  
198 make this determination the predominate factor in its decision.  
199 The commission or council shall consider the degree to which  
200 each institution has met the following conditions:

201 (A) Has maximized resources available through nonresident  
202 tuition and fee charges to the satisfaction of the commission or  
203 council;

204 (B) Is consistently achieving the benchmarks established in  
205 the compact of the institution pursuant to the provisions of  
206 article one-a of this chapter;

207 (C) Is continuously pursuing the statewide goals for  
208 post-secondary education and the statewide compact established  
209 in articles one and one-a of this chapter;

210 (D) Has demonstrated to the satisfaction of the commission  
211 or council that an increase will be used to maintain high-quality  
212 programs at the institution;

213 (E) Has demonstrated to the satisfaction of the commission  
214 or council that the institution is making adequate progress  
215 toward achieving the goals for education established by the  
216 southern regional education board; and

217 (F) To the extent authorized, will increase by up to five  
218 percent the available tuition and fee waivers provided by the  
219 institution. The increased waivers may not be used for athletics.

220 (6) This section does not require equal increases among  
221 institutions or require any level of increase at an institution.

222 (7) The commission and council shall report to the Legisla-  
223 tive Oversight commission on Education Accountability  
224 regarding the basis for each approval or denial as determined  
225 using the criteria established in subdivision (5) of this subsec-  
226 tion.

227 (8) Notwithstanding the provisions of subdivisions (1) and  
228 (4) of this subsection, tuition and fee increases at state institu-  
229 tions of higher education which are under the jurisdiction of the

230 commission, including the state institutions of higher education  
231 known as Marshall University and West Virginia University,  
232 are subject to the following conditions:

233 (A) Institutions may increase tuition and fees for resident,  
234 undergraduate students by no more than an average of seven  
235 and one-half percent per year during any period covering four  
236 consecutive fiscal years, with the first fiscal year of the first  
237 four-fiscal year cycle beginning on the first day of July, two  
238 thousand seven;

239 (B) The seven and one-half percent average cap does not  
240 apply to an institution for any fiscal year in which the total state  
241 base operating budget appropriations to that institution are less  
242 than the total state base operating budget appropriations in the  
243 fiscal year immediately preceding;

244 (C) A new capital fee or an increase in an existing capital  
245 fee is excluded from the tuition and fee increase calculation in  
246 this subdivision:

247 (i) If the new fee or fee increase is approved by an institu-  
248 tional governing board or by a referendum of an institution's  
249 undergraduate students, or both, on or before the first day of  
250 February, two thousand six; or

251 (ii) If the following conditions are met:

252 (I) The new fee or fee increase was approved by an  
253 institutional governing board or by a referendum of an institu-  
254 tion's undergraduate students, or both, on or before the first day  
255 of July, two thousand six;

256 (II) The institution for which the capital fee is approved has  
257 been designated a university pursuant to the provisions of  
258 section six, article two-a of this chapter by the effective date of  
259 this section; and

260 (III) The institutional board of governors previously  
261 oversaw a community and technical college that achieved  
262 independent accreditation and consequently acquired its own  
263 board of governors;

264 (D) Institutions shall provide, in a timely manner, any data  
265 on tuition and fee increases requested by the staff of the  
266 commission. The commission has the power and the duty to:

267 (i) Collect such data from any institution under its jurisdic-  
268 tion; and

269 (ii) Annually by the first day of July, provide a detailed  
270 analysis of the institutions' compliance with the provisions of  
271 this subdivision to the Legislative Oversight Commission on  
272 Education Accountability.

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## CHAPTER 85

**(Com. Sub. for H. B. 4690 — By Delegates Perry and Pino)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to repeal §18B-2-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §18B-1-2 of said code; to amend and reenact §18B-1B-6 of said code; to amend and reenact §18B-1C-1 and §18B-1C-2 of said code; to amend said code by adding thereto a new section, designated §18B-1C-3; to amend and reenact §18B-2A-1 of said code; to amend and reenact §18B-3-1 of said code; to amend and reenact §18B-3C-4 and §18B-3C-8 of said code; to amend said code by adding thereto a new section, designated §18B-3C-13; to amend and reenact §18B-3D-2, §18B-

3D-3, §18B-3D-4 and §18B-3D-5 of said code; to amend and reenact §18B-6-1 and §18B-6-1a of said code; and to amend and reenact §18B-10-1 of said code, all relating to higher education generally; higher education governance; making West Virginia University Institute of Technology a fully integrated division of West Virginia University; consolidating administrative and academic units; assigning direction and support of such units to West Virginia University; designating certain board of advisors as board of visitors; providing that chair of West Virginia University Institute of Technology Board of Advisors serves as ex officio, voting member of West Virginia University Board of Governors; establishing legislative findings and intent regarding collaboration in engineering programs between West Virginia University Institute of Technology, Marshall University and West Virginia University; establishing legislative findings and intent; adding and clarifying definitions; providing for appointment of certain institutional presidents and officers; designating Community and Technical College of Shepherd as Blue Ridge Community and Technical College; requiring study and reports on operations of certain community and technical college; providing for continuance of certain state institutions of higher education; creating West Virginia Consortium for Undergraduate Research and Engineering; membership; purpose; requiring development of collaborative engineering strategic plan; requiring reports by certain dates; continuing Workforce Development Initiative Program under West Virginia Council for Community and Technical College Education; providing for appointment of advisory committee members; requiring report to Legislative Oversight Commission on Education Accountability; requiring plan as part of institutional compact; requiring promulgation of legislative rule; providing for continuation of current rule; deleting requirement for certain chairs of boards of governors and advisors to serve on certain boards of advisors and governors; clarifying role of boards of advisors in process to select certain institutional presidents; providing for fee increases for certain

institutions under certain conditions; making technical corrections and repealing obsolete provisions.

*Be it enacted by the Legislature of West Virginia:*

That §18B-2-9 of the Code of West Virginia, 1931, as amended, be repealed; that §18B-1-2 of said code be amended and reenacted; that §18B-1B-6 of said code be amended and reenacted; that §18B-1C-1 and §18B-1C-2 be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-1C-3; that §18B-2A-1 of said code be amended and reenacted; that §18B-3-1 of said code be amended and reenacted; that §18B-3C-4 and §18B-3C-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18B-3C-13; that §18B-3D-2, §18B-3D-3, §18B-3D-4 and §18B-3D-5 of said code be amended and reenacted; that §18B-6-1 and §18B-6-1a of said code be amended and reenacted; and that §18B-10-1 of said code be amended and reenacted, all to read as follows:

## **CHAPTER 18B. HIGHER EDUCATION.**

### **Article**

- 1. Governance.**
- 1B. Higher Education Policy Commission.**
- 1C. West Virginia University Institute of Technology.**
- 2A. Institutional Boards of Governors.**
- 3. Additional Powers and Duties of Research, Doctoral-granting Public Universities.**
- 3C. Community and Technical College System.**
- 3D. Workforce Development Initiative.**
- 6. Advisory Councils.**
- 10. Fees and Other Money Collected at State Institutions of Higher Education.**

### **ARTICLE 1. GOVERNANCE.**

#### **\*§18B-1-2. Definitions.**

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\* **CLERK'S NOTE:** This section was also amended by S. B. 792 (Chapter 84), which passed subsequent to this act.

1       The following words when used in this chapter and chapter  
2 eighteen-c of this code have the meanings ascribed to them  
3 unless the context clearly indicates a different meaning:

4       (a) Effective the first day of July, two thousand seven,  
5 “regional campus” means West Virginia University at  
6 Parkersburg.

7       (b) “Governing boards” or “boards” means the institutional  
8 boards of governors created pursuant to section one, article  
9 two-a of this chapter;

10       (c) “Freestanding community and technical colleges”  
11 means Southern West Virginia Community and Technical  
12 College, West Virginia Northern Community and Technical  
13 College and Eastern West Virginia Community and Technical  
14 College which may not be operated as branches or off-campus  
15 locations of any other state institution of higher education;

16       (d) “Community college” or “community colleges” means  
17 community and technical college or colleges as those terms are  
18 defined in this section;

19       (e) “Community and technical college,” in the singular or  
20 plural, means the freestanding community and technical  
21 colleges and other state institutions of higher education which  
22 deliver community and technical college education. This  
23 definition includes Southern West Virginia Community and  
24 Technical College, West Virginia Northern Community and  
25 Technical College, Eastern West Virginia Community and  
26 Technical College, New River Community and Technical  
27 College, West Virginia University at Parkersburg, The Commu-  
28 nity and Technical College at West Virginia University Institute  
29 of Technology, Blue Ridge Community and Technical College,  
30 Fairmont State Community and Technical College, Marshall  
31 Community and Technical College and West Virginia State  
32 Community and Technical College;



33 (f) “Community and technical college education” means the  
34 programs, faculty, administration and funding associated with  
35 the delivery of community and technical college education  
36 programs;

37 (g) “Essential conditions” means those conditions which  
38 shall be met by community and technical colleges as provided  
39 in section three, article three-c of this chapter;

40 (h) “Higher education institution” means any institution as  
41 defined by Sections 401(f), (g) and (h) of the federal Higher  
42 Education Facilities Act of 1963, as amended;

43 (i) “Higher Education Policy Commission,” “policy  
44 commission” or “commission” means the commission created  
45 pursuant to section one, article one-b of this chapter;

46 (j) “Chancellor for Higher Education” means the chief  
47 executive officer of the Higher Education Policy Commission  
48 employed pursuant to section five, article one-b of this chapter;

49 (k) “Chancellor for Community and Technical College  
50 Education” means the Chief Executive Officer of the West  
51 Virginia Council for Community and Technical College  
52 Education employed pursuant to section three, article two-b of  
53 this chapter;

54 (l) “Chancellor” means the Chancellor for Higher Educa-  
55 tion where the context refers to a function of the Higher  
56 Education Policy Commission. “Chancellor” means chancellor  
57 for Community and Technical College Education where the  
58 context refers to a function of the West Virginia Council for  
59 Community and Technical College Education;

60 (m) “Institutional operating budget” or “operating budget”  
61 means for any fiscal year an institution’s total unrestricted  
62 education and general funding from all sources in the prior

63 fiscal year, including, but not limited to, tuition and fees and  
64 legislative appropriation, and any adjustments to that funding  
65 as approved by the commission or council based on compari-  
66 sons with peer institutions or to reflect consistent components  
67 of peer operating budgets;

68 (n) “Community and technical college education program”  
69 means any college-level course or program beyond the high  
70 school level provided through a public institution of higher  
71 education resulting in or which may result in a two-year  
72 associate degree award including an associate of arts, an  
73 associate of science and an associate of applied science;  
74 certificate programs and skill sets; developmental education;  
75 continuing education; collegiate credit and noncredit workforce  
76 development programs; and transfer and baccalaureate parallel  
77 programs. All such programs are under the jurisdiction of the  
78 council. Any reference to “post-secondary vocational education  
79 programs” means community and technical college education  
80 programs as defined in this subsection;

81 (o) “Rule” or “rules” means a regulation, standard, policy  
82 or interpretation of general application and future effect;

83 (p) “Senior administrator” means the vice chancellor for  
84 administration employed in accordance with section two, article  
85 four of this chapter;

86 (q) “State college” means Bluefield State College, Concord  
87 University, Fairmont State University, Glenville State College,  
88 Shepherd University, West Liberty State College or West  
89 Virginia State University;

90 (r) “State institution of higher education” means any  
91 university, college or community and technical college under  
92 the jurisdiction of a governing board as that term is defined in  
93 this section;

94 (s) Until the first day of July, two thousand seven “Regional  
95 campus” means West Virginia University at Parkersburg and  
96 West Virginia University Institute of Technology;

97 (t) The advisory board previously appointed for the West  
98 Virginia Graduate College is known as the “Board of Visitors”  
99 and shall provide guidance to the Marshall University Graduate  
100 College;

101 (u) “Institutional compact” means the compact between the  
102 commission or council and a state institution of higher educa-  
103 tion under its jurisdiction, as described in section two, article  
104 one-a of this chapter;

105 (v) “Peer institutions”, “peer group” or “peers” means  
106 public institutions of higher education used for comparison  
107 purposes and selected by the commission pursuant to section  
108 three, article one-a of this chapter;

109 (w) “Administratively linked community and technical  
110 college” means a community and technical college created  
111 pursuant to section eight, article three-c of this chapter;

112 (x) “Sponsoring institution” means a state institution of  
113 higher education that maintains an administrative link to a  
114 community and technical college pursuant to section eight,  
115 article three-c of this chapter;

116 (y) “Collaboration” means entering into an agreement with  
117 one or more providers of education services in order to enhance  
118 the scope, quality or efficiency of education services;

119 (z) “Broker” or “brokering” means serving as an agent on  
120 behalf of students, employers, communities or responsibility  
121 areas to obtain education services not offered at that institution.  
122 These services include courses, degree programs or other  
123 services contracted through an agreement with a provider of  
124 education services either in-state or out-of-state; and

125 (aa) “Council” means the West Virginia Council for  
126 Community and Technical College Education created pursuant  
127 to article two-b of this chapter.

128 (bb) “West Virginia Consortium for Undergraduate  
129 Research and Engineering” or “West Virginia CURE” means  
130 the collaborative planning group established pursuant to article  
131 one-c of this chapter.

#### ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

##### **\*§18B-1B-6. Appointment of institutional presidents; evaluation.**

1 (a) *Appointment of institutional presidents.* — Appointment  
2 of presidents of the state institutions of higher education shall  
3 be made as follows:

4 (1) Subject to the approval of the commission, the govern-  
5 ing board of the institution appoints a president for Bluefield  
6 State College, Concord University, Fairmont State University,  
7 Glenville State College, Marshall University, Shepherd  
8 University, West Liberty State College, West Virginia School  
9 of Osteopathic Medicine, West Virginia State University and  
10 West Virginia University.

11 (2) Subject to the approval of the council and to the  
12 provisions of article three-c of this chapter, the governing board  
13 of West Virginia University appoints the president of the  
14 regional campus known as West Virginia University at  
15 Parkersburg. The president serves at the will and pleasure of the  
16 governing board. When selecting candidates for consideration  
17 to fill the office of president, the governing board shall use the  
18 search and screening process provided in section one, article six  
19 of this chapter.

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\* **CLERK’S NOTE:** This section was also amended by S. B. 792 (Chapter 84), which passed subsequent to this act.

20        Until the first day of July, two thousand seven and subject  
21 to the approval of the commission, the Governing Board of  
22 West Virginia University appoints the President of the regional  
23 campus known as West Virginia University Institute of  
24 Technology. The president of the regional campus serves at the  
25 will and pleasure of the appointing governing board.

26        (3) Subject to the approval of the council, the governing  
27 board of the community and technical college appoints a  
28 president for Eastern West Virginia Community and Technical  
29 College, Southern West Virginia Community and Technical  
30 College and West Virginia Northern Community and Technical  
31 College.

32        (4) Subject to the approval of the council, the governing  
33 board of the sponsoring institution appoints a president for each  
34 administratively linked community and technical college which  
35 shares a physical campus location with the sponsoring institu-  
36 tion, including Fairmont State Community and Technical  
37 College, Marshall Community and Technical College, The  
38 Community and Technical College at West Virginia University  
39 Institute of Technology and West Virginia State Community  
40 and Technical College.

41        (5) Subject to the approval of the council, the governing  
42 board of the community and technical college appoints a  
43 president for each administratively linked community and  
44 technical college which does not share a physical campus  
45 location with the sponsoring institution, including New River  
46 Community and Technical College and Blue Ridge Community  
47 and Technical College.

48        (b) *Other appointments.* — The institutional president  
49 appoints a provost to be the administrative head of the Potomac  
50 campus of West Virginia University and, effective the first day  
51 of July, two thousand seven, for West Virginia University  
52 Institute of Technology.

53 (c) *Evaluation of presidents.* — The appointing governing  
54 board shall conduct written performance evaluations of each  
55 institution’s president, including the presidents of administra-  
56 tively linked community and technical colleges. Evaluations  
57 shall be done in every fourth year of employment as president,  
58 recognizing unique characteristics of the institution and  
59 utilizing institutional personnel, institutional boards of advisors  
60 as appropriate, staff of the appropriate governing board and  
61 persons knowledgeable in higher education matters who are not  
62 otherwise employed by a governing board. A part of the  
63 evaluation shall be a determination of the success of the  
64 institution in meeting the requirements of its institutional  
65 compact.

#### **ARTICLE 1C. WEST VIRGINIA UNIVERSITY INSTITUTE OF TECHNOLOGY.**

§18B-1C-1. Legislative findings and intent.

§18B-1C-2. West Virginia University Institute of Technology; division of West Virginia University.

§18B-1C-3. West Virginia Consortium for Undergraduate Research and Engineering established; short title; membership; purpose; strategic plan; report.

#### **§18B-1C-1. Legislative findings and intent.**

1 (a) The Legislature recognizes that:

2 (1) West Virginia University Institute of Technology is a  
3 vital part of higher education in West Virginia;

4 (2) The engineering program at West Virginia University  
5 Institute of Technology plays a significant role in the continued  
6 success of the students at the institution and of the state as a  
7 whole;

8 (3) The average salaries of faculty at West Virginia  
9 University Institute of Technology are significantly lower than  
10 the average salaries of faculty at West Virginia University;

11 (4) Facilities at West Virginia University Institute of  
12 Technology are in greater disrepair and in greater need of  
13 overall capital investment than are facilities at West Virginia  
14 University; and

15 (5) Collaboration between the engineering program of West  
16 Virginia University Institute of Technology, West Virginia  
17 University, Marshall University and other private partners as  
18 appropriate would:

19 (A) Lead to a greater understanding and knowledge of  
20 engineering research;

21 (B) Lead to greater opportunities for students to engage in  
22 research; and

23 (C) Result in greater opportunities for participating students  
24 to find gainful employment in future research or to continue  
25 graduate level research and study.

26 (b) It is the intent of the Legislature to encourage collabora-  
27 tion between West Virginia University Institute of Technology,  
28 West Virginia University, Marshall University and appropriate  
29 private entities to provide significant education opportunities to  
30 students.

31 (c) It is specifically the intent of the Legislature that:

32 (1) The baccalaureate engineering program offered at the  
33 West Virginia University Institute of Technology be and remain  
34 a permanent component of its curriculum;

35 (2) Collaboration in engineering and other appropriate  
36 programs occur between West Virginia University Institute of  
37 Technology, West Virginia University, Marshall University and  
38 appropriate private entities pursuant to section three of this  
39 article; and

40 (3) The West Virginia University Board of Governors  
41 develop a plan and take appropriate steps to address faculty  
42 average salary levels. In developing the plan, the board may  
43 consider the unique mission of the division and the performance  
44 expectations for faculty in meeting the goals of the institution.  
45 The plan also shall include recommendations for addressing the  
46 capital improvement needs at West Virginia University Institute  
47 of Technology.

**§18B-1C-2. West Virginia University Institute of Technology;  
division 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 seven, West  
3 Virginia University Institute of Technology shall merge and  
4 consolidate with West Virginia University and become a fully  
5 integrated division of West Virginia University. All administra-  
6 tive and academic units shall be consolidated with primary  
7 responsibility for direction and support assigned to West  
8 Virginia University. The advisory board previously appointed  
9 for West Virginia University Institute of Technology shall be  
10 known as the board of visitors and shall provide guidance to the  
11 division in fulfilling its mission. The chairperson of the board  
12 of visitors serves as an ex-officio, voting member of the West  
13 Virginia University Board of Governors.

14 (b) The fully integrated division formerly named West  
15 Virginia University Institute of Technology is hereafter named  
16 West Virginia University Institute of Technology. The head-  
17 quarters of West Virginia University Institute of Technology  
18 shall remain in Montgomery, West Virginia.

19 (c) The provisions of this section do not affect the inde-  
20 pendent accreditation, administrative linkage or continued  
21 operation of The Community and Technical College at West  
22 Virginia University Institute of Technology under the jurisdic-  
23 tion and authority of the council.



24       (d) Auxiliary enterprises shall be incorporated into the West  
25 Virginia University auxiliary enterprise system. The West  
26 Virginia University Board of Governors shall determine if  
27 operations at West Virginia University Institute of Technology  
28 can be operated on a self-sufficient basis when establishing  
29 rates for auxiliary services and products.

30       (e) West Virginia University Institute of Technology has a  
31 strong reputation in engineering and other scientific disciplines.  
32 These programs shall be maintained, cultivated and emphasized  
33 further as its sustaining mission over the next decade.

34       (f) By the first day of April, two thousand seven, the West  
35 Virginia University Board of Governors shall develop and  
36 approve a plan to implement the provisions of this article.  
37 Beginning the first day of July, two thousand six, the board of  
38 governors may begin implementing appropriate changes in the  
39 operations of West Virginia University Institute of Technology  
40 to further the purposes of this article.

41       (g) By the first day of November, two thousand six, and  
42 annually thereafter for a period of four years, the West Virginia  
43 University Board of Governors shall prepare and submit a  
44 report to the commission and Legislative Oversight Commis-  
45 sion on Education Accountability on progress being made to  
46 implement the provisions of this article.

47       (h) The West Virginia University Board of Governors, in  
48 conjunction with the Board of Advisors of The Community and  
49 Technical College at West Virginia University Institute of  
50 Technology, shall conduct a study and report to the council by  
51 the first day of November, two thousand six. The study  
52 includes, but is not limited to, the following issues:

53       (1) An appropriate governance structure for the community  
54 and technical college;

55       (2) An appropriate name for the community and technical  
56 college; and

57       (3) The most effective and efficient mechanism to ensure  
58 that all essential conditions for the delivery of community and  
59 technical college education are met, including the most  
60 effective and efficient method for the community and technical  
61 college to obtain services.

62       The council shall review the study findings, conclusions  
63 and recommendations and report to the Legislative Oversight  
64 Commission on Education Accountability by the first day of  
65 January, two thousand seven. The report of the council shall  
66 include a determination of the need for statutory change,  
67 together with drafts of any legislation necessary to effectuate  
68 the council's recommendations. West Virginia University  
69 Institute of Technology shall develop or maintain baccalaureate  
70 degree programs as a permanent component of its curriculum.

**§18B-1C-3. West Virginia Consortium for Undergraduate Research and Engineering established; short title; membership; purpose; strategic plan; report.**

1       (a) There is established the West Virginia Consortium for  
2 Undergraduate Research and Engineering. This section may be  
3 designated and cited as "West Virginia CURE".

4       (b) West Virginia CURE is a collaborative planning group  
5 comprised of thirteen members. The Governor shall designate  
6 one of the members to be the chairperson. The members are  
7 selected as follows:

8       (1) The provost or a designee from West Virginia Univer-  
9 sity Institute of Technology, Marshall University and West  
10 Virginia University;

11       (2) The director of sponsored programs from West Virginia  
12 University Institute of Technology and the vice presidents for  
13 research from Marshall University and West Virginia Univer-  
14 sity;

15       (3) The deans of engineering from West Virginia Univer-  
16 sity Institute of Technology, Marshall University and West  
17 Virginia University; and

18       (4) Four members appointed by the Governor, each of  
19 whom has demonstrated an interest in public higher education  
20 in West Virginia and each of whom possesses recognized  
21 credentials and expertise in one or more of the following fields:

22       (A) Engineering;

23       (B) Technology and computer science;

24       (C) Research development;

25       (D) Business leadership and management; and

26       (E) Finance.

27       At least one of the members appointed by the Governor  
28 shall be a representative of the engineering profession from  
29 business or industry.

30       (c) The purposes for which West Virginia CURE is  
31 established include, but are not limited to, the following:

32       (1) Increasing West Virginia's capacity for high quality  
33 engineering instruction and research;

34       (2) Increasing access throughout the state to high quality  
35 instruction and research opportunities in science, technology,  
36 engineering, and mathematics; and

37 (3) Stimulating economic development throughout West  
38 Virginia by increasing the number of professional engineers  
39 available to business and industry.

40 (d) *Collaborative Engineering Strategic Plan Required.*

41 CURE shall develop a collaborative engineering strategic  
42 plan to address the needs identified in subsection (c) of this  
43 section.

44 (e) *Collaborative Engineering Strategic Plan Elements.*

45 (1) The Collaborative Engineering Strategic Plan shall  
46 focus on methods to use the complementary strengths of West  
47 Virginia University Institute of Technology, Marshall Univer-  
48 sity and West Virginia University.

49 (A) West Virginia University Institute of Technology  
50 provides a student-centered engineering program that provides  
51 full-time faculty attention and small classes. This approach  
52 prepares students well to enter and succeed in the professional  
53 practice of engineering.

54 (B) Marshall University exhibits a strong commitment to  
55 engineering outreach and has developed an undergraduate  
56 engineering program that builds upon the institution's tradition  
57 in liberal arts and sciences to provide unique, flexible engineer-  
58 ing opportunities that are attractive to a broad range of students.

59 (C) West Virginia University's large student enrollment and  
60 high quality faculty enables the institution to provide access to  
61 a broad range of undergraduate and graduate engineering  
62 programs as well as opportunities for research-oriented study at  
63 the graduate level.

64 (2) The strategic plan may address, but is not limited to,  
65 consideration of the following elements:

- 66 (A) Faculty.
- 67 (B) Libraries and technology resources.
- 68 (C) Research collaboration.
- 69 (D) Coordination with K-12 education.
- 70 The strategic plan may not contain a recommendation  
71 which would result in abolishing an existing program.
- 72 (3) The consortium shall:
- 73 (A) Prepare an interim report outlining its progress and  
74 tentative conclusions for presentation to the Governor and the  
75 Legislative Oversight Commission on Education Accountability  
76 no later than the first day of December, two thousand six; and
- 77 (B) Prepare a final report containing the Collaborative  
78 Engineering Strategic Plan, together with recommendations for  
79 implementation, for presentation to the Governor and the  
80 Legislative Oversight Commission on Education Accountability  
81 no later than the first day of July, two thousand seven.

#### ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

##### **\*§18B-2A-1. Composition of boards; terms and qualifications of members; vacancies; eligibility for reappointment.**

- 1 (a) A board of governors is continued at each of the  
2 following institutions: Bluefield State College, Blue Ridge  
3 Community and Technical College, Concord University,  
4 Eastern West Virginia Community and Technical College,  
5 Fairmont State University, Glenville State College, Marshall

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\* **CLERK'S NOTE:** This section was also amended by S. B. 792 (Chapter 85), which passed prior to this act.

6 University, New River Community and Technical College,  
7 Shepherd University, Southern West Virginia Community and  
8 Technical College, West Liberty State College, West Virginia  
9 Northern Community and Technical College, the West Virginia  
10 School of Osteopathic Medicine, West Virginia State Univer-  
11 sity and West Virginia University.

12 (b) The Institutional Board of Governors for Marshall  
13 University consists of sixteen persons, and the Institutional  
14 Board of Governors for West Virginia University consists of  
15 seventeen persons. Each other board of governors consists of  
16 twelve persons.

17 (c) Each board of governors includes the following  
18 members:

19 (1) A full-time member of the faculty with the rank of  
20 instructor or above duly elected by the faculty of the respective  
21 institution;

22 (2) A member of the student body in good academic  
23 standing, enrolled for college credit work and duly elected by  
24 the student body of the respective institution;

25 (3) A member from the institutional classified employees  
26 duly elected by the classified employees of the respective  
27 institution; and

28 (4) For the Institutional Board of Governors at Marshall  
29 University, twelve lay members appointed by the Governor, by  
30 and with the advice and consent of the Senate, pursuant to this  
31 section and, additionally, the chairperson of the Institutional  
32 Board of Advisors of Marshall Community and Technical  
33 College serving as an ex officio, voting member.

34 (5) For the Institutional Board of Governors at West  
35 Virginia University, twelve lay members appointed by the

36 Governor by and with the advice and consent of the Senate  
37 pursuant to this section and, additionally, the chairperson of the  
38 Institutional Board of Advisors of The Community and  
39 Technical College at West Virginia University Institute of  
40 Technology and West Virginia University at Parkersburg.

41 (6) For each institutional board of governors of an institu-  
42 tion that does not have an administratively-linked community  
43 and technical college under its jurisdiction, nine lay members  
44 appointed by the Governor, by and with the advice and consent  
45 of the Senate, pursuant to this section.

46 (7) For each institutional board of governors which has an  
47 administratively linked community and technical college under  
48 its jurisdiction:

49 (A) Eight lay members appointed by the Governor, by and  
50 with the advice and consent of the Senate, pursuant to this  
51 section and, additionally, the chairperson of the institutional  
52 board of advisors of the administratively linked community and  
53 technical college; and

54 (B) Of the eight lay members appointed by the Governor,  
55 one shall be the superintendent of a county board of education  
56 from the area served by the institution.

57 (d) Of the eight or nine members appointed by the Gover-  
58 nor, no more than five may be of the same political party. Of  
59 the twelve members appointed by the Governor to the govern-  
60 ing boards of Marshall University and West Virginia Univer-  
61 sity, no more than seven may be of the same political party. Of  
62 the eight or nine members appointed by the Governor, at least  
63 six shall be residents of the state. Of the twelve members  
64 appointed by the Governor to the governing boards of Marshall  
65 University and West Virginia University, at least eight shall be  
66 residents of the state.

67 (e) The student member serves for a term of one year. Each  
68 term begins on the first day of July.

69 (f) The faculty member serves for a term of two years. Each  
70 term begins on the first day of July. Faculty members are  
71 eligible to succeed themselves for three additional terms, not to  
72 exceed a total of eight consecutive years.

73 (g) The member representing classified employees serves  
74 for a term of two years. Each term begins on the first day of  
75 July. Members representing classified employees are eligible to  
76 succeed themselves for three additional terms, not to exceed a  
77 total of eight consecutive years.

78 (h) The appointed lay citizen members serve terms of four  
79 years each and are eligible to succeed themselves for no more  
80 than one additional term.

81 (i) A vacancy in an unexpired term of a member shall be  
82 filled for the unexpired term within thirty days of the occur-  
83 rence of the vacancy in the same manner as the original  
84 appointment or election. Except in the case of a vacancy, all  
85 elections shall be held and all appointments shall be made no  
86 later than the thirtieth day of June preceding the commence-  
87 ment of the term. Each board of governors shall elect one of its  
88 appointed lay members to be chairperson in June of each year.  
89 A member may not serve as chairperson for more than two  
90 consecutive years.

91 (j) The appointed members of the institutional boards of  
92 governors serve staggered terms of four years.

93 (k) A person is ineligible for appointment to membership  
94 on a board of governors of a state institution of higher educa-  
95 tion under the following conditions:

96 (1) For a baccalaureate institution or university, a person is  
97 ineligible for appointment who is an officer, employee or



98 member of any other board of governors, a member of an  
99 institutional board of advisors of any public institution of higher  
100 education, an employee of any institution of higher education,  
101 an officer or member of any political party executive commit-  
102 tee, the holder of any other public office or public employment  
103 under the government of this state or any of its political  
104 subdivisions or a member of the council or commission. This  
105 subsection does not prevent the representative from the faculty,  
106 classified employees, students or chairpersons of the boards of  
107 advisors or the superintendent of a county board of education  
108 from being members of the governing boards.

109 (2) For a community and technical college, a person is  
110 ineligible for appointment who is an officer, employee or  
111 member of any other board of governors; a member of an  
112 institutional board of advisors of any public institution of higher  
113 education; an employee of any institution of higher education;  
114 an officer or member of any political party executive commit-  
115 tee; the holder of any other public office, other than an elected  
116 county office, or public employment, other than employment by  
117 the county board of education, under the government of this  
118 state or any of its political subdivisions; or a member of the  
119 council or commission. This subsection does not prevent the  
120 representative from the faculty, classified employees, students  
121 or chairpersons of the boards of advisors from being members  
122 of the governing boards.

123 (1) Before exercising any authority or performing any duties  
124 as a member of a governing board, each member shall qualify  
125 as such by taking and subscribing to the oath of office pre-  
126 scribed by section five, article IV of the Constitution of West  
127 Virginia and the certificate thereof shall be filed with the  
128 Secretary of State.

129 (m) A member of a governing board appointed by the  
130 Governor may not be removed from office by the Governor  
131 except for official misconduct, incompetence, neglect of duty

132 or gross immorality and then only in the manner prescribed by  
133 law for the removal of the state elective officers by the Gover-  
134 nor.

135 (n) The president of the institution shall make available  
136 resources of the institution for conducting the business of its  
137 board of governors. The members of the board of governors  
138 serve without compensation, but are reimbursed for all reason-  
139 able and necessary expenses actually incurred in the perfor-  
140 mance of official duties under this article upon presentation of  
141 an itemized sworn statement of expenses. All expenses incurred  
142 by the board of governors and the institution under this section  
143 are paid from funds allocated to the institution for that purpose.

**ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF RESEARCH,  
DOCTORAL-GRANTING PUBLIC UNIVERSITIES.**

**§18B-3-1. Legislative findings, purpose and intent; definitions.**

1 (a) The Legislature finds that an effective and efficient  
2 system of doctoral-level education is vital to providing for the  
3 economic well-being of the citizens of West Virginia and for  
4 accomplishing established state goals and objectives. As the  
5 only research and doctoral-granting public universities in the  
6 state, Marshall University and West Virginia University are  
7 major assets to the citizens of West Virginia and must be an  
8 integral part of any plan to strengthen and expand the economy.

9 (b) The Legislature further finds that these two institutions  
10 must compete in both a national and global environment that is  
11 rapidly changing, while they continue to provide high quality  
12 education that is both affordable and accessible and remain  
13 accountable to the people of West Virginia for the most  
14 efficient and effective use of scarce resources.

15 (c) The Legislature further finds that Marshall University  
16 and West Virginia University, under the direction of their

17 respective governing boards, have sufficient staff and internal  
18 expertise to manage operational governance of their institutions  
19 in an efficient and accountable manner and can best fulfill their  
20 public missions when their governing boards are given flexibil-  
21 ity and autonomy sufficient to meet state goals established in  
22 this article and in section one-a, article one of this chapter.

23 (d) Therefore, the purposes of this article include, but are  
24 not limited to, the following:

25 (1) Enhancing the competitive position of Marshall  
26 University and West Virginia University in the current environ-  
27 ment for research and development;

28 (2) Providing the governing boards of these institutions  
29 with operational flexibility and autonomy, including tools to  
30 promote economic development in West Virginia;

31 (3) Encouraging the development of research expertise in  
32 areas directly beneficial to the state; and

33 (4) Focusing the attention and resources of the governing  
34 boards on state goals and priorities to enhance the competitive  
35 position of the state and the economic, social and cultural  
36 well-being of its citizens.

37 (e) The following terms wherever used or referred to in this  
38 chapter have the following meaning, unless a different meaning  
39 plainly appears from the context:

40 (1) “State institution of higher education known as Marshall  
41 University” means the doctoral-granting research institution  
42 and does not include Marshall Community and Technical  
43 College; and

44 (2) “State institution of higher education known as West  
45 Virginia University” means the doctoral-granting research  
46 institution and does not include any of the following:

47 (A) Until the first day of July, two thousand seven, the  
48 regional campus known as West Virginia University Institute  
49 of Technology;

50 (B) The administratively linked institution known as The  
51 Community and Technical College at West Virginia University  
52 Institute of Technology; and

53 (C) The regional campus known as West Virginia Univer-  
54 sity at Parkersburg.

55 (f) The governing boards of Marshall University and West  
56 Virginia University each have the power and the obligation to  
57 perform functions, tasks and duties as prescribed by law and to  
58 exercise their authority and carry out their responsibilities in a  
59 manner that is consistent with and not in conflict with the  
60 powers and duties assigned by law to the West Virginia council  
61 for Community and Technical College Education and the  
62 Higher Education Policy Commission.

63 (g) While the governing boards of Marshall University and  
64 West Virginia University, respectively, may choose to delegate  
65 powers and duties to the presidents of the state institutions of  
66 higher education known as Marshall University and West  
67 Virginia University pursuant to subsection (s), section four,  
68 article two-a of this chapter, ultimately, it is they who are  
69 accountable to the Legislature, the Governor and the citizens of  
70 West Virginia for meeting the established state goals set forth  
71 in this article and section one-a, article one of this chapter.  
72 Therefore, it is the intent of the Legislature that grants of  
73 operational flexibility and autonomy be made directly to the  
74 governing boards and are not grants of operational flexibility  
75 and autonomy to the presidents of these institutions.

### **ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.**

§18B-3C-4. Community and technical college consortia planning districts.

§18B-3C-8. Statewide network of independently accredited community and technical colleges.

§18B-3C-13. Blue Ridge Community and Technical College.

**§18B-3C-4. Community and technical college consortia planning districts.**

1 (a) Unless otherwise designated, the president of each  
2 community and technical college facilitates the formation of  
3 community and technical college consortia in the state, which  
4 includes representatives of community and technical colleges,  
5 public vocational-technical education centers, and public  
6 baccalaureate institutions offering associate degrees. The  
7 community and technical college consortium shall:

8 (1) Complete a comprehensive assessment of the district to  
9 determine what education and training programs are necessary  
10 to meet the short and long-term workforce development needs  
11 of the district;

12 (2) Coordinate efforts with regional labor market informa-  
13 tion systems to identify the ongoing needs of business and  
14 industry, both current and projected, and to provide information  
15 to assist in an informed program of planning and decision  
16 making;

17 (3) Plan and develop a unified effort between the commu-  
18 nity and technical colleges and public vocational-technical  
19 education to meet the documented workforce development  
20 needs of the district through individual and cooperative  
21 programs, shared facilities, faculty, staff, equipment and other  
22 resources and the development and use of distance learning and  
23 other education technologies;

24 (4) Regularly review and revise curricula to ensure that the  
25 workforce needs are met, develop new programs and phase out  
26 or modify existing programs as appropriate to meet such needs,  
27 streamline procedures for designing and implementing custom-  
28 ized training programs;

29       (5) Increase the integration of secondary and post-second-  
30 ary curriculum and programs that are targeted to meet regional  
31 labor market needs, including implementation of seamless  
32 curricula projects in all major career pathways and the West  
33 Virginia EDGE, “Earn a Degree Graduate Early” program;

34       (6) Plan and implement integrated professional develop-  
35 ment activities for secondary and post-secondary faculty, staff  
36 and administrators;

37       (7) Ensure that program graduates have attained the  
38 competencies required for successful employment through the  
39 involvement of business, industry and labor in establishing  
40 student credentialing;

41       (8) Performance assessment of student knowledge and  
42 skills which may be gained from multiple sources so that  
43 students gain credit toward program completion and advance  
44 more rapidly without repeating course work in which they  
45 already possess competency;

46       (9) Cooperate with workforce investment boards in  
47 establishing one-stop-shop career centers with integrated  
48 employment and training and labor market information systems  
49 that enable job seekers to assess their skills, identify and secure  
50 needed education training and secure employment and employ-  
51 ers to locate available workers;

52       (10) Increase the integration of adult literacy, adult basic  
53 education, federal Workforce Investment Act and community  
54 and technical college programs and services to expedite the  
55 transition of adults from welfare to gainful employment; and

56       (11) Establish a single point of contact for employers and  
57 potential employers to access education and training programs  
58 throughout the district.

59 (b) The community and technical college education  
60 consortium shall cooperate with the regional workforce  
61 investment board in the district and shall participate in any  
62 development or amendment to the regional workforce invest-  
63 ment plan.

64 (c) To carry out the provisions of this section, community  
65 and technical college consortia planning districts are established  
66 and defined as follows:

67 (1) Northern Panhandle Community and Technical College  
68 District includes Hancock, Brooke, Ohio, Marshall and Wetzel  
69 counties.

70 (A) The facilitating institution is West Virginia Northern  
71 Community and Technical College.

72 (B) Participating institutions include West Virginia  
73 Northern Community and Technical College; John Marshall  
74 High School; Cameron High School; John D. Rockefeller  
75 Center; and other public vocational technical schools offering  
76 post-secondary programs.

77 (2) North Central West Virginia Community and Technical  
78 College District includes Monongalia, Marion, Preston, Taylor,  
79 Barbour, Randolph, Doddridge, Harrison, Braxton, Lewis,  
80 Calhoun, Gilmer and Upshur counties.

81 (A) The facilitating institution is Fairmont State Commu-  
82 nity and Technical College.

83 (B) Participating institutions include Fairmont State  
84 Community and Technical College; Glenville State College;  
85 Randolph County Vocational-Technical Center; Monongalia  
86 County Technical Education Center; United Technical Center;  
87 Marion County Technical Center; Fred W. Eberly Technical

88 Center; and other public vocational technical schools offering  
89 post-secondary programs.

90 (3) Mid-Ohio Valley Community and Technical College  
91 District includes Tyler, Pleasants, Ritchie, Wood, Wirt, Jackson  
92 and Roane counties.

93 (A) The facilitating institution is West Virginia University  
94 at Parkersburg.

95 (B) Participating institutions includes West Virginia  
96 University at Parkersburg; West Virginia Northern Community  
97 and Technical College; Roane-Jackson Technical Center;  
98 Gaston Caperton Center; Wood County Technical Center; and  
99 other public vocational technical schools offering  
100 post-secondary programs.

101 (4) Potomac Highlands Community and Technical College  
102 District includes Tucker, Pendleton, Grant, Hardy, Mineral and  
103 Hampshire counties.

104 (A) The facilitating institution is Eastern West Virginia  
105 Community and Technical College.

106 (B) Participating institutions include Eastern West Virginia  
107 Community and Technical College; South Branch Career and  
108 Technical Center; Mineral County Technical Center; and other  
109 public vocational technical schools offering post-secondary  
110 programs.

111 (5) Shenandoah Valley Community and Technical College  
112 District includes Berkeley, Jefferson and Morgan counties.

113 (A) The facilitating institution is Blue Ridge Community  
114 and Technical College.

115 (B) Participating institutions include Blue Ridge Commu-  
116 nity and Technical College; James Rumsey Technical Institute;



117 and other public vocational technical schools offering  
118 post-secondary programs.

119 (6) Advantage Valley Community and Technical College  
120 District includes Fayette, Kanawha, Clay, Putnam, Cabell,  
121 Mason and Wayne counties.

122 (A) The facilitating institution is Marshall Community and  
123 Technical College.

124 (B) Every five years the council shall:

125 (i) Evaluate the progress of the Advantage Valley Consortia  
126 toward achieving the goals and benchmarks of its compact;

127 (ii) Evaluate the progress of each community and technical  
128 college in the district toward achieving the goals and  
129 benchmarks of its institutional compact;

130 (iii) Determine which community and technical college in  
131 the district would best serve the needs of the district for the  
132 following five-year period if serving as the facilitating institu-  
133 tion; and

134 (iv) Designate the community and technical college  
135 selected pursuant to subparagraph (iii) of this paragraph to  
136 serve as the facilitating institution for the following five-year  
137 period.

138 (C) Participating institutions include Marshall Community  
139 and Technical College; The Community and Technical College  
140 at West Virginia University Institute of Technology; West  
141 Virginia State Community and Technical College; Carver  
142 Career Center; Garnet Career Center; Ben Franklin Career  
143 Center; Putnam County Vocational-Technical-Occupational  
144 Center; Cabell County Career-Technical Center; and other  
145 public vocational technical schools offering post-secondary  
146 programs.

147 (7) Southern Mountains Community and Technical College  
148 District includes Lincoln, Boone, Logan, Mingo, Wyoming and  
149 McDowell counties.

150 (A) The facilitating institution is Southern West Virginia  
151 Community and Technical College.

152 (B) Participating institutions include Southern West  
153 Virginia Community and Technical College; New River  
154 Community and Technical College; Boone County Career and  
155 Technical Center; Wyoming County Vocational-Technical  
156 Center; Ralph R. Willis Career and Technical Center;  
157 McDowell County Career and Technology Center; Mingo  
158 County Vocation-Technical Center; Charles Yeager Technical  
159 Center; and other public vocational technical schools offering  
160 post-secondary programs.

161 (8) Southeastern Community and Technical College District  
162 includes Raleigh, Summers, Fayette, Nicholas, Webster,  
163 Pocahontas, Greenbrier, Monroe and Mercer counties.

164 (A) The facilitating institution is New River Community  
165 and Technical College.

166 (B) Participating institutions include New River Commu-  
167 nity and Technical College; Southern West Virginia Commu-  
168 nity and Technical College; The Community and Technical  
169 College at West Virginia University Institute of Technology;  
170 Bluefield State College; Academy of Careers and Technology;  
171 Fayette Plateau Vocation-Technology Center; Summers County  
172 High School; Monroe County Technical Center; Mercer County  
173 Technical Center; and other public vocational technical schools  
174 offering post-secondary programs.

175 (d) In the role of the facilitating institution of the commu-  
176 nity and technical college district, the college:

177 (1) Communicates to the council;

178 (2) Facilitates the delivery of comprehensive community  
179 and technical college education in the region, which includes  
180 the seven areas of comprehensive community and technical  
181 college education delivery as required by section six of this  
182 article; and

183 (3) Facilitates development of statement of commitment  
184 signed by all participating institutions in the region as to how  
185 community and technical college education will be delivered.

186 (e) Participating institutions are not subordinate to the  
187 facilitating institution but will sign the statement of commit-  
188 ment to participate.

189 (f) The council shall:

190 (1) Maintain guidelines for community and technical  
191 college consortia development;

192 (2) Set goals for each consortium based upon legislative  
193 goals for the delivery of comprehensive community and  
194 technical college education; and

195 (3) Maintain a format for developing and revising a  
196 consortium compact outlining plans for achieving stated goals  
197 to be submitted to the council annually for approval.

198 (g) Annually, on or before the fifteenth day of November,  
199 each consortium shall submit to the council for approval a  
200 compact which outlines plans for obtaining the stated goals.  
201 Each compact shall include the implementation of seamless  
202 curricula and the West Virginia EDGE, "Earn a Degree  
203 Graduate Early" program.

204 (h) Annually, the council shall evaluate the progress made  
205 in meeting the compact goals for each community and technical

206 college consortia through the development and collection of  
207 performance indicator data.

**\*§18B-3C-8. Statewide network of independently accredited  
community and technical colleges.**

1 (a) There is continued a statewide network of independently  
2 accredited community and technical colleges serving every  
3 region of the state. This section does not apply to the freestand-  
4 ing community and technical colleges or West Virginia  
5 University at Parkersburg.

6 (b) To be eligible for funds appropriated to develop  
7 independently accredited community and technical colleges, a  
8 state institution of higher education shall demonstrate the  
9 following:

10 (1) That it has as a part of its institutional compact ap-  
11 proved by the council a step-by-step plan with measurable  
12 benchmarks for developing an independently accredited  
13 community and technical college that meets the essential  
14 conditions set forth in section three of this article;

15 (2) That it is able to offer evidence to the satisfaction of the  
16 council that it is making progress toward accomplishing the  
17 benchmarks established in its institutional compact for develop-  
18 ing an independently accredited community and technical  
19 college; and

20 (3) That it has submitted an expenditure schedule approved  
21 by the council which sets forth a proposed plan of expenditures  
22 for funds allocated to it from the fund.

23 (c) The statewide network of independently accredited  
24 community and technical colleges is comprised of the free-

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\* **CLERK'S NOTE:** This section was also amended by S. B. 792 (Chapter 84), which passed prior to this act.

25 standing community and technical colleges, West Virginia  
26 University at Parkersburg, and the following state institutions  
27 of higher education:

28 (1) *New River Community and Technical College.* —

29 (A) There is continued the multicampus entity known as  
30 New River Community and Technical College, administratively  
31 linked to Bluefield State College. New River Community and  
32 Technical College is headquartered in the Beckley Higher  
33 Education Center and incorporates the campuses of Greenbrier  
34 Community College Center of New River Community and  
35 Technical College and Nicholas Community College Center of  
36 New River Community and Technical College. New River  
37 Community and Technical College is an independently  
38 accredited community and technical college.

39 (B) Bluefield State College may continue associate degree  
40 programs in areas of particular institutional strength which are  
41 closely articulated to its baccalaureate programs and missions  
42 or which are of a high-cost nature and can best be provided  
43 through direct coordination with a baccalaureate institution.  
44 Any such program shall be delivered under the authority of the  
45 council and through contract with the community and technical  
46 college. The terms of the contract shall be negotiated between  
47 the council and the governing board of the sponsoring institu-  
48 tion. The final contract is approved by the council. Such a  
49 program shall be evaluated according to the benchmarks and  
50 indicators for community and technical college education  
51 developed by the council. If the council determines that the  
52 program is making insufficient progress toward accomplishing  
53 the benchmarks, the program shall thereafter be delivered by  
54 the community and technical college.

55 (C) Bluefield State College may continue the associate of  
56 science degree in nursing which is an existing nationally  
57 accredited associate degree program in an area of particular

58 institutional strength and which is closely articulated to the  
59 baccalaureate program and mission. The program is of a high-  
60 cost nature and can best be provided through direct administra-  
61 tion by a baccalaureate institution. This program may not be  
62 transferred to New River Community and Technical College or  
63 any other community and technical college as long as the  
64 program maintains national accreditation and is seamlessly  
65 coordinated into the baccalaureate program at the institution.

66 (D) As an independently accredited community and  
67 technical college, New River also serves as a higher education  
68 center for its region by brokering with other colleges, universi-  
69 ties and providers, in-state and out-of-state, both public and  
70 private, to ensure the coordinated access of students, employers  
71 and other clients to needed programs and services.

72 (E) New River Community and Technical College partici-  
73 pates in the planning and development of a unified effort  
74 involving multiple providers to meet the documented education  
75 and workforce development needs in the region. Nothing in this  
76 subdivision prohibits or limits any existing, or the continuation  
77 of any existing, affiliation between Mountain State University,  
78 West Virginia University Institute of Technology and West  
79 Virginia University. The objective is to assure students and  
80 employers in the area that there is coordination and efficient use  
81 of resources among the separate programs and facilities,  
82 existing and planned, in the Beckley area.

83 (2) *Fairmont State Community and Technical College.* —  
84 Fairmont State Community and Technical College is an  
85 independently accredited community and technical college. The  
86 community and technical college is developed on the base of  
87 the component community and technical college of Fairmont  
88 State College. Subject to the provisions of this section, the  
89 president and the governing board of Fairmont State College  
90 are responsible, according to a plan approved by the council, for  
91 step-by-step implementation of the independently accredited

92 community and technical college which adheres to the essential  
93 conditions pursuant to section three of this article. Subject to  
94 the provisions of section twelve of this article, the community  
95 and technical college will remain administratively linked to  
96 Fairmont State College. Fairmont State College may continue  
97 associate degree programs in areas of particular institutional  
98 strength which are closely articulated to their baccalaureate  
99 programs and missions or which are of a high-cost nature and  
100 can best be provided in direct coordination with a baccalaureate  
101 institution. Any such program shall be delivered under the  
102 authority of the council and through contract with the commu-  
103 nity and technical college. The terms of the contract shall be  
104 negotiated between the council and the governing board of the  
105 sponsoring institution. The final contract is approved by the  
106 council. Such a program shall be evaluated according to the  
107 benchmarks and indicators for community and technical college  
108 education developed by the council. If the council determines  
109 that the program is making insufficient progress toward  
110 accomplishing the benchmarks, the program shall thereafter be  
111 delivered by the community and technical college.

112 (3) *Marshall Community and Technical College.* —  
113 Marshall Community and Technical College is an independ-  
114 ently accredited community and technical college. The new  
115 community and technical college is developed on the base of  
116 the component community and technical college of Marshall  
117 University. Subject to the provisions of this section, the  
118 president and the governing board of Marshall University are  
119 responsible, according to a plan approved by the council, for  
120 step-by-step implementation of the new independently accred-  
121 ited community and technical college which adheres to the  
122 essential conditions pursuant to section three of this article.  
123 Subject to the provisions of section twelve of this article, the  
124 community and technical college remains administratively  
125 linked to Marshall University. Marshall University may  
126 continue associate degree programs in areas of particular

127 institutional strength which are closely articulated to its  
128 baccalaureate programs and missions or which are of a  
129 high-cost nature and can best be provided in direct coordination  
130 with a baccalaureate institution. Any such program shall be  
131 delivered under the authority of the council and through  
132 contract with the community and technical college. The terms  
133 of the contract shall be negotiated between the council and the  
134 governing board of the sponsoring institution. The final contract  
135 is approved by the council. Such a program shall be evaluated  
136 according to the benchmarks and indicators for community and  
137 technical college education developed by the council. If the  
138 council determines that the program is making insufficient  
139 progress toward accomplishing the benchmarks, the program  
140 shall thereafter be delivered by the community and technical  
141 college.

142       (4) *Blue Ridge Community and Technical College.* — Blue  
143 Ridge Community and Technical College is an independently  
144 accredited community and technical college. Subject to the  
145 provisions of section twelve of this article, the community and  
146 technical college remains administratively linked to Shepherd  
147 University. Shepherd University may continue associate degree  
148 programs in areas of particular institutional strength which are  
149 closely articulated to its baccalaureate programs and missions  
150 or which are of a high-cost nature and can best be provided in  
151 direct coordination with a baccalaureate institution. Any such  
152 program shall be delivered under the authority of the council  
153 and through contract with the community and technical college.  
154 The terms of the contract shall be negotiated between the  
155 council and the governing board of the sponsoring institution.  
156 The final contract is approved by the council. Such a program  
157 shall be evaluated according to the benchmarks and indicators  
158 for community and technical college education developed by  
159 the council. If the council determines that the program is  
160 making insufficient progress toward accomplishing the



161 benchmarks, the program shall thereafter be delivered by the  
162 community and technical college.

163       (5) *West Virginia State Community and Technical College.*  
164 — West Virginia State Community and Technical College is an  
165 independently accredited community and technical college. The  
166 new community and technical college is developed on the base  
167 of the component community and technical college of West  
168 Virginia State College. Subject to the provisions of this section,  
169 the president and the governing board of West Virginia state  
170 College are responsible, according to a plan approved by the  
171 council, for step-by-step implementation of the new independ-  
172 ently accredited community and technical college which  
173 adheres to the essential conditions pursuant to section three of  
174 this article. Subject to the provisions of section twelve of this  
175 article, the community and technical college remains adminis-  
176 tratively linked to West Virginia State University. West  
177 Virginia State University may continue associate degree  
178 programs in areas of particular institutional strength which are  
179 closely articulated to its 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. Any such  
182 program shall be delivered under the authority of the council  
183 and through contract with the community and technical college.  
184 The terms of the contract shall be negotiated between the  
185 council and the governing board of the sponsoring institution.  
186 The final contract is approved by the council. Such a program  
187 shall be evaluated according to the benchmarks and indicators  
188 for community and technical college education developed by  
189 the council. If the council determines that the program is  
190 making insufficient progress toward accomplishing the  
191 benchmarks, the program shall thereafter be delivered by the  
192 community and technical college.

193       (6) *The Community and Technical College at West Virginia*  
194 *University Institute of Technology.* — The Community and

195 Technical College at West Virginia University Institute of  
196 Technology is an independently accredited community and  
197 technical college. The new community and technical college is  
198 developed on the base of the component community and  
199 technical college of West Virginia University Institute of  
200 Technology. Subject to the provisions of this section, the  
201 president and the governing board of West Virginia University  
202 are responsible, according to a plan approved by the council, for  
203 step-by-step implementation of the new independently accredited  
204 community and technical college which adheres to the  
205 essential conditions pursuant to section three of this article.  
206 Subject to the provisions of section twelve of this article, the  
207 community and technical college remains administratively  
208 linked to West Virginia University Institute of Technology.  
209 West Virginia University Institute of Technology may continue  
210 associate degree programs in areas of particular institutional  
211 strength which are closely articulated to its baccalaureate  
212 programs and missions or which are of a high-cost nature and  
213 can best be provided in direct coordination with a baccalaureate  
214 institution. Any such program shall be delivered under the  
215 authority of the council and through contract with the commu-  
216 nity and technical college. The terms of the contract shall be  
217 negotiated between the council and the governing board of the  
218 sponsoring institution. The final contract is approved by the  
219 council. Such a program shall be evaluated according to the  
220 benchmarks and indicators for community and technical college  
221 education developed by the council. If the council determines  
222 that the program is making insufficient progress toward  
223 accomplishing the benchmarks, the program shall thereafter be  
224 delivered by the community and technical college.

225 (d) The president and the board of governors of each  
226 sponsoring institution are accountable to the council for  
227 ensuring that the community and technical college adheres to  
228 the essential conditions pursuant to section three of this article.

**§18B-3C-13. Blue Ridge Community and Technical College.**

1       The Community and Technical College of Shepherd is  
2 hereafter named “Blue Ridge Community and Technical  
3 College”. Any reference in this code to The Community and  
4 Technical College of Shepherd means Blue Ridge Community  
5 and Technical College.

**ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.**

§18B-3D-2. Workforce Development Initiative Program continued; purpose; program administration; rule required.

§18B-3D-3. Mission of the Workforce Development Initiative Program.

§18B-3D-4. Grant application procedures.

§18B-3D-5. Legislative rules.

**§18B-3D-2. Workforce Development Initiative Program continued; purpose; program administration; rule required.**

1       (a) The Workforce Development Initiative Program is  
2 continued under the supervision of the council. The purpose of  
3 the program is to administer and oversee grants to community  
4 and technical colleges to implement the provisions of this  
5 article in accordance with legislative intent.

6       (b) It is the responsibility of the council to administer the  
7 state fund for community and technical college and workforce  
8 development, including setting criteria for grant applications,  
9 receiving applications for grants, making determinations on  
10 distribution of funds and evaluating the performance of  
11 workforce development initiatives.

12       (c) The chancellor, under the direction of the council, shall  
13 review and approve the expenditure of all grant funds, including  
14 development of application criteria, the review and selection of  
15 applicants for funding and the annual review and justification  
16 of applicants for grant renewal.

17       (1) To aid in decision making, the chancellor appoints an  
18 advisory committee consisting of the Executive Director of the  
19 West Virginia Development Office or designee; the Secretary  
20 of Education and the Arts or designee; the Assistant State  
21 Superintendent for Technical and Adult Education; the Chair of  
22 the West Virginia Council for Community and Technical  
23 College Education; the Chair of the West Virginia Workforce  
24 Investment Council, the Executive Director of Workforce West  
25 Virginia, two members representing business and industry and  
26 one member representing labor. The advisory committee shall  
27 review all applications for workforce development initiative  
28 grants and make recommendations for distributing grant funds  
29 to the council. The advisory committee also shall make  
30 recommendations on methods to share among the community  
31 and technical colleges any curricula developed as a result of a  
32 workforce development initiative grant.

33       (2) When determining which grant proposals will be  
34 funded, the council shall give special consideration to proposals  
35 by community and technical colleges that involve businesses  
36 with fewer than fifty employees.

37       (3) The council shall weigh each proposal to avoid award-  
38 ing grants which will have the ultimate effect of providing  
39 unfair advantage to employers new to the state who will be in  
40 direct competition with established local businesses.

41       (d) The council may allocate a reasonable amount, not to  
42 exceed five percent up to a maximum of fifty thousand dollars  
43 of the funds available for grants on an annual basis, for general  
44 program administration.

45       (e) The council shall report to the Legislative Oversight  
46 Commission on Education Accountability and the Legislative  
47 Oversight Commission on Workforce Investment for Economic  
48 Development on the status of the Workforce Development  
49 Initiative Program annually by the first day of December.

50 (f) Moneys appropriated or otherwise available for the  
51 Workforce Development Initiative Program shall be allocated  
52 by line item to an appropriate account. Any moneys remaining  
53 in the fund at the close of a fiscal year are carried forward for  
54 use in the next fiscal year.

55 (g) Nothing in this article requires a specific level of  
56 appropriation by the Legislature.

**§18B-3D-3. Mission of the Workforce Development Initiative Program.**

1 (a) The statewide mission of the Workforce Development  
2 Initiative Program is to develop a strategy to strengthen the  
3 quality of the state's workforce by linking the existing  
4 post-secondary education capacity to the needs of business,  
5 industry and other employers. Available funding will be used to  
6 provide explicit incentives for partnerships between employers  
7 and community and technical colleges to develop comprehen-  
8 sive workforce development services. Funds will be granted on  
9 the basis of proposals developed according to criteria estab-  
10 lished by the council.

11 (b) The mission of any community and technical college  
12 accepting a workforce development initiative grant is to:

13 (1) Become client-focused and develop programs that meet  
14 documented employer needs;

15 (2) Involve and collaborate with employers in the develop-  
16 ment of programs;

17 (3) Develop customized training programs that provide for  
18 the changing needs of employers and that are offered at flexible  
19 times and locations to accommodate employer scheduling;

20 (4) Develop partnerships with other public and private  
21 providers, including small business development centers and

22 vocational, technical and adult education centers, and, with  
23 business and labor, to fulfill the workforce development needs  
24 of the service area;

25 (5) Establish cooperative arrangements with the public  
26 school system for the seamless progression of students through  
27 programs of study that begin at the secondary level and  
28 conclude at the community and technical college level,  
29 particularly with respect to career and technical education  
30 certificates, associate of applied science and selected associate  
31 of science degree programs for students seeking immediate  
32 employment, individual entrepreneurship skills, occupational  
33 development, skill enhancement and career mobility; and

34 (6) Assist in the on-going assessment of the workforce  
35 development needs of the service area.

**§18B-3D-4. Grant application procedures.**

1 (a) In order to participate in the workforce development  
2 initiative grant program, a community and technical college  
3 shall meet the following conditions:

4 (1) Participate in a community and technical college  
5 consortia planning district as required by article three-c of this  
6 chapter. Consortia representatives participate in the develop-  
7 ment of and approve applications for funding grants under the  
8 provisions of this article and approve the workforce develop-  
9 ment initiative budget;

10 (2) Develop, as a component of its institutional compact, a  
11 plan to achieve measurable improvements in the quality of the  
12 workforce within its service area over the period covered by the  
13 compact. The plan is developed in partnership with employers,  
14 local vocational schools and other workforce education  
15 providers; and

16       (3) Establish a special revolving fund under the jurisdiction  
17 of the community and technical college dedicated solely to  
18 workforce development initiatives for the purposes provided in  
19 this article. Any fees or revenues generated from workforce  
20 development initiatives funded by a competitive grant are  
21 deposited into this fund.

22       (b) To be eligible to receive a workforce development  
23 initiative grant, a community and technical college shall  
24 provide at least the following information in its application:

25       (1) Identification of the specific business or business sector  
26 training needs that will be met if a workforce development  
27 initiative grant is received;

28       (2) A commitment from the private or public sector partner  
29 or partners to provide a match of one dollar, cash and in-kind,  
30 for each dollar of state grant money received except:

31       (A) In cases where the community and technical college  
32 can demonstrate that it would be a hardship for the private  
33 sector partner or partners to provide a dollar-to-dollar match,  
34 the match may be reduced to one dollar for each three dollars  
35 of state funding.

36       (B) In cases where the grant award is to be used to modern-  
37 ize equipment, the council may establish a separate match  
38 requirement not to exceed one dollar, cash or in-kind, for each  
39 state dollar awarded.

40       (C) Beginning in fiscal year 2006, the commitment required  
41 by this subdivision may be provided by a public sector partner  
42 using state or federal dollars to provide the required match if  
43 funding for this initiative in the fiscal year exceeds six hundred  
44 fifty thousand dollars in which case, one-half the amount  
45 exceeding six hundred fifty thousand dollars may be granted  
46 using a public sector match;

47       (3) An agreement to share with other community and  
48 technical colleges any curricula developed using funds from a  
49 workforce development initiative grant;

50       (4) A specific plan showing how the community and  
51 technical college will collaborate with local post-secondary  
52 vocational institutions to maximize the use of existing facilities,  
53 personnel and equipment; and

54       (5) An acknowledgment that acceptance of a grant under  
55 the provisions of this article commits the community and  
56 technical college and its consortia committee to such terms,  
57 conditions and deliverables as specified by the council in the  
58 request for applications, including, but not limited to, the  
59 measures by which the performance of the workforce develop-  
60 ment initiative will be evaluated.

61       (c) Applications submitted by community and technical  
62 colleges may be awarded funds for programs which meet the  
63 requirements of this article that are operated on a collaborative  
64 basis at facilities under the jurisdiction of the public schools  
65 and utilized by both secondary and post-secondary students.

**§18B-3D-5. Legislative rules.**

1       The council shall propose a legislative rule pursuant to  
2 article three-a, chapter twenty-nine-a of this code to implement  
3 the provisions of this article and shall file the rule with the  
4 legislative oversight commission on education accountability  
5 no later than the first day of September, two thousand six.

6       Any rule promulgated by the West Virginia Development  
7 Office pursuant to previous enactments of this section and in  
8 effect on the effective date of the amendment and reenactment  
9 of this section in the year two thousand six remains in effect  
10 until amended, modified, repealed or replaced by the council.



**ARTICLE 6. ADVISORY COUNCILS.**

§18B-6-1. Institutional boards of advisors for regional campuses and certain administratively linked community and technical colleges.

§18B-6-1a. Definitions.

**\*§18B-6-1. Institutional boards of advisors for regional campuses and certain administratively linked community and technical colleges.**

1 (a) There are continued institutional boards of advisors as  
2 follows:

3 (1) For each regional campus. The chairperson of the board  
4 of advisors of West Virginia University at Parkersburg serves  
5 as an ex officio, voting member of the governing board of West  
6 Virginia University;

7 (2) For administratively linked community and technical  
8 colleges which share a physical location with the sponsoring  
9 institution. This category includes Fairmont State Community  
10 and Technical College, Marshall Community and Technical  
11 College, West Virginia State Community and Technical  
12 College and The Community and Technical College at West  
13 Virginia University Institute of Technology. The chairperson of  
14 the board of advisors of each administratively linked commu-  
15 nity and technical college serves as an ex officio, voting  
16 member of the sponsoring institution's board of governors, or,  
17 in the case of The Community and Technical College at West  
18 Virginia University Institute of Technology, the chairperson of  
19 the board of advisors serves as an ex officio voting member of  
20 the governing board of West Virginia University;

21 (b) The lay members of the institutional boards of advisors  
22 for the regional campuses are appointed by the board of  
23 governors.

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\* **CLERK'S NOTE:** This section was also amended by S. B. 792 (Chapter 84), which passed subsequent to this act.

24 (c) The lay members of the institutional boards of advisors  
25 established for the administratively linked community and  
26 technical colleges are appointed by the West Virginia Council  
27 for Community and Technical College Education.

28 (d) The board of advisors consists of fifteen members,  
29 including a full-time member of the faculty with the rank of  
30 instructor or above duly elected by the faculty of the respective  
31 institution; a member of the student body in good academic  
32 standing, enrolled for college credit work and duly elected by  
33 the student body of the respective institution; a member from  
34 the institutional classified employees duly elected by the  
35 classified employees of the respective institution; and twelve  
36 lay persons appointed pursuant to this section who have  
37 demonstrated a sincere interest in and concern for the welfare  
38 of that institution and who are representative of the population  
39 of its responsibility district and fields of study. At least eight of  
40 the twelve lay persons appointed shall be residents of the state.  
41 Of the lay members who are residents of the state, at least two  
42 shall be alumni of the respective institution and no more than a  
43 simple majority may be of the same political party.

44 (e) The student member serves for a term of one year  
45 beginning on the first day of May. The member from the faculty  
46 and the classified employees, respectively, serves for a term of  
47 two years beginning on the first day of May. The twelve lay  
48 members serve terms of four years each beginning on the first  
49 day of May. All members are eligible to succeed themselves for  
50 no more than one additional term. A vacancy in an unexpired  
51 term of a member shall be filled for the remainder of the  
52 unexpired term within thirty days of the occurrence thereof in  
53 the same manner as the original appointment or election. Except  
54 in the case of a vacancy:

55 (1) All elections shall be held and all appointments shall be  
56 made no later than the thirtieth day of April preceding the  
57 commencement of the term; and

58       (2) Terms of members begin on the first day of May  
59 following election.

60       (f) Each board of advisors shall hold a regular meeting at  
61 least quarterly, commencing in May of each year. Additional  
62 meetings may be held upon the call of the chairperson, presi-  
63 dent of the institution or upon the written request of at least five  
64 members. A majority of the members constitutes a quorum for  
65 conducting the business of the board of advisors.

66       (g) One of the twelve lay members shall be elected as  
67 chairperson by the board of advisors in May of each year. A  
68 member may not serve as chairperson for more than two  
69 consecutive years.

70       (h) The president of the institution shall make available  
71 resources of the institution for conducting the business of the  
72 board of advisors. The members of the board of advisors shall  
73 be reimbursed for all reasonable and necessary expenses  
74 actually incurred in the performance of their official duties  
75 under this section upon presentation of an itemized sworn  
76 statement thereof. All expenses incurred by the boards of  
77 advisors and the institutions under this section shall be paid  
78 from funds allocated to the institutions for that purpose.

79       (i) Prior to the submission by the president to its governing  
80 board, the board of advisors shall review all proposals of the  
81 institution in the areas of mission, academic programs, budget,  
82 capital facilities and such other matters as requested by the  
83 president of the institution or its governing board or otherwise  
84 assigned to it by law. The board of advisors shall comment on  
85 each such proposal in writing, with such recommendations for  
86 concurrence therein or revision or rejection thereof as it  
87 considers proper. The written comments and recommendations  
88 shall accompany the proposal to the governing board and the  
89 governing board shall include the comments and recommenda-  
90 tions in its consideration of and action on the proposal. The

91 governing board shall promptly acknowledge receipt of the  
92 comments and recommendations and shall notify the board of  
93 advisors in writing of any action taken thereon.

94 (j) Prior to their implementation by the president, the board  
95 of advisors shall review all proposals regarding institution-wide  
96 personnel policies. The board of advisors may comment on the  
97 proposals in writing.

98 (k) The board of advisors shall provide advice and assis-  
99 tance to the president and the governing board in areas includ-  
100 ing, but not limited to, the following:

101 (1) Establishing closer connections between higher  
102 education and business, labor, government and community and  
103 economic development organizations to give students greater  
104 opportunities to experience the world of work. Examples of  
105 such experiences include business and community service  
106 internships, apprenticeships and cooperative programs;

107 (2) Communicating better and serving the current  
108 workforce and workforce development needs of their service  
109 area, including the needs of nontraditional students for col-  
110 lege-level skills upgrading and retraining and the needs of  
111 employers for specific programs of limited duration; and

112 (3) Assessing the performance of the institution's graduates  
113 and assisting in job placement.

114 (l) When a vacancy occurs in the office of president of the  
115 institution, the board of advisors shall serve as a search and  
116 screening committee for candidates to fill the vacancy under  
117 guidelines established by the council. When serving as a search  
118 and screening committee, the board of advisors and its govern-  
119 ing board are each authorized to appoint up to three additional  
120 persons to serve on the committee as long as the search and  
121 screening process is in effect. The three additional appointees  
122 of the board of advisors shall be faculty members of the

123 institution. For the purposes of the search and screening process  
124 only, the additional members shall possess the same powers and  
125 rights as the regular members of the board of advisors, includ-  
126 ing reimbursement for all reasonable and necessary expenses  
127 actually incurred. Following the search and screening process,  
128 the committee shall submit the names of at least three candi-  
129 dates to the appropriate governing board. If the governing board  
130 rejects all candidates submitted, the committee shall submit the  
131 names of at least three additional candidates and this process  
132 shall be repeated until the governing board approves one of the  
133 candidates submitted. In all cases, the governing board shall  
134 make the appointment with the approval of the council or the  
135 commission in the case of West Virginia University Institute of  
136 Technology. The governing board or the council shall provide  
137 all necessary staff assistance to the board of advisors in its role  
138 as a search and screening committee.

139 (m) The boards of advisors shall develop a master plan for  
140 those administratively linked community and technical colleges  
141 which retain boards of advisors. The ultimate responsibility for  
142 developing and updating the master plans at the institutional  
143 level resides with the institutional board of advisors, but the  
144 ultimate responsibility for approving the final version of these  
145 institutional master plans, including periodic updates, resides  
146 with the council. The plan shall include, but not be limited to,  
147 the following:

148 (1) A detailed demonstration of how the master plan will be  
149 used to meet the goals and objectives of the institutional  
150 compact;

151 (2) A well-developed set of goals outlining missions,  
152 degree offerings, resource requirements, physical plant needs,  
153 personnel needs, enrollment levels and other planning  
154 determinates and projections necessary in such a plan to assure  
155 that the needs of the institution's area of responsibility for a  
156 quality system of higher education are addressed;

157 (3) Documentation of the involvement of the commission,  
158 institutional constituency groups, clientele of the institution and  
159 the general public in the development of all segments of the  
160 institutional master plan.

161 The plan shall be established for periods of not less than  
162 three nor more than six years and shall be revised periodically  
163 as necessary, including recommendations on the addition or  
164 deletion of degree programs as, in the discretion of the board of  
165 advisors, may be necessary.

**\*§18B-6-1a. Definitions.**

1 For the purposes of this article, the following words have  
2 the meanings specified unless the context clearly indicates a  
3 different meaning:

4 (a) “Advisory Council of Classified Employees” or “classi-  
5 fied council” means the state advisory organization of classified  
6 employees created pursuant to section five of this article.

7 (b) “Advisory Council of Faculty” or “faculty council”  
8 means the state advisory organization of faculty created  
9 pursuant to section two of this article.

10 (c) “Advisory Council of Students” or “student advisory  
11 council” means the state advisory organization of students  
12 created pursuant to section four of this article.

13 (d) “Classified employee”, in the singular or plural, means  
14 any regular full-time or regular part-time employee of a  
15 governing board, the commission, the council or the West  
16 Virginia Network for Educational Telecomputing who holds a  
17 position that is assigned a particular job title and pay grade in

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\* **CLERK’S NOTE:** This section was also amended by S. B. 792 (Chapter 84), which passed subsequent to this act.

18 accordance with the personnel classification system established  
19 by law.

20 (e) “Community and Technical College” means Eastern  
21 West Virginia Community and Technical College, Fairmont  
22 State Community and Technical College, Marshall Community  
23 and Technical College, New River Community and Technical  
24 College, West Virginia Northern Community and Technical  
25 College, Blue Ridge Community and Technical College,  
26 Southern West Virginia Community and Technical College,  
27 West Virginia State Community and Technical College, The  
28 Community and Technical College at West Virginia University  
29 Institute of Technology, West Virginia University at  
30 Parkersburg and any other community and technical college so  
31 designated by the Legislature.

32 (f) “Council” means the West Virginia Council for Commu-  
33 nity and Technical College Education created pursuant to  
34 section three, article two-b of this chapter.

35 (g) “Institutional Classified Employee Council” or “staff  
36 council” means the advisory group of classified employees  
37 formed at a state institution of higher education pursuant to  
38 section six of this article.

39 (h) “Institutional Faculty Senate”, “faculty senate” or  
40 “faculty assembly” means the advisory group of faculty formed  
41 at a state institution of higher education pursuant to section  
42 three of this article.

43 (i) “State institution of higher education”, in the singular or  
44 plural, means the institutions as defined in section two, article  
45 one of this chapter and, additionally, Fairmont State Commu-  
46 nity and Technical College, Marshall Community and Techni-  
47 cal College, New River Community and Technical College,  
48 Potomac State Campus of West Virginia University, Robert C.  
49 Byrd Health Sciences Charleston Division of West Virginia

50 University, Blue Ridge Community and Technical College,  
51 West Virginia State Community and Technical College, West  
52 Virginia University at Parkersburg, West Virginia University  
53 Institute of Technology, The Community and Technical College  
54 at West Virginia University Institute of Technology, the Higher  
55 Education Policy Commission, the West Virginia Council for  
56 Community and Technical College Education, the West  
57 Virginia Network for Educational Telecomputing and any other  
58 institution so designated by the Legislature.

**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.**

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 the tuition and  
5 fees any one or more of the following as defined in section  
6 one-b of this article:

7 (1) Tuition and required educational and general fees;

8 (2) Auxiliary and auxiliary capital fees; and

9 (3) Required educational and general capital fees.

10 (b) An institution may establish a single special revenue  
11 account for each of the following classifications of fees:

12 (1) All tuition and required educational and general fees  
13 collected;

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\* **CLERK'S NOTE:** This section was also amended by H. B. 4049 (Chapter 79), which passed prior to this act, and S. B. 792 (Chapter 84), which passed subsequent to this act.



14 (2) All auxiliary and auxiliary capital fees collected; and

15 (3) All required educational and general capital fees  
16 collected to support existing systemwide and institutional debt  
17 service and future systemwide and institutional debt service,  
18 capital projects and campus renewal for educational and general  
19 facilities.

20 (4) Subject to any covenants or restrictions imposed with  
21 respect to revenue bonds payable from such accounts, an  
22 institution may expend funds from each such special revenue  
23 account for any purpose for which funds were collected within  
24 that account regardless of the original purpose for which the  
25 funds were collected.

26 (c) The purposes for which tuition and fees may be  
27 expended include, but are not limited to, health services, student  
28 activities, recreational, athletic and extracurricular activities.  
29 Additionally, tuition and fees may be used to finance a stu-  
30 dent's attorney to perform legal services for students in civil  
31 matters at the institutions: *Provided*, That the legal services are  
32 limited only to those types of cases, programs or services  
33 approved by the administrative head of the institution where the  
34 legal services are to be performed.

35 (d) The commission and council jointly shall propose a rule  
36 for legislative approval in accordance with the provisions of  
37 article three-a, chapter twenty-nine-a of this code to govern the  
38 fixing, collection and expenditure of tuition and other fees.

39 (e) The Legislature finds that an emergency exists and,  
40 therefore, the commission and council jointly shall file the rule  
41 required by subsection (d) of this section as an emergency rule  
42 pursuant to the provisions of article three-a, chapter  
43 twenty-nine-a of this code, subject to the prior approval of the  
44 Legislative Oversight Commission on Education Accountabil-  
45 ity.

46 (f) The schedule of all tuition and fees, and any changes  
47 therein, shall be entered in the minutes of the meeting of the  
48 appropriate governing board and the board shall file with the  
49 commission or council, or both, as appropriate, and the  
50 Legislative Auditor a certified copy of such schedule and  
51 changes.

52 (g) The boards shall establish the rates to be charged  
53 full-time students, as defined in section one-b of this article,  
54 who are enrolled during a regular academic term.

55 (1) Undergraduate students taking fewer than twelve credit  
56 hours in a regular term shall have their fees reduced pro rata  
57 based upon one twelfth of the full-time rate per credit hour and  
58 graduate students taking fewer than nine credit hours in a  
59 regular term shall have their fees reduced pro rata based upon  
60 one ninth of the full-time rate per credit hour.

61 (2) Fees for students enrolled in summer terms or other  
62 nontraditional time periods shall be prorated based upon the  
63 number of credit hours for which the student enrolls in accor-  
64 dance with the above provisions.

65 (h) All fees are due and payable by the student upon  
66 enrollment and registration for classes except as provided in  
67 this subsection:

68 (1) The governing boards shall permit fee payments to be  
69 made in installments over the course of the academic term. All  
70 fees shall be paid prior to the awarding of course credit at the  
71 end of the academic term.

72 (2) The governing boards also shall authorize the accep-  
73 tance of credit cards or other payment methods which may be  
74 generally available to students for the payment of fees. The  
75 governing boards may charge the students for the reasonable

76 and customary charges incurred in accepting credit cards and  
77 other methods of payment.

78 (3) If a governing board determines that a student's  
79 finances are affected adversely by a legal work stoppage, it may  
80 allow the student an additional six months to pay the fees for  
81 any academic term. The governing board shall determine on a  
82 case-by-case basis if the finances of a student are affected  
83 adversely.

84 (4) The commission and council jointly shall propose a rule  
85 in accordance with the provisions of article three-a, chapter  
86 twenty-nine-a of this code, defining conditions under which an  
87 institution may offer tuition and fee deferred payment plans  
88 through the institution or through third parties.

89 (5) An institution may charge interest or fees for any  
90 deferred or installment payment plans.

91 (i) In addition to the other fees provided in this section,  
92 each governing board may impose, collect and distribute a fee  
93 to be used to finance a nonprofit, student-controlled public  
94 interest research group if the students at the institution demon-  
95 strate support for the increased fee in a manner and method  
96 established by that institution's elected student government.  
97 The fee may not be used to finance litigation against the  
98 institution.

99 (j) Institutions shall retain tuition and fee revenues not  
100 pledged for bonded indebtedness or other purposes in accor-  
101 dance with the tuition rule proposed by the commission and  
102 council jointly pursuant to this section. The tuition rule shall:

103 (1) Provide a basis for establishing nonresident tuition and  
104 fees;

105 (2) Allow institutions to charge different tuition and fees for  
106 different programs;

107 (3) Provide that a board of governors may propose to the  
108 commission, council or both, as appropriate, a mandatory  
109 auxiliary fee under the following conditions:

110 (A) The fee shall be approved by the commission, council  
111 or both, as appropriate, and either the students below the senior  
112 level at the institution or the Legislature before becoming  
113 effective;

114 (B) Increases may not exceed previous state subsidies by  
115 more than ten percent;

116 (C) The fee may be used only to replace existing state funds  
117 subsidizing auxiliary services such as athletics or bookstores;

118 (D) If the fee is approved, the amount of the state subsidy  
119 shall be reduced annually by the amount of money generated  
120 for the institution by the fees. All state subsidies for the  
121 auxiliary services shall cease five years from the date the  
122 mandatory auxiliary fee is implemented;

123 (E) The commission, council or both, as appropriate, shall  
124 certify to the Legislature by the first day of October in the fiscal  
125 year following implementation of the fee, and annually  
126 thereafter, the amount of fees collected for each of the five  
127 years;

128 (4) Establish methodology, where applicable, to ensure that,  
129 within the appropriate time period under the compact, commu-  
130 nity and technical college tuition rates for community and  
131 technical college students in all independently accredited  
132 community and technical colleges will be commensurate with  
133 the tuition and fees charged by their peer institutions.

134 (k) A penalty may not be imposed by the commission or  
135 council upon any institution based upon the number of nonresi-  
136 dents who attend the institution unless the commission or  
137 council determines that admission of nonresidents to any  
138 institution or program of study within the institution is imped-  
139 ing unreasonably the ability of resident students to attend the  
140 institution or participate in the programs of the institution. The  
141 institutions shall report annually to the commission or council  
142 on the numbers of nonresidents and such other enrollment  
143 information as the commission or council may request.

144 (l) Tuition and fee increases of the governing boards, except  
145 for the governing boards of the state institutions of higher  
146 education known as Marshall University and West Virginia  
147 University, are subject to rules adopted by the commission and  
148 council jointly pursuant to this section and in accordance with  
149 the provisions of article three-a, chapter twenty-nine-a of this  
150 code.

151 (1) Subject to the provisions of subdivision (4) of this  
152 subsection, a governing board of an institution under the  
153 jurisdiction of the commission may propose tuition and fee  
154 increases of up to nine and one-half percent for undergraduate  
155 resident students for any fiscal year. The nine and one-half  
156 percent total includes the amount of increase over existing  
157 tuition and fees, combined with the amount of any newly  
158 established, specialized fee which may be proposed by a  
159 governing board.

160 (2) A governing board of an institution under the jurisdic-  
161 tion of the council may propose tuition and fee increases of up  
162 to four and three quarters percent for undergraduate resident  
163 students for any fiscal year. The four and three-quarters percent  
164 total includes the amount of increase over existing tuition and  
165 fees, combined with the amount of any newly established,  
166 specialized fee which may be proposed by a governing board.

167 (3) The commission or council, as appropriate, shall  
168 examine individually each request from a governing board for  
169 an increase.

170 (4) The governing boards of Marshall University and West  
171 Virginia University, as these provisions relate to the state  
172 institutions of higher education known as Marshall University  
173 and West Virginia University, each may annually:

174 (A) Increase tuition and fees for undergraduate resident  
175 students to the maximum allowed by this section without  
176 seeking approval from the commission; and

177 (B) Set tuition and fee rates for post-baccalaureate resident  
178 students and for all nonresident students, including establishing  
179 regional tuition and fee rates, reciprocity agreements or both.

180 (C) The provisions of this subdivision do not apply to  
181 tuition and fee rates of the administratively linked institution  
182 known as Marshall Community and Technical College, the  
183 administratively linked institution known as The Community  
184 and Technical College at West Virginia University Institute of  
185 Technology, the regional campus known as West Virginia  
186 University at Parkersburg and, until the first day of July, two  
187 thousand seven, the regional campus known as West Virginia  
188 University Institute of Technology.

189 (5) Any proposed tuition and fee increase for state institu-  
190 tions of higher education other than the state institutions of  
191 higher education known as Marshall University and West  
192 Virginia University requires the approval of the commission or  
193 council, as appropriate. In determining whether to approve or  
194 deny the governing board's request, the commission or council  
195 shall determine the progress the institution has made toward  
196 meeting the conditions outlined in this subdivision and shall  
197 make this determination the predominate factor in its decision.

198 The commission or council shall consider the degree to which  
199 each institution has met the following conditions:

200 (A) Has maximized resources available through nonresident  
201 tuition and fee charges to the satisfaction of the commission or  
202 council;

203 (B) Is consistently achieving the benchmarks established in  
204 the compact of the institution pursuant to the provisions of  
205 article one-a of this chapter;

206 (C) Is continuously pursuing the statewide goals for  
207 post-secondary education and the statewide compact established  
208 in articles one and one-a of this chapter;

209 (D) Has demonstrated to the satisfaction of the commission  
210 or council that an increase will be used to maintain high-quality  
211 programs at the institution;

212 (E) Has demonstrated to the satisfaction of the commission  
213 or council that the institution is making adequate progress  
214 toward achieving the goals for education established by the  
215 southern regional education board; and

216 (F) To the extent authorized, will increase by up to five  
217 percent the available tuition and fee waivers provided by the  
218 institution. The increased waivers may not be used for athletics.

219 (6) This section does not require equal increases among  
220 institutions or require any level of increase at an institution.

221 (7) The commission and council shall report to the Legisla-  
222 tive Oversight Commission on Education Accountability  
223 regarding the basis for each approval or denial as determined  
224 using the criteria established in subdivision (5) of this subsec-  
225 tion.

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## CHAPTER 86

(Com. Sub. for H. B. 4240 — By Delegates Wysong, Tabb and Doyle)

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[Passed March 9, 2006; in effect from passage.]

[Approved by the Governor on April 5, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §18B-3C-13 and §18B-3C-14, all relating to higher education; changing the name of the Community and Technical College of Shepherd to Blue Ridge Community and Technical College; making findings; clarifying legislative intent related to certain institutional boards of governors; permitting institutions under a single governing board to be recognized as a single organization within West Virginia's financial systems; and clarifying certain operations of certain community and technical colleges.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto two new sections, designated §18B-3C-13 and §18B-3C-14, all to read as follows:

**ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.**

§18B-3C-13. Blue Ridge Community and Technical College.

§18B-3C-14. Operations of certain administratively linked community and technical colleges.

**§18B-3C-13. Blue Ridge Community and Technical College.**

- 1 Effective the first day of July, two thousand six, the
- 2 Community and Technical College of Shepherd is named "Blue



3 Ridge Community and Technical College". Any reference in  
4 this code to the Community and Technical College of Shepherd  
5 means Blue Ridge Community and Technical College.

**§18B-3C-14. Operations of certain administratively linked community and technical colleges.**

1 (a) The provisions of this section apply to the following  
2 governing boards created pursuant to section one, article two-a  
3 of this chapter:

4 (1) Fairmont State University Board of Governors, which  
5 is responsible for Fairmont State University and Fairmont  
6 State Community and Technical College;

7 (2) The Marshall University Board of Governors, which is  
8 responsible for Marshall University and Marshall Community  
9 and Technical College;

10 (3) The West Virginia State University Board of Gover-  
11 nors, which is responsible for West Virginia State University  
12 and West Virginia State Community and Technical College;  
13 and

14 (4) The West Virginia University Board of Governors,  
15 which is responsible for West Virginia University Institute of  
16 Technology and the Community and Technical College at  
17 West Virginia University Institute of Technology.

18 (b) *Legislative findings.* —

19 The Legislature makes the following findings related to  
20 operation of the administratively linked community and  
21 technical colleges and the relationship between them and their  
22 respective governing boards:

23 (A) The Legislature has adopted a series of legislation,  
24 beginning with Enrolled Senate Bill No. 653, passed during the

25 two thousand regular session, and continuing through Enrolled  
26 Senate Bill No. 448, passed during the two thousand four  
27 regular session, whose purpose is to strengthen the state's  
28 community and technical colleges.

29 (B) The primary goal of the Legislature in adopting such  
30 legislation is to create a thriving system of community and  
31 technical colleges that focuses on technical education,  
32 workforce training and lifelong learning for the new economy,  
33 consistent with a series of legislatively commissioned reports  
34 and the findings contained in section one, article two-b of this  
35 chapter.

36 (C) A necessary precedent to accomplishment of this goal  
37 is to change the way that leaders at all levels of education,  
38 including institutional governing boards, view community and  
39 technical colleges. Specifically, education leaders need to  
40 understand:

41 (i) That community and technical colleges are different  
42 from traditional four-year colleges in what they seek to  
43 accomplish and how they can accomplish it effectively, just as  
44 the medical schools, for example, are different from engineer-  
45 ing schools;

46 (ii) That community and technical colleges may not be  
47 viewed as add-ons or afterthoughts if the state is to compete  
48 successfully in a new economy; and

49 (iii) That community and technical college programs may  
50 not be run primarily for the financial benefit of four-year  
51 programs.

52 (D) At the same time, the Legislature recognizes that  
53 community and technical colleges may achieve administrative  
54 efficiencies if they are linked to the larger four-year institu-  
55 tions and remain under the authority of a single governing

56 board, especially when two- and four-year programs are  
57 directed from a single location.

58 (c) *Legislative intent.* —

59 (1) State and federal officials have found it difficult to  
60 ascertain the Legislature's intent as it relates to a number of  
61 operational issues, including accounting, financial aid adminis-  
62 tration, technology, historically black colleges and universities  
63 status and reporting, thus jeopardizing some of the administra-  
64 tive efficiencies that the Legislature has sought to maintain.

65 (2) Therefore, concerning roles of the institutional govern-  
66 ing boards listed in subsection (a) of this section and the  
67 operation of the community and technical colleges under their  
68 jurisdiction it is the intent of the Legislature that:

69 (A) The requirement for independent, specialized accredi-  
70 tation of community and technical colleges, contained in  
71 sections three and eight of this article, ensure that institutional  
72 governing boards do not operate community and technical  
73 colleges as add-ons or afterthoughts and that a mechanism for  
74 external evaluation is in place to ensure the integrity of this  
75 process, much as an external organization such as ABET, Inc.,  
76 reviews and accredits applied science, computing, engineering  
77 and technology programs.

78 (B) The provision contained in section twelve of this  
79 article requiring that each administratively linked institution  
80 enter into a fee-for-service agreement approved by the  
81 appropriate governing board and by the council ensure that  
82 community and technical college programs are not run for the  
83 financial benefit of four-year programs and that external  
84 evaluation of the real cost of community and technical college  
85 education is possible.

86 (C) The West Virginia State University Board of Gover-  
87 nors ensures that two- and four-year students understand the

88 long and honorable history West Virginia State University and  
89 West Virginia State Community and Technical College have  
90 enjoyed as a federally designated historically black institution  
91 and work to regain this important federal designation for the  
92 community and technical college.

93 (d) Notwithstanding any other provision of this code to the  
94 contrary and effective no later than the first day of July, two  
95 thousand six, each governing board identified in subsection (a)  
96 of this section:

97 (1) May be recognized as a single organization within the  
98 financial systems of the State of West Virginia and the entities  
99 under its jurisdiction designated as subordinate organizations,  
100 if practicable, to facilitate ease of financial processing at the  
101 institution level while ensuring that community and technical  
102 college data is readily segregable at the state level.

103 (A) Independent financial auditors shall produce a single  
104 audited financial statement for each governing board identified  
105 in subsection (a) of this section, but that financial statement  
106 shall include a breakdown of assets and liabilities and revenues  
107 and expenditures for the community and technical college.

108 (B) Independent financial auditors shall compile and  
109 present a consolidated audited financial statement to the  
110 council, separate and apart from higher education's consoli-  
111 dated financial audit, containing information concerning all  
112 community and technical colleges, whether independent or  
113 administratively linked institutions.

114 (2) Shall operate a single student financial aid office for all  
115 two- and four-year students under its jurisdiction unless the  
116 board expressly determines that another arrangement is clearly  
117 more efficient and effective. The commission shall ensure that  
118 state-level financial aid programs are administered to facilitate  
119 efficiencies at all administratively linked institutions.

120 (3) Shall use a single set of technology solutions to  
121 minimize the complexity of administrative operations for two-  
122 and four-year students unless the board expressly determines  
123 that another arrangement is clearly more efficient and effec-  
124 tive.

125 (e) In preparing statutorily mandated reports, commission  
126 and council staff generally shall segregate community and  
127 technical college data so that the Legislature and governing  
128 boards can evaluate implementation of the provisions related to  
129 community and technical colleges in this chapter. Segregation  
130 of community and technical college data from other data may  
131 not be construed in a manner that is inconsistent with the  
132 general provisions of this section.

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## CHAPTER 87

**(Com. Sub. for S. B. 18 — By Senators Bailey, Dempsey,  
Sharpe, Minard, Hunter and Love)**

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[Passed March 11, 2006; in effect July 1, 2006.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §18B-10-7 of the Code of West Virginia, 1931, as amended, relating to granting tuition waivers to the children and spouses of parole and probation officers killed in the line of duty.

*Be it enacted by the Legislature of West Virginia:*

That §18B-10-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE  
INSTITUTIONS OF HIGHER EDUCATION.**

**§18B-10-7. Tuition and fee waivers for children and spouses of  
officers and firefighters killed in the line of duty.**

1       (a) Each state institution of higher education shall permit  
2 any person to attend its undergraduate courses and classes if  
3 classroom space is available without charging the person any  
4 tuition or any fees, if:

5       (1) The person is the child or spouse of an individual who  
6 was:

7       (A) A law-enforcement officer as defined in section one,  
8 article twenty-nine, chapter thirty of this code;

9       (B) A correctional officer at a state penal institution;

10       (C) A parole officer;

11       (D) A probation officer;

12       (E) A conservation officer; or

13       (F) A registered firefighter; and

14       (2) Killed in the line of duty while:

15       (A) Employed by the state or any political subdivision of  
16 the state; or

17       (B) A member of a volunteer fire department serving a  
18 political subdivision of this state.

19       (b) The state institution of higher education may require the  
20 person to pay:

21 (1) Special fees, including any laboratory fees, if the fees  
22 are required of all other students taking a single or that particu-  
23 lar course; and

24 (2) Parking fees.

25 (c) The governing boards may promulgate rules:

26 (1) For determining the availability of classroom space;

27 (2) As it considers necessary to implement this section; and

28 (3) Regarding requirements for attendance, which may not  
29 exceed such requirements for other persons.

30 (d) The governing boards may extend to persons attending  
31 courses and classes under this section any rights, privileges or  
32 benefits extended to other students which it considers appropri-  
33 ate.

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## CHAPTER 88

**(H. B. 4603 — By Delegates Campbell and Williams)**

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[Passed March 7, 2006; in effect from passage.]

[Approved by the Governor on March 17, 2006.]

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AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, all relating to authorizing rules for the Higher Education Policy Commission and the West Virginia Council for Community and Technical College Education regarding authorization of degree granting institutions.

*Be it enacted by the Legislature of West Virginia:*

That §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 17. LEGISLATIVE RULES.**

§18B-17-2. Authorizing rules of Higher Education Policy Commission.

§18B-17-3. Authorizing rule of the council for community and technical college education.

**§18B-17-2. Authorizing rules of Higher Education Policy Commission.**

1 (a) The legislative rule filed in the State Register on the  
2 fifteenth day of October, two thousand four, relating to the  
3 Higher Education Policy Commission (Underwood-Smith  
4 Teacher Scholarship Program rule) is authorized.

5 (b) The legislative rule filed in the State Register on the  
6 fifteenth day of October, two thousand four, relating to the  
7 Higher Education Policy Commission (West Virginia Engineer-  
8 ing, Science and Technology Scholarship Program rule) is  
9 authorized.

10 (c) The legislative rule filed in the State Register on the  
11 fifteenth day of October, two thousand four, relating to the  
12 Higher Education Policy Commission (Medical Education Fee  
13 and Medical Student Loan Program rule) is authorized.

14 (d) The legislative rule filed in the State Register on the  
15 twenty-seventh day of October, two thousand five, relating to  
16 the Higher Education Policy Commission (Authorization of  
17 Degree Granting Institutions) is authorized.

**§18B-17-3. Authorizing rule of the council for community and technical college education.**

1 (a) The legislative rule filed in the State Register on the  
2 twenty-ninth day of September, two thousand four, relating to



3 the West Virginia Council for Community and Technical  
4 College Education (performance indicators rule) is authorized.

5 (b) The legislative rule filed in the State Register on the  
6 thirteenth day of October, two thousand five, relating to the  
7 West Virginia Council for Community and Technical College  
8 Education (Authorization of Degree Granting Institutions) is  
9 authorized.

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## CHAPTER 89

**(S. B. 788 — By Senators Oliverio, Kessler, Dempsey, Fanning,  
Foster, Hunter, Jenkins, Minard, White, Barnes, Caruth and Weeks)**

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[Passed March 10, 2006; in effect from passage.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to amend and reenact §3-1-46 of the Code of West Virginia, 1931, as amended; to amend and reenact §3-2-5 and §3-2-10 of said code; to amend and reenact §3-3-8 of said code; to amend and reenact §3-5-23 of said code; and to amend and reenact §3-8-10 of said code, all relating generally to elections; establishing training requirements for county clerks; making amendments to conform to requirements of the Help America Vote Act; clarifying requirements for voter registration drives; providing penalties for voter registration violations; clarifying use of excess campaign contribution funds; clarifying processing of absentee ballots; and making technical corrections.

*Be it enacted by the Legislature of West Virginia:*

That §3-1-46 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §3-2-5 and §3-2-10 of said code be

amended and reenacted; that §3-3-8 of said code be amended and reenacted; that §3-5-23 of said code be amended and reenacted; and that §3-8-10 of said code be amended and reenacted, all to read as follows:

**Article**

- 1. General Provisions and Definitions.**
- 2. Registration of Voters.**
- 3. Voting by Absentees.**
- 5. Primary Elections and Nominating Procedures.**
- 8. Regulation and Control of Elections**

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§3-1-46. Training program for election officials.**

1           (a) The Secretary of State in conjunction with the State  
2 Election Commission shall produce one or more audio-visual  
3 programs which explain and illustrate the procedures for  
4 conducting elections, the duties of the various election officials  
5 and the methods of voting on each voting system in use in the  
6 state.

7           (b) One copy of the appropriate training program shall be  
8 distributed to and kept and preserved by the clerk of the county  
9 commission of each county. The program shall be shown to all  
10 election officials before each election as part of their instruc-  
11 tional program. The clerk of the county commission shall  
12 conduct an adequate number of sessions to train all election  
13 officials shall schedule the regular sessions not less than seven  
14 days before each election and shall notify all election officials  
15 of the exact date, time and place such instructional program will  
16 be conducted.

17           (c) No person may serve as an election commissioner or  
18 poll clerk in any election unless he or she has attended the  
19 instructional program required by subsection (a) of this section.  
20 If an election official fails to attend the instructional program,

21 another person shall be appointed in the election official's place  
22 in the same manner as persons are appointed under the provi-  
23 sions of section thirty of this article to replace election officials  
24 refusing to serve and the clerk of the county commission shall  
25 conduct an additional instructional program within seven days  
26 prior to the election for any such person so appointed: *Pro-*  
27 *vided*, That in cases of emergency when no person who has  
28 attended the instructional program for that election is available  
29 to fill a vacancy on the election board, the clerk of the county  
30 commission may appoint such person as a commissioner or poll  
31 clerk notwithstanding that such person has not received the  
32 instruction.

33 (d) The requirements of this section apply to all elections  
34 conducted by municipalities, except that the recorder or  
35 municipal clerk responsible for the election shall perform the  
36 duties of the clerk of the county commission defined in this  
37 section. The clerk of the county commission may assist the  
38 recorder or municipal clerk in conducting the instructional  
39 program.

40 (e) When the instructional program is not being used by the  
41 clerk for instructional purposes, it shall be available to any duly  
42 organized civic, religious, educational or charitable group  
43 without charge, except that the clerk shall require a cash deposit  
44 on such use in an amount to be determined by the Secretary of  
45 State.

46 (f) The Secretary of State shall cause the instructional  
47 program to be amended, edited or reproduced whenever he or  
48 she is of the opinion such revision is necessary in light of  
49 changes in the election laws of this state.

50 (g) No elected official may appear in such program either  
51 in person or by visual image or by name.

52 (h) Every county clerk shall attend a training, to be  
53 conducted by the Secretary of State every two years, for the

- 54 purpose of reviewing the election official training and receiving  
55 updates on election law matters.

**ARTICLE 2. REGISTRATION OF VOTERS.**

§3-2-5. Forms for application for registration; information required and requested;  
types of application forms; notices.

§3-2-10. Application for registration by mail.

**§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 applicant's driver's license number or if the  
36 applicant does not have a driver's license, then the last four  
37 digits of the applicant's social security number; and

38 (5) Any other instructions or information essential to  
39 complete the application process.

40 (c) Each application form shall require that the following be  
41 provided by the applicant, under oath, and any application  
42 which does not contain each of the following shall be consid-  
43 ered incomplete:

44 (1) The applicant's legal name, including the first name,  
45 middle or maiden name, if any, and last name;

46 (2) The month, day and year of the applicant's birth;

47 (3) The applicant's residence address, including the number  
48 and street or route and city and county of residence except:

49 (A) In the case of a person eligible to register under the  
50 provisions of 42 U. S. C. §1973ff, *et seq.*, the Uniformed and  
51 Overseas Citizens Absentee Voting Act, the address at which he  
52 or she last resided before leaving the United States or entering

53 the uniformed services, or if a dependent child of such a person,  
54 the address at which his or her parent last resided; and

55 (B) In the case of a homeless person having no fixed  
56 residence address who nevertheless resides and remains  
57 regularly within the county, the address of a shelter, assistance  
58 center or family member with whom he or she has regular  
59 contact or other specific location approved by the clerk of the  
60 county commission for the purposes of establishing a voting  
61 residence; and

62 (4) The applicant's signature, under penalty of perjury, as  
63 provided in section thirty-six of this article to the attestation of  
64 eligibility to register to vote and to the truth of the information  
65 given.

66 (d) The applicant shall be requested to provide the follow-  
67 ing information, but no application shall be rejected for lack of  
68 this information:

69 (1) An indication whether the application is for a new  
70 registration, change of address, change of name or change of  
71 party affiliation;

72 (2) The applicant's choice of political party affiliation, if  
73 any, or an indication of no affiliation: *Provided*, That any  
74 applicant who does not enter any choice of political party  
75 affiliation shall be listed as having no party affiliation on the  
76 voting record;

77 (3) The applicant's residence mailing address if different  
78 than the residence street address;

79 (4) The last four digits of the applicant's social security  
80 number;

81 (5) The applicant's telephone number;

82       (6) The address at which the applicant was last registered  
83 to vote, if any, for the purpose of canceling or transferring the  
84 previous registration; and

85       (7) The applicant's gender.

86       (e) The Secretary of State shall prescribe the printing  
87 specifications of each type of voter registration application and  
88 the voter registration application portion of any form which is  
89 part of a combined agency form.

90       (f) Application forms prescribed in this section may refer  
91 to various public officials by title or official position, but in no  
92 case may the actual name of any officeholder be printed on the  
93 voter registration application or on any portion of a combined  
94 application form.

95       (g) No later than the first day of July of each odd-numbered  
96 year, the Secretary of State shall submit the specifications of the  
97 voter registration application by mail for statewide bidding for  
98 a contract period beginning the first day of September of each  
99 odd-numbered year and continuing for two calendar years. The  
100 successful bidder shall produce and supply the required mail  
101 voter registration forms at the contract price to all purchasers of  
102 the form for the period of the contract.

### **§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 two hundred or more  
11 forms with a description of the dates and locations in which the  
12 proposed registration drive is to be conducted. The Secretary of  
13 State shall also require the entity or organization requesting the  
14 forms to provide contact information on a form prescribed by  
15 the Secretary of State. The Secretary of State may limit the  
16 distribution to a reasonable amount per group.

17 (c) The clerk of the county commission shall provide up to  
18 four mail registration forms to any resident of the county upon  
19 request. To the extent possible with funds allocated annually for  
20 the purpose, the clerk of the county commission shall make  
21 state mail registration forms available for distribution through  
22 organized voter registration programs within the county. The  
23 clerk of the county commission shall make a record of all  
24 requests by entities or organizations for ten or more forms with  
25 a description of the dates and locations in which the proposed  
26 registration drive is to be conducted. The clerk may limit the  
27 distribution to a reasonable amount per group.

28 (d) The applicant shall provide all required information and,  
29 only after completing the information, sign the prescribed  
30 applicant's oath under penalty of perjury as provided in section  
31 thirty-six of this article. No person may alter or add any entry  
32 or make any mark which would alter any material information  
33 on the voter registration application after the applicant has  
34 signed the oath: *Provided*, That the clerk of the county commis-  
35 sion may correct any entry upon the request of the applicant  
36 provided the request is properly documented and the correction  
37 is dated and initialed by the clerk.

38 (e) Completed applications shall be mailed or delivered to  
39 the clerk of the county commission of the county in which the  
40 voter resides. If a clerk receives a completed mail application  
41 form from a voter whose residence address is located in another



42 county, the clerk shall forward that application within three  
43 days to the clerk of the county commission of the county of the  
44 applicant's residence.

45 (f) Upon receipt of the application for registration by the  
46 appropriate clerk of the county commission, the clerk shall:

47 (1) Attempt to establish whether the residence address  
48 given is within the boundaries of an incorporated municipality  
49 and, if so, make the proper entry required for municipal  
50 residents to be properly identified for municipal voter registra-  
51 tion purposes; and

52 (2) Immediately begin the verification process required by  
53 the provisions of section sixteen of this article.

54 (g) Any person who registers by mail pursuant to this  
55 section and who has not previously voted in an election in the  
56 state shall be required to present the following forms of  
57 identification to the Secretary of State or clerk of the county  
58 commission:

59 (1) In the case of an individual who votes in person, a  
60 current and valid photo identification; or a copy of a current  
61 utility bill, bank statement, government check, paycheck or  
62 other government document that shows the name and address  
63 of the voter;

64 (2) In the case of an individual who votes by mail, a copy  
65 of a current and valid photo identification or a copy of a current  
66 utility bill, bank statement, government check, paycheck or  
67 other government document that shows the name and address  
68 of the voter, submitted with the ballot.

69 (h) An individual who desires to vote in person or by mail,  
70 but who does not meet the requirements of subsection (g) of  
71 this section, may cast a provisional ballot.

72 (i) Subsection (g) of this section does not apply in the case  
73 of a person:

74 (1) Who registers to vote by mail under 42 U. S. C.  
75 §1973gg-4, *et seq.*, and submits as part of his or her registration  
76 either a copy of a current and valid photo identification or a  
77 copy of a current utility bill, bank statement, government check,  
78 paycheck or government document that shows the name and  
79 address of the voter;

80 (2) (A) Who registers to vote by mail under 42 U. S. C.  
81 §1973gg-4, *et seq.*, and submits with his or her registration  
82 either a driver's license number or at least the last four digits of  
83 the individual's social security number; and (B) with respect to  
84 whom the Secretary of State or clerk of the county commission  
85 matches the information submitted under paragraph (A) of this  
86 subdivision with an existing state identification record bearing  
87 the same number, name and date of birth as provided in the  
88 registration; or

89 (3) Who is: (A) Entitled to vote by absentee ballot under 42  
90 U. S. C. §1973ff-1, *et seq.*, the Uniformed and Overseas  
91 Citizens Absentee Voting Act; (B) provided the right to vote  
92 otherwise than in person under 42 U. S. C.  
93 §1973ee-1(b)(2)(B)(ii); or 25 (iii), section 3(b)(2)(B)(ii) of the  
94 Voting Accessibility for the Elderly and Handicapped Act; (C)  
95 entitled to vote otherwise than in person under any other federal  
96 law: *Provided*, That any person who has applied for an absentee  
97 ballot pursuant to the provisions of subdivision (1), subsection  
98 (b), section one, article three of this chapter; paragraph (B),  
99 subdivision (2) of said subsection; subdivision (3) of said  
100 subsection; or subsection (c) of said section may not have his or  
101 her ballot in that election challenged for failure to appear in  
102 person or for failure to present identification.

103 (j) Any person who submits a state mail voter registration  
104 application to the clerk of the county commission in the county

105 in which he or she is currently registered for the purpose of  
106 entering a change of address within the county, making a  
107 change of party affiliation or recording a change of legal name  
108 shall not be required to make his or her first vote in person or  
109 to present identification or proof of age.

110 (k) On and after the first day of July, two thousand six, any  
111 person who agrees to mail or to deliver a signed voter registra-  
112 tion application to the Secretary of State or the clerk of the  
113 county commission and who intentionally interferes with the  
114 applicant's effort to register either by destroying the application  
115 or by failing to mail or to deliver the application in a timely  
116 manner is guilty of a misdemeanor and, upon conviction  
117 thereof, shall be fined not more than one thousand dollars, or  
118 confined in a jail for not more than one year, or both. For  
119 purposes of this subsection, the mailing or delivery of an  
120 application is timely if it is mailed or delivered within fifteen  
121 days after the applicant signs the application or in accordance  
122 with the provisions of article two, chapter three of this code for  
123 processing before the closing of the registration records for the  
124 pending election, whichever comes first.

125 (l) On or after the first day of July, two thousand six, any  
126 person who intentionally solicits multiple registrations from any  
127 one person or who intentionally falsifies a registration applica-  
128 tion is guilty of a misdemeanor and, upon conviction thereof,  
129 shall be fined not more than one thousand dollars, or confined  
130 in jail for not more than one year, or both.

### **ARTICLE 3. VOTING BY ABSENTEES.**

#### **§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 counties using optical scan 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; and

23 (2) The absentee ballots shall be counted in accordance  
24 with section twenty-seven, article four-a of this chapter.

25 (c) In counties using direct recording elections systems, the  
26 absentee ballots shall be counted as follows:

27 (1) On election day, the ballot boxes containing the paper  
28 absentee ballots shall be delivered to the central counting center  
29 and opened in the presence of the clerk of the county commis-  
30 sion and two representatives of opposite political parties; and

31 (2) Each absentee ballot shall be recorded on a direct  
32 recording voting terminal designated by the clerk of the county

33 commission as the terminal for absentee tabulations, after being  
34 read aloud by a separate team of two representatives of opposite  
35 political parties; and

36 (3) The ballot shall be verified by both teams as being  
37 accurately printed on the paper receipt before the ballot is  
38 tabulated; and

39 (4) The appropriate election officials shall follow the  
40 procedures set out in subsections (a), (b), (d) and (e), section  
41 twenty-seven, article four-a of this chapter and subdivisions (3),  
42 (4), (5) and (6), subsection (c) of said section.

43 (d) The provisional ballots shall be deposited in a provi-  
44 sional ballot envelope and delivered to the board of canvassers.

45 (e) Any election official who determines a person has voted  
46 an absent voter's ballot and has also voted at the polls on  
47 election day must report the fact to the prosecuting attorney of  
48 the county in which the votes were cast.

#### **ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.**

##### **§3-5-23. Certificate nominations; requirements and control; penalties.**

1 (a) Groups of citizens having no party organization may  
2 nominate candidates for public office otherwise than by  
3 conventions or primary elections. In the case, the candidate or  
4 candidates, jointly or severally, shall file a declaration with the  
5 Secretary of State if the office is to be filled by the voters of  
6 more than one county, or with the clerk of the county commis-  
7 sion of the county if the office is to be filled by the voters of  
8 one county or political subdivision thereof; the declaration to be  
9 filed at least thirty days prior to the time of filing the certificate  
10 provided by section twenty-four of this article: *Provided*, That  
11 the deadline for filing the certificate for persons seeking ballot

12 access as a candidate for the office of President or Vice  
 13 President shall be filed not later than the first day of August  
 14 preceding the general election. At the time of filing of the  
 15 declaration each candidate shall pay the filing fee required by  
 16 law, and if the declaration is not so filed or the filing fee so  
 17 paid, the certificate shall not be received by the Secretary of  
 18 State, or clerk of the county commission, as the case may be.

19 (b) The person or persons soliciting or canvassing signa-  
 20 tures of duly qualified voters on the certificate or certificates,  
 21 may solicit or canvass duly registered voters residing within the  
 22 county, district or other political division represented by the  
 23 office sought, but must first obtain from the clerk of the county  
 24 commission credentials which must be exhibited to each voter  
 25 canvassed or solicited, which credentials may be in the follow-  
 26 ing form or effect:

27 State of West Virginia, County of ....., ss:

28 This certifies that the holder of this credential is hereby  
 29 authorized to solicit and canvass duly registered voters residing  
 30 in ..... (here place the county, district or other political  
 31 division represented by the office sought) to sign a certificate  
 32 purporting to nominate ..... (here place name of  
 33 candidate heading list on certificate) for the office of  
 34 ..... and others, at the general election to be held on  
 35 ....., 20.....

36 Given under my hand and the seal of my office this  
 37 ..... day of ....., 20.....

38 .....

39 Clerk, County Commission of .....County.

40       The clerk of each county commission, upon proper applica-  
41       tion made as herein provided, shall issue such credentials and  
42       shall keep a record thereof.

43       (c) The certificate shall be personally signed by duly  
44       registered voters, in their own proper handwriting or by their  
45       marks duly witnessed, who must be residents within the county,  
46       district or other political division represented by the office  
47       sought wherein the canvass or solicitation is made by the person  
48       or persons duly authorized. The signatures need not all be on  
49       one certificate. The number of signatures shall be equal to not  
50       less than two percent of the entire vote cast at the last preceding  
51       general election for the office in the state, district, county or  
52       other political division for which the nomination is to be made,  
53       but in no event shall the number be less than twenty-five. The  
54       number of signatures shall be equal to not less than two percent  
55       of the entire vote cast at the last preceding general election for  
56       any statewide, congressional or presidential candidate, but in no  
57       event shall the number be less than twenty-five. Where two or  
58       more nominations may be made for the same office, the total of  
59       the votes cast at the last preceding general election for the  
60       candidates receiving the highest number of votes on each ticket  
61       for the office shall constitute the entire vote. No signature on a  
62       certificate shall be counted unless it be that of a duly registered  
63       voter of the county, district or other political division repre-  
64       sented by the office sought wherein the certificate was pre-  
65       sented.

66       (d) The certificates shall state the name and residence of  
67       each of the candidates; that he or she is legally qualified to hold  
68       the office; that the subscribers are legally qualified and duly  
69       registered as voters and desire to vote for the candidates; and  
70       may designate, by not more than five words, a brief name of the  
71       party which the candidates represent and may adopt a device or  
72       emblem to be printed on the official ballot. All candidates  
73       nominated by the signing of the certificates shall have their

74 names placed on the official ballot as candidates, as if otherwise  
75 nominated under the provisions of this chapter.

76 The Secretary of State shall prescribe the form and content  
77 of the nomination certificates to be used for soliciting signa-  
78 tures.

79 Offices to be filled by the voters of more than one county  
80 shall use separate petition forms for the signatures of qualified  
81 voters for each county.

82 (e) The Secretary of State, or the clerk of the county  
83 commission, as the case may be, may investigate the validity of  
84 the certificates and the signatures thereon. If, upon investiga-  
85 tion, there is doubt as to the legitimacy and the validity of  
86 certificate, the Secretary of State may ask the Attorney General  
87 of the state, or the clerk of the county commission may ask the  
88 prosecuting attorney of the county, to institute a quo warranto  
89 proceeding against the nominee by certificate to determine his  
90 or her right to the nomination to public office and upon request  
91 being made, the Attorney General or prosecuting attorney shall  
92 institute the quo warranto proceeding. The clerk of the county  
93 commission shall, at the request of the Secretary of State or the  
94 clerk of the circuit court, compare the information from any  
95 certificate to the county voter registration records in order to  
96 assist in determining the validity of any certificates.

97 (f) In addition to penalties prescribed elsewhere for  
98 violation of this chapter, any person violating the provisions of  
99 this section is guilty of a misdemeanor and, upon conviction,  
100 shall be fined not more than one thousand dollars, or confined  
101 in jail for not more than one year, or both, in the discretion of  
102 the court: *Provided*, That no criminal penalty may be imposed  
103 upon anyone who signs a nomination certificate and votes in the  
104 primary election held after the date the certificate was signed.



**ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.****§3-8-10. Use of certain contributions.**

1 (a) Notwithstanding any provision of this code to the  
2 contrary, amounts received by a candidate as contributions that  
3 are in excess of any amount necessary to defray his or her  
4 expenditures may be:

5 (1) Used by the candidate to defray any usual and custom-  
6 ary expenses incurred in connection with his or her duties as a  
7 holder of public office; and

8 (2) Contributed by the candidate, after the general election,  
9 to:

10 (A) Any charitable organization or subsequent campaign by  
11 the same candidate, without limitation;

12 (B) Any national committee in accordance with federal  
13 requirements;

14 (C) Any state party executive committee or state party  
15 legislative caucus committee, in an amount not to exceed  
16 fifteen thousand dollars in a calendar year; or

17 (D) Any local committee of any political party or any other  
18 candidate for public office, in accordance with the existing  
19 limitations on contributions.

20 (b) The State Election Commission shall promulgate  
21 emergency and legislative rules, in accordance with the  
22 provisions of chapter twenty-nine-a of this code, to establish  
23 guidelines for the administration of this section.

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## CHAPTER 90

**(Com. Sub. for H. B. 4489— By Delegates Morgan,  
Schadler, Ellem, Amores and Armstead)**

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[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2006.]

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AN ACT to amend and reenact §3-4A-13 and §3-4A-26 of the Code of West Virginia, 1931, as amended, all relating to the testing of electronic voting machines used for early voting in order to allow their use on election day.

*Be it enacted by the Legislature of West Virginia:*

That §3-4A-13 and §3-4A-26 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

§3-4A-13. Inspection of ballots and vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote recording devices; receipt of election materials by ballot commissioners.

§3-4A-26. Test of automatic tabulating equipment.

**§3-4A-13. Inspection of ballots and vote recording devices; duties of county commission, ballot commissioners and election commissioners; records relating to ballots and vote recording devices; receipt of election materials by ballot commissioners.**

- 1       When the clerk of the county commission has completed
- 2       the preparation of the ballots and vote recording devices as

3 provided in sections eleven, eleven-a and twelve of this article  
4 and as provided in section twenty-one, article one of this  
5 chapter, and not later than seven days before the day of the  
6 election, he or she shall notify the members of the county  
7 commission and the ballot commissioners that the ballots and  
8 devices, where applicable, are ready for use. Thereupon the  
9 members of the county commission and the ballot commission-  
10 ers shall convene at the office of the clerk or at such other place  
11 wherein the vote recording devices, where applicable, and  
12 ballots are stored, not later than five days before the day of the  
13 election, and shall inspect the devices and the ballots to  
14 determine whether the requirements of this article have been  
15 met. Notice of the place and time of such inspection shall be  
16 published, no less than three days prior thereto, as a Class I-0  
17 legal advertisement in compliance with the provisions of article  
18 three, chapter fifty-nine of this code, and the publication area  
19 for the publication shall be the county involved. Any candidate  
20 and one representative of each political party on the ballot may  
21 be present during such examination. If the devices, where  
22 applicable, and ballots are found to be in proper order, the  
23 members of the county commission and the ballot commission-  
24 ers shall, where applicable, endorse their approval in the book  
25 in which the clerk entered the numbers of the devices opposite  
26 the numbers of the precincts. The vote recording devices and  
27 the ballots shall then be secured in double lock rooms. The  
28 clerk and the president or president pro tempore of the county  
29 commission shall each have a key. The rooms shall be unlocked  
30 only in their presence and only for the removal of the devices,  
31 where applicable, and the ballots for transportation to the polls.  
32 Upon such removal of the devices and ballots, the clerk and  
33 president or president pro tempore of the county commission  
34 shall certify in writing signed by them that the devices, where  
35 applicable, and packages of ballots were found to be sealed  
36 when removed for transportation to the polls.

37       Vote recording devices used during the early voting period  
38 may be used on election day if retested in accordance with all  
39 the provisions of this section, including public notice between  
40 the close of early voting and prior to precinct placement for  
41 election day. Vote recording devices containing a Personal  
42 Electronic Ballot (PEB), a Programable Memory Chip and a  
43 printed paper trail must comply with the applicable require-  
44 ments of section twenty-six of this article.

45       Not later than one day before the election the election  
46 commissioner of each precinct who shall have been previously  
47 designated by the ballot commissioners, shall attend at the  
48 office of the clerk of the county commission to receive the  
49 necessary election records, books and supplies required by law.  
50 The election commissioners shall receive the per diem mileage  
51 rate prescribed by law for this service. The election commis-  
52 sioners shall give the ballot commissioners a sequentially  
53 numbered written receipt, on a printed form, provided by the  
54 clerk of the county commission, for such records, books and  
55 supplies. The receipt shall be prepared in duplicate. One copy  
56 of the receipt shall remain with the clerk of the county commis-  
57 sion and one copy shall be delivered to the president or  
58 president pro tempore of the county commission.

**§3-4A-26. Test of automatic tabulating equipment.**

1       (a) One week prior to the start of the count of the votes  
2 recorded on ballots or ballot cards or screens, the clerk of the  
3 county commission shall have the automatic tabulating  
4 equipment tested to ascertain that it will accurately count the  
5 votes cast for all offices and on all measures. Public notice of  
6 the time and place of the test is to be given not less than  
7 forty-eight hours nor more than two weeks prior to the test by  
8 publication of a notice as a Class I-0 legal advertisement in the  
9 county involved, in compliance with the provisions of article  
10 three, chapter fifty-nine of this code.

11 (b)(1) Vote recording devices used and tested for early  
12 voting may also be used on election day upon compliance with  
13 all of the following requirements:

14 (A) That following the close of early voting the Personal  
15 Electronic Ballot (PEB) and the Programable Memory Chip is  
16 removed and replaced with a Personal Electronic Ballot (PEB)  
17 and a Programable Memory Chip prepared for, but unused,  
18 during the current election period;

19 (B) That the printed paper trail used during the early voting  
20 period is removed and replaced with a new paper trail; and

21 (C) That the vote recording device is retested prior to the  
22 device being used on election day.

23 (2) Any Personal Electronic Ballot (PEB), Programable  
24 Memory Chip and printed paper trail removed from a vote  
25 recording device used for early voting shall be securely stored  
26 by the county clerk until such time as it is used to tally the votes  
27 on election day in accordance with section twenty-seven of this  
28 article.

29 (c)(1) A test performed pursuant to this section shall be  
30 open to representatives of the political parties, candidates, the  
31 press and the public. It is to be conducted five times by  
32 processing two separate sets of a preaudited group of ballots or  
33 ballot cards as appropriate, punched or marked as to record a  
34 predetermined number of valid votes for each candidate or each  
35 measure. It includes for each multicandidate office one or more  
36 ballot cards which have cross-over votes in order to test the  
37 ability of the automatic tabulating equipment to record those  
38 votes in accordance with the provisions of this article and  
39 applicable law, and it includes for each office one or more  
40 ballot cards which have votes in excess of the number allowed  
41 by law in order to test the ability of the automatic tabulating  
42 equipment to reject votes. If, in the process of any of the test

43 counts, any error is detected, the cause of the error is to be  
44 ascertained and corrective action promptly taken. After the  
45 completion of the corrective action, the test counts are to  
46 continue, including a retesting of those precincts previously test  
47 counted. Prior to the continuation of the testing, the county  
48 commission shall certify in writing, signed by them, the nature  
49 of the error, the cause thereof and the type of corrective action  
50 taken. The certification is to be recorded in the office of the  
51 clerk of the county commission in the miscellaneous record  
52 book. Immediately after conclusion of this completed test, a  
53 certified duplicate copy of the program deck is to be sent by  
54 certified mail to the offices of the State Election Commission,  
55 where it is to be preserved and secured for one year, and made  
56 available for comparison or analysis by order of a circuit court  
57 or the Supreme Court of Appeals.

58 (2) The program deck to be used in the election is to  
59 immediately be certified by the county commission to be free  
60 from error as determined by the test, is to be placed with the  
61 certification in a sealed container and kept under individual  
62 multiple locks with individual keys for each lock. The number  
63 of locks and keys are the same as the number of county  
64 commissioners together with the county clerk, with each  
65 commissioner and the county clerk having a single key in his or  
66 her possession. The sealed container is to be opened to conduct  
67 the test required to be conducted immediately before the start  
68 of the official count.

69 (3) The test is to be repeated immediately before the start  
70 of the official count. The test is to also be conducted at the  
71 conclusion of the official count before the count is approved as  
72 errorless and before the election returns are approved as  
73 official.

74 (4) All results of all of the tests are to be immediately  
75 certified by the county commission and filed in the office of the

76 clerk of the county commission and immediately recorded in  
77 the miscellaneous record book. On completion of the count, the  
78 program deck, test materials and ballot cards are to be sealed,  
79 except for purposes of the canvass as provided in section  
80 twenty-eight of this article, and retained and kept under  
81 individual multiple locks and individual keys for each lock.

82 (5) The numbers of locks and keys are the same as the  
83 number of county commissioners together with the county  
84 clerk, with each commissioner and the county clerk having a  
85 single key in his or her possession.

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## CHAPTER 91

**(Com. Sub. for H. B. 4481 — By Delegates Amores,  
Morgan, Palumbo and Schadler)**

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[Passed March 11, 2006; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §3-4A-9b of the Code of West Virginia, 1931, as amended, relating to the limited use of precinct ballot-scanning devices for a count of votes following the close of the polls on election night.

*Be it enacted by the Legislature of West Virginia:*

That §3-4A-9b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.**

**§3-4A-9b. Authorization for precinct ballot-scanning device; minimum requirements.**

1 (a) For purposes of this section, “precinct ballot-scanning  
2 device” means a device used by the voter at the precinct on  
3 election day or during early voting for the purpose of scanning  
4 the voter’s ballot after the ballot has been voted but prior to  
5 depositing the ballot into the ballot box.

6 (b) The precinct ballot-scanning device may be used for the  
7 purpose of scanning optically readable ballots cast in all  
8 primary, general and special elections.

9 (c) The precinct ballot-scanning device, firmware and  
10 programming software must be certified by an independent  
11 testing authority, according to current federal standards and be  
12 approved by the State Election Commission. No election  
13 official may enter into any contract to purchase, rent, lease or  
14 otherwise acquire any precinct ballot-scanning device, firmware  
15 or software not approved by the State Election Commission.

16 (d) The precinct ballot-scanning device shall additionally:

17 (1) Alert the voter if the voter has made more ballot  
18 selections than the law allows for an individual office or ballot  
19 issue;

20 (2) Alert the voter if the voter has made fewer ballot  
21 selections than the law allows for an individual office or ballot  
22 issue; and

23 (3) Allow voters an opportunity to change ballot selections,  
24 or correct errors, including the opportunity to correct the error  
25 through the issuance of a replacement ballot if the voter was  
26 otherwise unable to change the ballot or correct the error.



27 (e) The precinct ballot-scanning device may be used for  
28 tabulating election results only under the following conditions:

29 (1) The county has at least one precinct ballot-scanning  
30 device in each precinct;

31 (2) No print out or tabulation of results is done at the  
32 precinct;

33 (3) The “tabulation memory device” may be removed from  
34 the ballot-scanning device only after the polls close and the  
35 votes may only be counted at the central counting center on the  
36 night of the election; and

37 (4) All voters at the precinct are required to use the ballot  
38 scanning device as a condition of completing their vote.

39 (f) If the optical scan ballots from each of the precincts are  
40 counted at the central counting center on election night in  
41 accordance with section twenty-seven of this article, and the  
42 results from that count are the results finally published on  
43 election night, then any county meeting each of the require-  
44 ments in paragraphs (1) through (4) of subsection (e), may turn  
45 off the over vote switch on the central counting device since  
46 every ballot will have been evaluated for over votes by the  
47 precinct scanning device.

48 (g) The Secretary of State is hereby directed to propose  
49 rules and emergency rules for legislative approval in accor-  
50 dance with the provisions of article three, chapter twenty-nine-a  
51 of this code in accordance with the provisions of this section.

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## CHAPTER 92

(H. B. 4721 — By Delegates Palumbo, Amores and Walters)

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[Passed March 10, 2006; in effect from passage.]

[Approved by the Governor on March 28, 2006.]

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AN ACT to amend and reenact §3-4A-19 of the Code of West Virginia, 1931, as amended, relating to the authorization of special messengers appointed by the County Clerk to deliver the ballot box to the central county center.

*Be it enacted by the Legislature of West Virginia:*

That §3-4A-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 4A. ELECTRONIC VOTING SYSTEMS.

#### § 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  
109 thereupon is to be sealed with a paper seal signed by the  
110 election commissioners to ensure that no additional ballots may  
111 be deposited or removed from the ballot box. Two election  
112 commissioners of different registered party affiliations or two

113 special messengers of different registered party affiliations  
114 appointed by the clerk of the county commission, shall forth-  
115 with deliver the ballot box or container to the clerk of the  
116 county commission at the central counting center and receive a  
117 signed numbered receipt therefor. The receipt must carefully set  
118 forth in detail any and all irregularities pertaining to the ballot  
119 boxes or containers and noted by the precinct election officers.

120 The receipt is to be prepared in duplicate, a copy of which  
121 remains with the clerk of the county commission who shall  
122 have any and all irregularities noted. The time of their departure  
123 from the polling place is to be noted on the two remaining  
124 copies of the report, which are to be immediately mailed to the  
125 clerk of the county commission.

126 (k) The pollbooks, register of voters, unused ballots, spoiled  
127 ballots and other records and supplies are to be delivered to the  
128 clerk of the county commission, all in conformity with the  
129 provisions of this section.

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## CHAPTER 93

**(S. B. 632 — By Senators Kessler, Dempsey, Hunter,  
Caruth, Deem, Lanham, McKenzie and Weeks)**

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[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 5, 2006.]

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AN ACT to amend and reenact §3-8-1a, §3-8-2b and §3-8-8 of the Code of West Virginia, 1931, as amended, all relating generally to electioneering communications; definitions; excluding candidates for federal office from requirement to disclose electioneering communications; and clarifying effect of election-

eer ing communications provisions on provision regarding corporate contributions.

*Be it enacted by the Legislature of West Virginia:*

That §3-8-1a, §3-8-2b and §3-8-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.**

§3-8-1a. Definitions.

§3-8-2b. Disclosure of electioneering communications.

§3-8-8. Corporation contributions forbidden; exceptions; penalties; promulgation of rules; additional powers of State Election Commission.

**§3-8-1a. Definitions.**

1 As used in this article, the following terms have the  
2 following definitions:

3 (1) “Ballot issue” means a constitutional amendment,  
4 special levy, bond issue, local option referendum, municipal  
5 charter or revision, an increase or decrease of corporate limits  
6 or any other question that is placed before the voters for a  
7 binding decision.

8 (2) “Broadcast, cable, or satellite communication” means  
9 a communication that is publicly distributed by a television  
10 station, radio station, cable television system or satellite system.

11 (3) “Candidate” means an individual who:

12 (A) Has filed a certificate of announcement under section  
13 seven, article five of this chapter or a municipal charter;

14 (B) Has filed a declaration of candidacy under section  
15 twenty-three, article five of this chapter;

16 (C) Has been named to fill a vacancy on a ballot; or

17 (D) Has declared a write-in candidacy or otherwise publicly  
18 declared his or her intention to seek nomination or election for  
19 any state, district, county or municipal office or party office to  
20 be filled at any primary, general or special election.

21 (4) “Candidate’s committee” means a political committee  
22 established with the approval of or in cooperation with a  
23 candidate or a prospective candidate to explore the possibilities  
24 of seeking a particular office or to support or aid his or her  
25 nomination or election to an office in an election cycle. If a  
26 candidate directs or influences the activities of more than one  
27 active committee in a current campaign, those committees shall  
28 be considered one committee for the purpose of contribution  
29 limits.

30 (5) “Clearly identified” means that the name, nickname,  
31 photograph, drawing or other depiction of the candidate appears  
32 or the identity of the candidate is otherwise apparent through an  
33 unambiguous reference, such as “the Governor”, “your Senator”  
34 or “the incumbent”, or through an unambiguous reference to his  
35 or her status as a candidate, such as “the Democratic candidate  
36 for Governor” or “the Republican candidate for Supreme Court  
37 of Appeals”.

38 (6) “Contribution” means a gift subscription, assessment,  
39 payment for services, dues, advance, donation, pledge, contract,  
40 agreement, forbearance or promise of money or other tangible  
41 thing of value, whether conditional or legally enforceable, or a  
42 transfer of money or other tangible thing of value to a person,  
43 made for the purpose of influencing the nomination, election or  
44 defeat of a candidate. An offer or tender of a contribution is not  
45 a contribution if expressly and unconditionally rejected or  
46 returned. A contribution does not include volunteer personal  
47 services provided without compensation.

48 (7) “Direct costs of purchasing, producing or disseminating  
49 electioneering communications” means:



50 (A) Costs charged by a vendor, including, but not limited  
51 to, studio rental time, compensation of staff and employees,  
52 costs of video or audio recording media and talent, material and  
53 printing costs and postage; or

54 (B) The cost of airtime on broadcast, cable or satellite radio  
55 and television stations, the cost of disseminating printed  
56 materials, establishing a telephone bank, studio time, use of  
57 facilities and the charges for a broker to purchase airtime.

58 (8) “Disclosure date” means either of the following:

59 (A) The first date during any calendar year on which any  
60 electioneering communication is disseminated after the person  
61 paying for the communication has spent a total of five thousand  
62 dollars or more for the direct costs of purchasing, producing or  
63 disseminating electioneering communications; or

64 (B) Any other date during that calendar year after any  
65 previous disclosure date on which the person has made addi-  
66 tional expenditures totaling five thousand dollars or more for  
67 the direct costs of purchasing, producing or disseminating  
68 electioneering communications.

69 (9) “Election” means any primary, general or special  
70 election conducted under the provisions of this code or under  
71 the charter of any municipality at which the voters nominate or  
72 elect candidates for public office. For purposes of this article,  
73 each primary, general, special or local election constitutes a  
74 separate election. This definition is not intended to modify or  
75 abrogate the definition of the term “nomination” as used in this  
76 article.

77 (10) (A) “Electioneering communication” means any paid  
78 communication made by broadcast, cable or satellite signal,  
79 mass mailing, telephone bank, leaflet, pamphlet, flyer or  
80 outdoor advertising or published in any newspaper, magazine  
81 or other periodical that:

82 (i) Refers to a clearly identified candidate for Governor,  
83 Secretary of State, Attorney General, Treasurer, Auditor,  
84 Commissioner of Agriculture, Supreme Court of Appeals or the  
85 Legislature;

86 (ii) Is publicly disseminated within:

87 (a) Thirty days before a primary election at which the  
88 nomination for office sought by the candidate is to be deter-  
89 mined; or

90 (b) Sixty days before a general or special election at which  
91 the office sought by the candidate is to be filled; and

92 (iii) Is targeted to the relevant electorate.

93 (B) "Electioneering communication" does not include:

94 (i) A news story, commentary or editorial disseminated  
95 through the facilities of any broadcast, cable or satellite  
96 television or radio station, newspaper, magazine or other  
97 periodical publication not owned or controlled by a political  
98 party, political committee or candidate: *Provided*, That a news  
99 story disseminated through a medium owned or controlled by  
100 a political party, political committee or candidate is neverthe-  
101 less exempt if the news is:

102 (a) A bona fide news account communicated in a publica-  
103 tion of general circulation or through a licensed broadcasting  
104 facility; and

105 (b) Is part of a general pattern of campaign-related news  
106 that gives reasonably equal coverage to all opposing candidates  
107 in the circulation, viewing or listening area;

108 (ii) A communication that is required to be reported to the  
109 State Election Commission or the Secretary of State as an  
110 expenditure pursuant to any provision of this article, other than

111 section two-b of this article, or the rules of the State Election  
112 Commission or the Secretary of State promulgated pursuant to  
113 such provision: *Provided*, That independent expenditures  
114 required to be reported pursuant to subsection (b), section two  
115 of this article are not exempt from the reporting requirements  
116 of this section;

117 (iii) A candidate debate or forum conducted pursuant to  
118 rules adopted by the State Election Commission or the Secre-  
119 tary of State or a communication promoting that debate or  
120 forum made by or on behalf of its sponsor;

121 (iv) A communication paid for by any organization  
122 operating under Section 501(c)(3) of the Internal Revenue Code  
123 of 1986;

124 (v) A communication made while the Legislature is in  
125 session which, incidental to promoting or opposing a specific  
126 piece of legislation pending before the Legislature, urges the  
127 audience to communicate with a member or members of the  
128 Legislature concerning that piece of legislation;

129 (vi) A statement or depiction by a membership organiza-  
130 tion, in existence prior to the date on which the individual  
131 named or depicted became a candidate, made in a newsletter or  
132 other communication distributed only to bona fide members of  
133 that organization;

134 (vii) A communication made solely for the purpose of  
135 attracting public attention to a product or service offered for  
136 sale by a candidate or by a business owned or operated by a  
137 candidate which does not mention an election, the office sought  
138 by the candidate or his or her status as a candidate; or

139 (viii) A communication, such as a voter's guide, which  
140 refers to all of the candidates for one or more offices, which  
141 contains no appearance of endorsement for or opposition to the

142 nomination or election of any candidate and which is intended  
143 as nonpartisan public education focused on issues and voting  
144 history.

145 (11) “Financial agent” means any individual acting for and  
146 by himself or herself, or any two or more individuals acting  
147 together or cooperating in a financial way to aid or take part in  
148 the nomination or election of any candidate for public office, or  
149 to aid or promote the success or defeat of any political party at  
150 any election.

151 (12) “Fund-raising event” means an event such as a dinner,  
152 reception, testimonial, cocktail party, auction or similar affair  
153 through which contributions are solicited or received by such  
154 means as the purchase of a ticket, payment of an attendance fee  
155 or by the purchase of goods or services.

156 (13) “Independent expenditure” means an expenditure made  
157 by a person other than a candidate or a candidate’s committee  
158 in support of or opposition to the nomination or election of one  
159 or more clearly identified candidates and without consultation  
160 or coordination with or at the request or suggestion of the  
161 candidate whose nomination or election the expenditure  
162 supports or opposes or the candidate’s agent. Supporting or  
163 opposing the election of a clearly identified candidate includes  
164 supporting or opposing the candidates of a political party. An  
165 expenditure which does not meet the criteria for an independent  
166 expenditure is considered a contribution.

167 (14) “Mass mailing” means a mailing by United States  
168 mail, facsimile or electronic mail of more than five hundred  
169 pieces of mail matter of an identical or substantially similar  
170 nature within any thirty-day period.

171 (15) “Membership organization” means a group that grants  
172 bona fide rights and privileges, such as the right to vote, to elect  
173 officers or directors and the ability to hold office, to its

174 members and which uses a majority of its membership dues for  
175 purposes other than political purposes. “Membership organiza-  
176 tion” does not include organizations that grant membership  
177 upon receiving a contribution.

178 (16) “Name” means the full first name, middle name or  
179 initial, if any, and full legal last name of an individual and the  
180 full name of any association, corporation, committee or other  
181 organization of individuals, making the identity of any person  
182 who makes a contribution apparent by unambiguous reference.

183 (17) “Person” means an individual, partnership, committee,  
184 association and any other organization or group of individuals.

185 (18) “Political action committee” means a committee  
186 organized by one or more persons for the purpose of supporting  
187 or opposing the nomination or election of one or more candi-  
188 dates or the passage or defeat of one or more ballot issues.

189 (19) “Political party” means a political party as defined by  
190 section eight, article one, chapter three of this code or any  
191 committee established, financed, maintained or controlled by  
192 the party, including any subsidiary, branch or local unit thereof  
193 and including national or regional affiliates of the party.

194 (20) “Political purposes” means supporting or opposing the  
195 nomination, election or defeat of one or more candidates or the  
196 passage or defeat of a ballot issue, supporting the retirement of  
197 the debt of a candidate or political committee or the administra-  
198 tion or activities of an established political party or an organiza-  
199 tion which has declared itself a political party and determining  
200 the advisability of becoming a candidate under the  
201 precandidacy financing provisions of this chapter.

202 (21) “Targeted to the relevant electorate” means a commu-  
203 nication which refers to a clearly identified candidate for  
204 statewide office or the Legislature and which can be received

205 by ten thousand or more individuals in the state in the case of  
206 a candidacy for statewide office and five hundred or more  
207 individuals in the district in the case of a candidacy for the  
208 Legislature.

209 (22) "Telephone bank" means telephone calls that are  
210 targeted to the relevant electorate, other than telephone calls  
211 made by volunteer workers, regardless of whether paid profes-  
212 sionals designed the telephone bank system, developed calling  
213 instructions or trained volunteers.

214 (23) "Two-year election cycle" means the 24-month period  
215 that begins the day after a general election and ends on the day  
216 of the subsequent general election.

**§3-8-2b. Disclosure of electioneering communications.**

1 (a) Every person who has spent a total of five thousand  
2 dollars or more for the direct costs of purchasing, producing or  
3 disseminating electioneering communications during any  
4 calendar year shall, within twenty-four hours of each disclosure  
5 date, file with the Secretary of State a statement which contains:

6 (1) The name of the person making the expenditure, the  
7 name of any person sharing or exercising direction or control  
8 over the activities of the person making the expenditure and the  
9 name of the custodian of the books and accounts of the person  
10 making the expenditure;

11 (2) If the person making the expenditure is not an individ-  
12 ual, the principal place of business of the partnership, commit-  
13 tee, association, organization or group which made the expendi-  
14 ture;

15 (3) The amount of each expenditure of more than one  
16 thousand dollars made for electioneering communications  
17 during the period covered by the statement and the name of the  
18 person to whom the expenditure was made;

19       (4) The elections to which the electioneering communica-  
20 tions pertain and the names, if known, of the candidates referred  
21 to or to be referred to therein; and

22       (5) The names and addresses of any contributors who  
23 contributed a total of more than one thousand dollars between  
24 the first day of the preceding calendar year and the disclosure  
25 date and whose contributions were used to pay for electioneer-  
26 ing communications.

27       (b) With regard to the contributors required to be listed  
28 pursuant to subdivision (5), subsection (a) of this section, the  
29 statement shall also include:

30       (1) The month, day and year that the contributions of any  
31 single contributor exceeded two hundred fifty dollars;

32       (2) If the contributor is a political action committee, the  
33 name and address the political action committee registered with  
34 the State Election Commission;

35       (3) If the contributor is an individual, the name and address  
36 of the individual, his or her occupation, the name and address  
37 of the individual's current employer, if any, or, if the individual  
38 is self-employed, the name and address of the individual's  
39 business, if any;

40       (4) A description of the contribution, if other than money;

41       (5) The value in dollars and cents of the contribution.

42       (c)(1) Any person who makes a contribution for the purpose  
43 of funding the direct costs of purchasing, producing or dissemi-  
44 nating an electioneering communication under this section  
45 shall, at the time the contribution is made, provide his or her  
46 name and address to the recipient of the contribution;

47       (2) Any individual who makes contributions totaling two  
48 hundred fifty dollars or more between the first day of the  
49 preceding calendar year and the disclosure date for the purpose  
50 of funding the direct costs of purchasing, producing or dissemi-  
51 nating electioneering communications shall, at the time the  
52 contribution is made, provide the name of his or her occupation  
53 and of his or her current employer, if any, or, if the individual  
54 is self-employed, the name of his or her business, if any, to the  
55 recipient of the contribution.

56       (d) In each electioneering communication, a statement shall  
57 appear or be presented in a clear and conspicuous manner that:

58       (1) Clearly indicates that the electioneering communication  
59 is not authorized by the candidate or the candidate's committee;  
60 and

61       (2) Clearly identifies the person making the expenditure for  
62 the electioneering communication: *Provided*, That if the  
63 electioneering communication appears on or is disseminated by  
64 broadcast, cable or satellite transmission, the statement required  
65 by this subsection must be both spoken clearly and appear in  
66 clearly readable writing at the end of the communication.

67       (e) Within five business days after receiving a disclosure of  
68 electioneering communications statement pursuant to this  
69 section, the Secretary of State shall make information in the  
70 statement available to the public through the internet.

71       (f) For the purposes of this section, a person is considered  
72 to have made an expenditure when the person has entered into  
73 a contract to make the expenditure at a future time.

74       (g) The Secretary of State is hereby directed to propose  
75 legislative rules and emergency rules implementing this section  
76 for legislative approval in accordance with the provisions of  
77 article three, chapter twenty-nine-a of this code.



78 (h) If any person, including, but not limited to, a political  
79 organization (as defined in Section 527(e)(1) of the Internal  
80 Revenue Code of 1986) makes, or contracts to make, any  
81 expenditure for electioneering communications which is  
82 coordinated with and made with the cooperation, consent or  
83 prior knowledge of a candidate, candidate's committee or agent  
84 of a candidate, the expenditure shall be treated as a contribution  
85 and expenditure by the candidate. If the expenditure is coordi-  
86 nated with and made with the cooperation or consent of a state  
87 or local political party or committee, agent or official of that  
88 party, the expenditure shall be treated as a contribution to and  
89 expenditure by the candidate's party.

90 (i) This section does not apply to candidates for federal  
91 office. This section is not intended to restrict or to expand any  
92 limitations on, obligations of or prohibitions against any  
93 candidate, committee, agent, contributor or contribution  
94 contained in any other provision of this chapter.

**§3-8-8. Corporation contributions forbidden; exceptions; penal-  
ties; promulgation of rules; additional powers of  
State Election Commission.**

1 (a) Notwithstanding any provision of section two-b of this  
2 article, no officer, agent or person acting on behalf of any  
3 corporation, whether incorporated under the laws of this or any  
4 other state or of a foreign country, may pay, give, lend or  
5 authorize to be paid, given or lent any money or other thing of  
6 value belonging to the corporation, to any candidate, financial  
7 agent, political committee or other person for the payment of  
8 any primary or other election expenses whatever. No person  
9 may solicit or receive any payment, contribution or other thing  
10 from any corporation or from any officer, agent or other person  
11 acting on behalf of the corporation.

12 (b)(1) The provisions of this section do not prohibit a  
13 corporation from:

14 (A) Directly communicating with its stockholders and  
15 executive or administrative personnel and their families on any  
16 subject: *Provided*, That the communication is not by newspa-  
17 pers of general circulation, radio, television or billboard  
18 advertising likely to reach the general public.

19 (B) Conducting nonpartisan registration and  
20 get-out-the-vote campaigns aimed at its stockholders and  
21 executive or administrative personnel and their families; and

22 (C) Soliciting, through any officer, agent or person acting  
23 on behalf of the corporation, contributions to a separate  
24 segregated fund to be used for political purposes. Any separate  
25 segregated fund is considered a political action committee for  
26 the purpose of this article and is subject to all reporting  
27 requirements applicable to political action committees.

28 (2) It is unlawful for:

29 (A) A separate segregated fund to make a primary or other  
30 election contribution or expenditure by using money or  
31 anything of value secured: (i) By physical force, job discrimina-  
32 tion or financial reprisal; (ii) by the threat of force, job discrimi-  
33 nation or financial reprisal; (iii) as a condition of employment;  
34 or (iv) in any commercial transaction;

35 (B) Any person soliciting a stockholder or executive or  
36 administrative personnel and members of their families for a  
37 contribution to a separate segregated fund to fail to inform the  
38 person solicited of the political purposes of the separate  
39 segregated fund at the time of the solicitation;

40 (C) Any person soliciting any other person for a contribu-  
41 tion to a separate segregated fund to fail to inform the person  
42 solicited at the time of the solicitation of his or her right to  
43 refuse to contribute without any reprisal;

44 (D) A corporation or a separate segregated fund established  
45 by a corporation: (i) To solicit contributions to the fund from  
46 any person other than the corporation's stockholders and their  
47 families and its executive or administrative personnel and their  
48 families; or (ii) to contribute any corporate funds;

49 (E) A corporation or a separate segregated fund established  
50 by a corporation to receive contributions to the fund from any  
51 person other than the corporation's stockholders and their  
52 immediate families and its executive or administrative person-  
53 nel and their immediate families;

54 (F) A corporation to engage in job discrimination or to  
55 discriminate in job promotion or transfer because of an  
56 employee's failure to make a contribution to a separate  
57 segregated fund;

58 (G) A separate segregated fund to make any contribution,  
59 directly or indirectly, in excess of one thousand dollars in  
60 connection with or on behalf of any campaign for nomination  
61 or election to any elective office in the state or any of its  
62 subdivisions, or in connection with or on behalf of any commit-  
63 tee or other organization or person engaged in furthering,  
64 advancing, supporting or aiding the nomination or election of  
65 any candidate for any such office;

66 (H) A corporation to pay, give or lend or to authorize  
67 payment, giving or lending of any moneys or other things of  
68 value belonging to the corporation to a separate segregated fund  
69 for any purpose. This provision does not prohibit a separate  
70 segregated fund from using the property, real or personal,  
71 facilities and equipment of a corporation solely to establish,  
72 administer and solicit contributions to the fund, subject to the  
73 rules of the State Election Commission as provided in subsec-  
74 tion (d) of this section: *Provided*, That any such corporation  
75 shall also permit any group of its employees represented by a

76 bona fide political action committee to use the real property of  
77 the corporation solely to establish, administer and solicit  
78 contributions to the fund of the political action committee,  
79 subject to the rules of the State Election Commission promul-  
80 gated in accordance with said subsection. No corporation may  
81 use its property, real or personal, facilities, equipment, materi-  
82 als or services for the purpose of influencing any voter or  
83 voters: (i) To vote for a particular candidate or in any particular  
84 manner; or (ii) to influence the result of any election.

85 (3) For the purposes of this section, the term “executive or  
86 administrative personnel” means individuals employed by a  
87 corporation who are paid on a salary rather than hourly basis  
88 and who have policy-making, managerial, professional or  
89 supervisory responsibilities.

90 (c) Any person or corporation violating any provision of  
91 this section is guilty of a misdemeanor and, on conviction, shall  
92 be fined not more than ten thousand dollars. No corporation  
93 may reimburse any person the amount of any fine imposed  
94 pursuant to this section.

95 (d) To ensure uniform administration and application of the  
96 provisions of this section and of those of the Federal Election  
97 Campaign Act Amendments of 1976 relating to corporate  
98 contributions, the State Election Commission shall propose  
99 rules for legislative approval in accordance with the provisions  
100 of article three, chapter twenty-nine-a of this code to implement  
101 the provisions of this section consistent, insofar as practicable,  
102 with the rules and regulations promulgated by the Federal  
103 Election Commission to carry out similar or identical provi-  
104 sions of 2 U. S. C. §441b.

105 (e) In addition to the powers and duties set forth in article  
106 one-a of this chapter, the State Election Commission has the  
107 following powers and duties:

108       (1) To investigate, upon complaint or on its own initiative,  
109 any alleged violations or irregularities of this article.

110       (2) To administer oaths and affirmations, issue subpoenas  
111 for the attendance of witnesses, issue subpoenas duces tecum to  
112 compel the production of books, papers, records and all other  
113 evidence necessary to any investigation.

114       (3) To involve the aid of any circuit court in the execution  
115 of its subpoena power.

116       (4) To report any alleged violations of this article to the  
117 appropriate prosecuting attorney having jurisdiction, which  
118 prosecuting attorney shall present to the grand jury such alleged  
119 violations, together with all evidence relating thereto, no later  
120 than the next term of court after receiving the report.

121       (f) The Attorney General shall, when requested, provide  
122 legal and investigative assistance to the State Election Commis-  
123 sion.

124       (g) Any investigation, either upon complaint or initiative,  
125 shall be conducted in an executive session of the State Election  
126 Commission and shall remain undisclosed except upon an  
127 indictment by a grand jury.

128       (h) Any person who discloses the fact of any complaint,  
129 investigation or report or any part thereof, or any proceedings  
130 thereon, is guilty of a misdemeanor and, upon conviction, shall  
131 be fined not less than one thousand dollars, nor more than five  
132 thousand dollars, and shall be imprisoned in jail not less than  
133 six months nor more than one year.

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## CHAPTER 94

(Com. Sub. for S. B. 489 — By Senators Chafin and Helmick)

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[Passed March 8, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2006.]

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AN ACT to amend and reenact §12-3A-6 of the Code of West Virginia, 1931, as amended, relating to the authorization of the State Treasurer to provide remittance processing and e-government services for a political subdivision upon its request.

*Be it enacted by the Legislature of West Virginia:*

That §12-3A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

#### **§12-3A-6. Receipting of electronic commerce purchases.**

1       (a) The State Treasurer may establish a system for accep-  
2       tance of credit card and other payment methods for electronic  
3       commerce purchases from spending units. Notwithstanding any  
4       other provision of this code to the contrary, each spending unit  
5       utilizing WEB commerce, electronic commerce or other method  
6       that offers products or services for sale shall utilize the State  
7       Treasurer's system for acceptance of payments.

8       (b) To facilitate electronic commerce, the State Treasurer  
9       may charge a spending unit for the banking and other expenses  
10      incurred by the Treasurer on behalf of the spending unit and for  
11      any work performed, including, without limitation, assisting in

12 the development of a website and utilization of the Treasurer's  
13 payment gateway. A special revenue account, entitled the  
14 Treasurer's Financial Electronic Commerce Fund, is created in  
15 the State Treasury to receive the amounts charged by the  
16 Treasurer. The Treasurer may expend the funds received in the  
17 Treasurer's Financial Electronic Commerce Fund only for the  
18 purposes of this article and for other purposes as determined by  
19 the Legislature.

20 (c) The State Treasurer may authorize a spending unit to  
21 assess and collect a fee to recover or pay the cost of accepting  
22 bank, charge, check, credit or debit cards from amounts  
23 collected.

24 (d) Upon written request from a political subdivision, the  
25 State Treasurer may provide services of his or her office to a  
26 political subdivision and charge for the services.

27 (e) The State Treasurer shall propose legislative rules for  
28 promulgation in accordance with the provisions of article three,  
29 chapter twenty-nine-a of this code to implement the provisions  
30 of this section.

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## CHAPTER 95

**(H. B. 4611— By Mr. Speaker, Mr. Kiss)**

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[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to amend and reenact §15-5-11 of the Code of West  
Virginia, 1931, as amended, relating to immunity from civil

liability in certain circumstances; providing immunity from civil liability for death or injury to any person or damage to any property caused by a member of a duly qualified mine rescue team designated by a mine operator performing or engaging in emergency rescue services; and providing that certain emergency programs may be established by the Division of Homeland Security and Emergency Management and not limited to the Office of Emergency Services.

*Be it enacted by the Legislature of West Virginia:*

That §15-5-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.**

**§15-5-11. Immunity and exemption; “duly qualified emergency service worker” defined.**

1       (a) All functions hereunder and all other activities relating  
2 to emergency services are hereby declared to be governmental  
3 functions. Neither the state nor any political subdivision nor any  
4 agency of the state or political subdivision nor, except in cases  
5 of willful misconduct, any duly qualified emergency service  
6 worker complying with or reasonably attempting to comply  
7 with this article or any order, rule, regulation or ordinance  
8 promulgated pursuant to this article, shall be liable for the death  
9 of or injury to any person or for damage to any property as a  
10 result of such activity. This section does not affect the right of  
11 any person to receive benefits or compensation to which he or  
12 she would otherwise be entitled under this article, chapter  
13 twenty-three of this code, any Act of Congress or any other law.

14       (b) Any requirement for a license to practice any profes-  
15 sional, mechanical or other skill does not apply to an authorized



16 emergency service worker who shall, in the course of perform-  
17 ing his or her duties, practice such skill during an emergency.

18 (c) As used in this section, “duly qualified emergency  
19 service worker” means:

20 (1) Any duly qualified full or part-time paid, volunteer or  
21 auxiliary employee of this state, or any other state, territory,  
22 possession or the District of Columbia, of the federal govern-  
23 ment, of any neighboring country or political subdivision  
24 thereof or of any agency or organization performing emergency  
25 services in this state subject to the order or control of or  
26 pursuant to the request of the state or any political subdivision  
27 thereof.

28 (2) Duly qualified instructors and properly supervised  
29 students in recognized educational programs where emergency  
30 services are taught. A recognized educational program shall  
31 include any program in an educational institution existing under  
32 the laws of this state and such other educational programs as  
33 shall be established by the Division of Homeland Security and  
34 Emergency Management or otherwise under this article.

35 (3) A member of any duly qualified mine rescue team  
36 designated by a mine operator pursuant to the provisions of  
37 section thirty-five, article one, chapter twenty-two-a of this  
38 code who is performing or engaging in emergency rescue  
39 services.

40 (d) A duly qualified emergency service worker performing  
41 his or her duty in this state pursuant to any lawful agreement,  
42 compact or arrangement for mutual aid and assistance to which  
43 the state or a political subdivision is a party shall possess the  
44 same powers, duties, immunities and privileges he or she would  
45 possess if performing the same duties in his or her own state,  
46 province or political subdivision thereof.

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## CHAPTER 96

**(H. B. 4048 — By Delegates Craig, Amores, Mahan,  
Morgan, Pethtel, Stemple, Caputo, Armstead,  
Schadler, Hamilton and Azinger)**

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[Passed March 11, 2006; in effect ninety days from passage.]  
[Approved by the Governor on April 5, 2006.]

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AN ACT to amend and reenact §16-18-3, §16-18-6 and §16-18-8 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-18-6a; and to amend and reenact §54-1-2 of said code; and to further amend said code by adding thereto a new section designated §54-1-2a, all relating to limiting the use of eminent domain; creating definitions for certain terms; prohibiting use of eminent domain for economic development and providing for limited exceptions; establishing a procedure for municipal urban renewal authorities to use eminent domain for properties only in blighted areas; requiring notice of public hearing and rights of property owners related to proposed condemnation of property; requiring municipal urban renewal authority to consider other alternatives to condemnation; requiring municipal urban renewal authority to show property is blighted or necessary for the redevelopment plan; requiring municipal urban renewal authority meet additional requirements before proceeding with condemnation of nonblighted property; creating right for property owner to appeal the condemnation; requiring municipal authority to prove all statutory criteria have been met; protecting property owners right to relocation assistance; prohibiting use of eminent domain for economic development that would result in private economic gain; and requiring a good faith offer prior to condemnation.

*Be it enacted by the Legislature of West Virginia:*

That §16-18-3, §16-18-6 and §16-18-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-18-6a, and that §54-1-2 be amended and reenacted; and that said code be amended by adding thereto a new section, designated §54-1-2a, all to read as follows:

**Chapter**

**16. Public Health**

**54. Eminent Domain**

**CHAPTER 16. PUBLIC HEALTH**

**ARTICLE 18. SLUM CLEARANCE.**

§16-18-3. Definitions.

§16-18-6. Preparation and approval of redevelopment plans.

§16-18-6a. Municipal non-blighted property in slum or blight areas.

§16-18-8. Eminent domain.

**§16-18-3. Definitions.**

1       The following terms, wherever used or referred to in this  
2 article, shall have the following meanings, unless a different  
3 meaning is clearly indicated by the context:

4       (a) “Area of operation” means in the case of a municipality,  
5 the area within such municipality and the area within five miles  
6 of the territorial boundaries thereof, except that the area of  
7 operation of a municipality under this article shall not include  
8 any area which lies within the territorial boundaries of another  
9 municipality unless a resolution shall have been adopted by the  
10 governing body of such other municipality declaring a need  
11 therefor; and in the case of a county, the area within the county,  
12 except that the area of operation in such case shall not include  
13 any area which lies within the territorial boundaries of a  
14 municipality unless a resolution shall have been adopted by the

15 governing body of such municipality declaring a need therefor;  
16 and in the case of a regional authority, shall mean the area  
17 within the communities for which such regional authority is  
18 created: *Provided*, That a regional authority shall not undertake  
19 a redevelopment project within the territorial boundaries of any  
20 municipality unless a resolution shall have been adopted by the  
21 governing body of such municipality declaring that there is a  
22 need for the regional authority to undertake such development  
23 project within such municipality. No authority shall operate in  
24 any area of operation in which another authority already  
25 established is undertaking or carrying out a redevelopment  
26 project without the consent, by resolution, of such other  
27 authority.

28 (b) “Authority”, “slum clearance and redevelopment  
29 authority” or “urban renewal authority” means a public body,  
30 corporate and politic, created by or pursuant to section four of  
31 this article or any other public body exercising the powers,  
32 rights and duties of such an authority as hereinafter provided.

33 (c) “Blighted area” means an area, other than a slum area,  
34 which by reason of the predominance of defective or inadequate  
35 street layout, faulty lot layout in relation to size, adequacy,  
36 accessibility or usefulness, insanitary or unsafe conditions,  
37 deterioration of site improvement, diversity of ownership, tax  
38 or special assessment delinquency exceeding the fair value of  
39 the land, defective or unusual conditions of title, improper  
40 subdivision or obsolete platting, or the existence of conditions  
41 which endanger life or property by fire and other causes, or any  
42 combination of such factors, substantially impairs or arrests the  
43 sound growth of the community, retards the provision of  
44 housing accommodations or constitutes an economic or social  
45 liability and is a menace to the public health, safety, morals, or  
46 welfare in its present condition and use.

47 (d) “Blighted property” means a tract or parcel of land that,  
48 by reason of abandonment, dilapidation, deterioration, age or

49 obsolescence, inadequate provisions for ventilation, light, air or  
50 sanitation, high density of population and overcrowding,  
51 deterioration of site or other improvements, or the existence of  
52 conditions that endanger life or property by fire or other causes,  
53 or any combination of such factors, is detrimental to the public  
54 health, safety or welfare.

55 (e) “Bonds” means any bonds, including refunding bonds,  
56 notes, interim certificates, debentures, or other obligations  
57 issued by an authority pursuant to this article.

58 (f) “Community” means any municipality or county in the  
59 state.

60 (g) “Clerk” means the clerk or other official of the munici-  
61 pality or county who is the custodian of the official records of  
62 such municipality or county.

63 (h) “Federal government” is the United States of America  
64 or any agency or instrumentality, corporate or otherwise, of the  
65 United States of America.

66 (i) “Governing body” means the council or other legislative  
67 body charged with governing the municipality or the county  
68 court or other legislative body charged with governing the  
69 county.

70 (j) “Mayor” means the officer having the duties customarily  
71 imposed upon the executive head of a municipality.

72 (k) “Municipality” means any incorporated city, town or  
73 village in the state.

74 (l) “Obligee” means any bondholder, agents or trustees for  
75 any bondholders, or lessor demising to the authority property  
76 used in connection with a redevelopment project, or any  
77 assignee or assignees of such lessor’s interest or any part

78 thereof, and the federal government when it is a party to any  
79 contract with the authority.

80 (m) "Person" means any individual, firm, partnership,  
81 corporation, company, association, joint stock association, or  
82 body politic; and shall include any trustee, receiver, assignee,  
83 or other similar representative thereof.

84 (n) "Public body" means the state or any municipality,  
85 county, township, board, commission, authority, district, or any  
86 other subdivision or public body of the state.

87 (o) "Real property" includes all lands, including improve-  
88 ments and fixtures thereon, and property of any nature appurte-  
89 nant thereto, or used in connection therewith, and every estate,  
90 interest and right, legal or equitable, therein, including terms for  
91 years and liens by way of judgment, mortgage or otherwise and  
92 the indebtedness secured by such liens.

93 (p) "Redeveloper" means any person, partnership, or public  
94 or private corporation or agency which shall enter or propose to  
95 enter into a redevelopment contract.

96 (q) "Redevelopment contract" means a contract entered into  
97 between an authority and a redeveloper for the redevelopment  
98 of an area in conformity with a redevelopment plan.

99 (r) "Redevelopment plan" means a plan for the acquisition,  
100 clearance, reconstruction, rehabilitation, or future use of a  
101 redevelopment project area.

102 (s) "Redevelopment project" means any work or undertak-  
103 ing:

104 (1) To acquire pursuant to the limitations contained in  
105 subdivision (11), section two, article one, chapter fifty-four  
106 slum areas or blighted areas or portions thereof, including  
107 lands, structures, or improvements the acquisition of which is

108 necessary or incidental to the proper clearance, development or  
109 redevelopment of such slum or blighted areas or to the preven-  
110 tion of the spread or recurrence of slum conditions or conditions  
111 of blight;

112 (2) To clear any such areas by demolition or removal of  
113 existing buildings, structures, streets, utilities or other improve-  
114 ments thereon and to install, construct, or reconstruct streets,  
115 utilities, and site improvements essential to the preparation of  
116 sites for uses in accordance with a redevelopment plan;

117 (3) To sell, lease or otherwise make available land in such  
118 areas for residential, recreational, commercial, industrial or  
119 other use or for public use or to retain such land for public use,  
120 in accordance with a redevelopment plan; and

121 (4) Preparation of a redevelopment plan, the planning,  
122 survey and other work incident to a redevelopment project and  
123 the preparation of all plans and arrangements for carrying out  
124 a redevelopment project.

125 (t) "Slum area" means an area in which there is a predomi-  
126 nance of buildings or improvements or which is predominantly  
127 residential in character, and which, by reason of dilapidation,  
128 deterioration, age or obsolescence, inadequate provision for  
129 ventilation, light, air, sanitation, or open spaces, high density of  
130 population and overcrowding, or the existence of conditions  
131 which endanger life or property by fire and other causes, or any  
132 combination of such factors, is conducive to ill health, transmis-  
133 sion of disease, infant mortality, juvenile delinquency and  
134 crime, and is detrimental to the public health, safety, morals or  
135 welfare.

136 (q) "Unblighted property" means a property that is not a  
137 blighted property.

**§16-18-6. Preparation and approval of redevelopment plans.**

1 (a) An authority shall not acquire real property for a  
2 redevelopment project unless the governing body of the  
3 community in which the redevelopment project area is located  
4 has approved the redevelopment plans, as prescribed in  
5 subsection (i) below.

6 (b) An authority shall not prepare a redevelopment plan for  
7 a redevelopment project area unless the governing body of the  
8 community in which such area is located has, by resolution,  
9 declared such area to be a slum or blighted area in need of  
10 redevelopment.

11 (c) An authority shall not recommend a redevelopment plan  
12 to the governing body of the community in which the redevel-  
13 opment project area is located until a general plan for the  
14 development of the community has been prepared.

15 (d) The authority may itself prepare or cause to be prepared  
16 a redevelopment plan or any person or agency, public or  
17 private, may submit such a plan to an authority. A redevel-  
18 opment plan shall be sufficiently complete to indicate its relation-  
19 ship to definite local objectives as to appropriate land uses,  
20 improved traffic, public transportation, public utilities, recre-  
21 ational and community facilities and other public improvements  
22 and the proposed land uses and building requirements in the  
23 redevelopment project area, and shall include without being  
24 limited to:

25 (1) The boundaries of the redevelopment project area, with  
26 a map showing the existing uses and conditions of the real  
27 property therein;

28 (2) A land use plan showing proposed uses of the area;

29 (3) Information showing the standards of population  
30 densities, land coverage and building intensities in the area after  
31 redevelopment;



32       (4) A statement of the proposed changes, if any, in zoning  
33 ordinances or maps, street layouts, street levels or grades,  
34 building codes and ordinances;

35       (5) A site plan of the area; and

36       (6) A statement as to the kind and number of additional  
37 public facilities or utilities which will be required to support the  
38 new land uses in the area after redevelopment.

39       (e) Prior to recommending a redevelopment plan to the  
40 governing body for approval, an authority shall submit such  
41 plan to the planning commission of the community in which the  
42 redevelopment project area is located for review and recom-  
43 mendations as to its conformity with the general plan for the  
44 development of the community as a whole. The planning  
45 commission shall submit its written recommendations with  
46 respect to the proposed redevelopment plan to the authority  
47 within thirty days after receipt of the plan for review. Upon  
48 receipt of the recommendations of the planning commission or,  
49 if no recommendations are received within said thirty days, then  
50 without such recommendations, an authority may recommend  
51 the redevelopment plan to the governing body of the commu-  
52 nity for approval.

53       (f) Prior to recommending a redevelopment plan to the  
54 governing body for approval, an authority shall consider  
55 whether the proposed land uses and building requirements in  
56 the redevelopment project area are designed with the general  
57 purpose of accomplishing, in conformance with the general  
58 plan, a coordinated, adjusted and harmonious development of  
59 the community and its environs which will, in accordance with  
60 present and future needs, promote health, safety, morals, order,  
61 convenience, prosperity and the general welfare, as well as  
62 efficiency and economy in the process of development;  
63 including, among other things, adequate provision for traffic,

64 vehicular parking, the promotion of safety from fire, panic and  
65 other dangers, adequate provision for light and air, the promo-  
66 tion of the healthful and convenient distribution of population,  
67 the provision of adequate transportation, water, sewerage and  
68 other public utilities, schools, parks, recreational and commu-  
69 nity facilities and other public requirements, the promotion of  
70 sound design and arrangement, the wise and efficient expendi-  
71 ture of public funds, the prevention of the recurrence of  
72 insanitary or unsafe dwelling accommodations, slums, or  
73 conditions of blight, and the provision of adequate, safe and  
74 sanitary dwelling accommodations.

75 (g) The recommendation of a redevelopment plan by an  
76 authority to the governing body shall be accompanied by the  
77 recommendations, if any, of the planning commission concern-  
78 ing the redevelopment plan; a statement of the proposed method  
79 and estimated cost of the acquisition and preparation for  
80 redevelopment of the redevelopment project area and the  
81 estimated proceeds or revenues from its disposal to redevelop-  
82 ers; a statement of the proposed method of financing the  
83 redevelopment project; and a statement of a feasible method  
84 proposed for the relocation of families to be displaced from the  
85 redevelopment project area.

86 (h) The governing body of the community shall hold a  
87 public hearing on any redevelopment plan or substantial  
88 modification thereof recommended by the authority, after  
89 public notice thereof by publication as a Class II legal adver-  
90 tisement in compliance with the provisions of article three,  
91 chapter fifty-nine of this code, and the publication area for such  
92 publication shall be the community. Public notice shall also  
93 include notice by certified letter, return receipt requested to  
94 each property owner of record of all affected properties of the  
95 proposed project. The notice shall include:

96 (1) Notice of the public hearing time, date and location;

97       (2) The right to have an inspection by the municipal  
98 authority to determine if the property is blighted or unblighted;

99       (3) The inspection procedures; and

100       (4) The rights the property owner has pursuant to section  
101 six-a of this article relating to unblighted properties in blighted  
102 or slum areas.

103       The last publication shall be at least ten days prior to the  
104 date set for the hearing. The notice shall describe the time, date,  
105 place and purpose of the hearing and shall also generally  
106 identify the area to be redeveloped under the plan. All inter-  
107 ested parties shall be afforded at such public hearing a reason-  
108 able opportunity to express their views respecting the proposed  
109 redevelopment plan. The municipal authority shall consider  
110 reasonable alternatives for the redevelopment project that will  
111 minimize the use of eminent domain against any properties that  
112 are not blighted.

113       (i) Following such hearing, the governing body may  
114 approve a redevelopment plan if it finds that said plan is  
115 feasible and in conformity with the general plan for the  
116 development of the community as a whole: Provided, That if  
117 the redevelopment project area is a blighted area, the governing  
118 body must also find that a shortage of housing of sound  
119 standards and designs, adequate for family life, exists in the  
120 community; the need for housing accommodations has been or  
121 will be increased as a result of the clearance of slums in other  
122 areas under redevelopment; the conditions of blight in the  
123 redevelopment project area and the shortage of decent, safe and  
124 sanitary housing cause or contribute to an increase in and  
125 spread of disease and crime and constitute a menace to the  
126 public health, safety, morals or welfare; and that the develop-  
127 ment of the blighted area for predominantly residential uses is  
128 an integral part of and essential to the program of the commu-  
129 nity for the elimination of slum areas. A redevelopment plan

130 which has not been approved by the governing body when  
131 recommended by the authority may again be recommended to  
132 it with any modifications deemed advisable.

133 (j) A redevelopment plan may be modified at any time by  
134 the authority: Provided, That if modified after the lease or sale  
135 of real property in the redevelopment project area, the modifi-  
136 cation must be consented to by the redeveloper or developers  
137 of such real property or his successor, or their successors in  
138 interest affected by the proposed modification. Where the  
139 proposed modification will substantially change the redevelop-  
140 ment plan as previously approved by the governing body the  
141 modification must similarly be approved by the governing  
142 body.

**§16-18-6a. Municipal non-blighted property in slum or blight areas.**

1 (a) The municipal authority shall have the burden to show  
2 that a property is blighted. If the property owner does not allow  
3 the authority to conduct and inspection of the property to  
4 determine whether it is appropriate to deem the property  
5 blighted or unblighted, then it is a rebuttable presumption that  
6 the property is blighted.

7 (b) When any area has been declared to be slum and  
8 blighted, pursuant to the provisions of this article, if a private  
9 property within that area is found to not be a blighted property,  
10 then to condemn the property pursuant to article two, chapter  
11 fifty four of the code, the municipal authority must demon-  
12 strate, in addition to all other lawful condemnation require-  
13 ments, that the project or program requiring the clearance of the  
14 slum and blighted area:

15 (1) Cannot proceed without the condemnation of the private  
16 property at issue;

17       (2) That the private property shown not to be blighted  
18 cannot be integrated into the proposed project or program once  
19 the slum and blighted area surrounding such property is taken  
20 and cleared;

21       (3) That the condemnation of the unblighted property is  
22 necessary for the clearance of an area deemed to be slum or  
23 blighted;

24       (4) That other alternatives to the condemnation of the  
25 unblighted property are not reasonably practical;

26       (5) That every reasonable effort has been taken to ensure  
27 that the unblighted property and its owners have been given a  
28 reasonable opportunity to be included in the redevelopment  
29 project or plan without the use of eminent domain;

30       (6) That no alternative site within the slum and blighted  
31 area is available for purchase by negotiation that might  
32 substitute as a site for the unblighted property;

33       (7) That the redevelopment project or plan could not be  
34 restructured to avoid the taking of the unblighted property;

35       (8) That the redevelopment project or plan could not be  
36 carried out without the use of eminent domain; and

37       (9) That there is specific use for the unblighted property to  
38 be taken and a plan to redevelop and convert the unblighted  
39 property from its current use to the stated specific use basically  
40 exists.

41       (c) In any case when the municipal authority has decided to  
42 pursue condemnation, the property owner shall have the right  
43 to seek review in the circuit court within the county wherein the  
44 property lies. Prior to authorizing condemnation as provided  
45 pursuant to article two, chapter fifty-four of the code, the court

46 must find that the property is blighted, or if unblighted, that the  
47 authority has met the requirements of subsection (b) of this  
48 section.

49 (d) All of the rights and remedies contained in article three,  
50 chapter fifty-four of this code concerning relocation assistance  
51 are available to the private property owner whose unblighted  
52 property is being condemned, and if the property to be con-  
53 demned contains a business owned by the property owner, the  
54 property owner is entitled to the amount, if any, which when  
55 added to the acquisition cost of the property acquired by the  
56 condemning authority, equals the reasonable cost of obtaining  
57 a comparable building or property having substantially the same  
58 characteristics of the property sought to be taken.

#### **§16-18-8. Eminent domain.**

1 (a) An authority shall have the right to acquire by the  
2 exercise of the power of eminent domain, pursuant to the  
3 limitations contained in subdivision (11), section two, article  
4 one, chapter fifty-four, any real property which it may deem  
5 necessary for a redevelopment project or for its purposes under  
6 this article after the adoption by it of a resolution declaring that  
7 the acquisition of the real property described therein is neces-  
8 sary for such purposes. An authority may exercise the power of  
9 eminent domain in the manner provided for condemnation  
10 proceedings, in chapter fifty-four of the code of West Virginia,  
11 one thousand nine hundred thirty-one, as amended, or it may  
12 exercise the power of eminent domain in the manner now or  
13 which may be hereafter provided by any other statutory  
14 provisions for the exercise of the power of eminent domain.  
15 Property already devoted to a public use may be acquired in  
16 like manner: *Provided*, That no real property belonging to the  
17 municipality, the county or the state may be acquired without  
18 its consent.

19 (b) When an authority has found and determined by  
20 resolution that certain real property described therein is  
21 necessary for a redevelopment project or for its purposes under  
22 this article, the resolution shall be conclusive evidence that the  
23 acquisition of such real property is necessary for the purposes  
24 described therein.

## CHAPTER 54. EMINENT DOMAIN

### ARTICLE 1. RIGHT OF EMINENT DOMAIN.

§54-1-2. Public uses for which private property may be taken or damaged.

§54-1-2a. Notice; good faith purchase.

#### **§54-1-2. Public uses for which private property may be taken or damaged.**

1 (a) The public uses for which private property may be taken  
2 or damaged are as follows:

3 (1) For the construction, maintenance and operation of  
4 railroad and traction lines (including extension, lateral and  
5 branch lines, spurs, switches and sidetracks), canals, public  
6 landings, wharves, bridges, public roads, streets, alleys, parks  
7 and other works of internal improvement, for the public use;

8 (2) For the construction and maintenance of telegraph,  
9 telephone, electric light, heat and power plants, systems, lines,  
10 transmission lines, conduits, stations (including branch, spur  
11 and service lines), when for public use;

12 (3) For constructing, maintaining and operating pipelines,  
13 plants, systems and storage facilities for manufacturing gas and  
14 for transporting petroleum oil, natural gas, manufactured gas,  
15 and all mixtures and combinations thereof, by means of pipes,  
16 pressure stations or otherwise, (including the construction and  
17 operation of telephone and telegraph lines for the service of  
18 such systems and plants), and for underground storage areas

19 and facilities, and the operation and maintenance thereof, for  
20 the injection, storage and removal of natural gas in subterranean  
21 oil and/or gas bearing stratum, which, as shown by previous  
22 exploration of the stratum sought to be condemned and within  
23 the limits of the reservoir proposed to be utilized for such  
24 purposes, has ceased to produce or has been proved to be  
25 nonproductive of oil and/or gas in substantial quantities, when  
26 for public use, the extent of the area to be acquired for such  
27 purpose to be determined by the court on the basis of reason-  
28 able need therefor. Nothing in this subsection shall be construed  
29 to interfere with the power of the state and its political subdivi-  
30 sions to enact and enforce ordinances and regulations deemed  
31 necessary to protect the lives and property of citizens from the  
32 effects of explosions of oil or gas;

33 (4) For constructing, maintaining and operating, water  
34 plants and systems, including lines for transporting water by  
35 any corporate body politic, or private corporation, for supplying  
36 water to the inhabitants of any city, town, village or commu-  
37 nity, for public use, including lands for pump stations, reser-  
38 voirs, cisterns, storage dams, and other means of storing,  
39 purifying and transporting water, and the right to take and  
40 damage lands which may be flooded by the impounded waters,  
41 and to appropriate any spring, stream and the surrounding  
42 property necessary to protect, preserve and maintain the purity  
43 of any such spring, stream, reservoir, cistern and water im-  
44 pounded by means of any storage dam;

45 (5) For the purpose of constructing, maintaining and  
46 operating sewer systems, lines and sewage disposal plants, to  
47 collect, transport and dispose of sewage. When in the interest  
48 of the public welfare and the preservation of the public health,  
49 the construction of a sewer line to serve a single building or  
50 institution shall be deemed a public use, and, for such purpose,  
51 the right of eminent domain, if within a municipal corporation,  
52 may be exercised in the name of a municipal corporation, and



53 if not within a municipal corporation, in the name of the county  
54 commission of the county in which the property is located;

55 (6) For the reasonable use by an incorporated company  
56 engaged in a public enterprise of which the state or any county  
57 or municipality is the sole or a part owner;

58 (7) For courthouses and municipal buildings, parks, public  
59 playgrounds, the location of public monuments, and all other  
60 public buildings;

61 (8) For cemeteries, and the extension and enlargement of  
62 existing cemeteries: *Provided*, That no lands shall be taken for  
63 cemetery purposes which lie within four hundred feet of a  
64 dwelling house, unless to extend the boundaries of an existing  
65 cemetery, and then only in such manner that the limits of the  
66 existing cemetery shall not be extended nearer than four  
67 hundred feet of any dwelling house distant four hundred feet or  
68 more from such cemetery, or nearer than it was to any dwelling  
69 house which is within four hundred feet thereof;

70 (9) For public schools, public libraries and public hospitals;

71 (10) For the construction and operation of booms (including  
72 approaches, landings and ways necessary for such objects),  
73 when for a public use;

74 (11) By the State of West Virginia for any and every other  
75 public use, object and purpose not herein specifically men-  
76 tioned, but in no event may "public use", for the purposes of  
77 this subdivision, be construed to mean the exercise of eminent  
78 domain primarily for private economic development.

79 For purposes of this subdivision, no private property may  
80 be taken by the State of West Virginia or its political subdivi-  
81 sions without the owner's consent when the primary purpose of  
82 the taking is economic development that will ultimately result

83 in ownership or control of the property transferring to another  
84 private entity, other than one having the power of eminent  
85 domain, whether by purchase agreement, long-term lease  
86 agreement or any other mechanism whereby ownership or  
87 control is effectively transferred: *Provided*, That a municipal  
88 urban renewal authority may exercise a right of eminent domain  
89 as to property only within an area designated a slum area or  
90 blighted area under the provisions of article eighteen, chapter  
91 sixteen of this code.

92 By the United States of America for each and every  
93 legitimate public use, need and purpose of the government of  
94 the United States, within the purview, and subject to the  
95 provisions of chapter one of this code.

96 (12) For constructing, maintaining and operating pipelines,  
97 plants, systems and storage facilities, for the transportation by  
98 common carrier as a public utility of coal and its derivatives  
99 and all mixtures and combinations thereof with any substance  
100 by means of pipes, pressure stations or otherwise (including the  
101 construction and operation of telephone and telegraph lines for  
102 the service of such systems and plants), for public use: *Pro-*  
103 *vided*, That the common carrier engages in some intrastate  
104 activity in this state, if there is any reasonable demand therefor:  
105 *Provided, however*, That in addition to all other requisites by  
106 federal or state constitutions, statute or common law required  
107 for the taking of private property for public use, a further  
108 prerequisite and condition precedent to the exercise of such  
109 taking of or damage to private property for public use as in this  
110 subsection hereinabove provided, is that the Public Service  
111 Commission of this state, in an appropriate hearing and  
112 proceeding on due notice to all interested persons, firms or  
113 corporations, in accordance with the procedure now or hereafter  
114 established by statute and the regulations thereunder, shall have  
115 found that such pipeline transportation of coal and its deriva-  
116 tives and all mixtures and combinations thereof is required for

117 the public convenience and necessity, and that the Public  
118 Service Commission of this state shall not extend a certificate  
119 of convenience and necessity or make such finding of public  
120 convenience and necessity unless, in addition to the other facts  
121 required to support such findings, it shall have been established  
122 by the applicant therefor that the patents and other similar rights  
123 under which the applicant proposes to construct, maintain or  
124 operate such pipeline, plants, systems and storage facilities  
125 shall be and shall remain equally available, insofar as said  
126 subsequent applicant may determine such availability, upon fair  
127 and reasonable terms, to other bona fide applicants seeking a  
128 certificate of convenience and necessity and finding of fact for  
129 any other pipeline in West Virginia; for the purpose of making  
130 the findings hereinbefore set forth the Public Service Commis-  
131 sion shall have and exercise jurisdiction, and that the aforesaid  
132 findings in this proviso above set forth shall be subject to  
133 judicial review as in other Public Service Commission proceed-  
134 ings.

135 It is the intention of the Legislature in amending this  
136 section by the addition of subdivision (12) to extend the right of  
137 eminent domain to coal pipelines for public use; to provide for  
138 regulation of such coal pipelines by the Public Service Com-  
139 mission of this state or the Interstate Commerce Commission of  
140 the United States of America, or both; to assure that such rights  
141 shall be extended only to public utilities or common carriers as  
142 distinguished from private carriers or contract carriers; to make  
143 patents covering the same equally available to others on fair and  
144 reasonable terms; and to prevent monopolistic use of coal  
145 pipelines by any users thereof which would result in any  
146 appreciable economic detriment to others similarly situated by  
147 reasons of any such monopoly.

**§54-1-2a. Notice; good faith purchase.**

1 Prior to initiation of any condemnation proceeding pursuant  
2 to slum and blight, the applicant must make a reasonable

3 attempt to notify all parties subject to a condemna-  
4 tion provided in section two of this article, and attempt to enter  
5 into negotiations for purchase of the property with the owners.  
6 The applicant shall make an offer in good faith for the purchase  
7 of the property subject to the condemnation prior to initiation  
8 of the condemnation proceeding.

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## CHAPTER 97

(Com. Sub. for S. B. 767 — By Senators Bowman, Hunter and Minard)

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[Passed March 11, 2006; in effect from passage.]  
[Approved by the Governor on March 31, 2006.]

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AN ACT to amend and reenact §21A-2-6 of the Code of West Virginia, 1931, as amended, relating to the powers and duties of the Commissioner of the Bureau of Employment Programs; and authorizing the commissioner to promulgate rules authorizing state agencies to revoke the business license of an employing unit in default on unemployment compensation payments.

*Be it enacted by the Legislature of West Virginia:*

That §21A-2-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. THE COMMISSIONER OF THE BUREAU OF EMPLOYMENT PROGRAMS.**

**§21A-2-6. Powers and duties generally.**

1 The commissioner is the executive and administrative head  
2 of the bureau and has the power and duty to:

- 3       (1) Exercise general supervision for the governance of the  
4 bureau and propose rules for promulgation in accordance with  
5 the provisions of article three, chapter twenty-nine-a of this  
6 code to implement the requirements of this chapter;
- 7       (2) Prescribe uniform rules pertaining to investigations,  
8 departmental hearings and propose rules for promulgation;
- 9       (3) Supervise fiscal affairs and responsibilities of the  
10 bureau;
- 11       (4) Prescribe the qualifications of, appoint, remove and fix  
12 the compensation of the officers and employees of the bureau,  
13 subject to the provisions of section ten, article four of this  
14 chapter, relating to the board of review;
- 15       (5) Organize and administer the bureau so as to comply  
16 with the requirements of this chapter and to satisfy any condi-  
17 tions established in applicable federal law or regulation;
- 18       (6) Make reports in the form and containing information  
19 required by the United States Department of Labor and comply  
20 with any requirements that the United States Department of  
21 Labor finds necessary to assure the correctness and verification  
22 of the reports;
- 23       (7) Make available to any agency of the United States  
24 charged with the administration of public works or assistance  
25 through public employment, upon its request, the name,  
26 address, ordinary occupation and employment status of each  
27 recipient of unemployment compensation and a statement of the  
28 recipient's rights to further compensation under this chapter;
- 29       (8) Keep an accurate and complete record of all bureau  
30 proceedings, record and file all bonds and contracts and assume  
31 responsibility for the custody and preservation of all papers and  
32 documents of the bureau;

33 (9) Sign and execute in the name of the state, by the  
34 “Bureau of Employment Programs”, any contract or agreement  
35 with the federal government, its agencies, other states, their  
36 subdivisions or private persons;

37 (10) Prescribe a salary scale to govern compensation of  
38 appointees and employees of the bureau;

39 (11) Make the original determination of right in claims for  
40 benefits;

41 (12) Make recommendations and an annual report to the  
42 Governor concerning the condition, operation and functioning  
43 of the bureau;

44 (13) Invoke any legal or special remedy for the enforcement  
45 of orders or the provisions of this chapter;

46 (14) Exercise any other power necessary to standardize  
47 administration, expedite bureau business, assure the establish-  
48 ment of fair rules and promote the efficiency of the service;

49 (15) Keep an accurate and complete record and prepare a  
50 monthly report of the number of persons employed and  
51 unemployed in the state. The report shall be made available  
52 upon request to members of the public and press;

53 (16) Provide at bureau expense a program of continuing  
54 professional, technical and specialized instruction for the  
55 personnel of the bureau;

56 (17) (A) Propose rules for legislative approval in accor-  
57 dance with the provisions of article three, chapter twenty-nine-a  
58 of this code, under which agencies of this state shall revoke or  
59 not grant, issue or renew any contract, license, permit, certifi-  
60 cate or other authority to conduct a trade, profession or business  
61 to or with any employing unit whose account is in default with

62 the commissioner with regard to the administration of this  
63 chapter. The term “agency” includes any unit of state govern-  
64 ment such as officers, agencies, divisions, departments, boards,  
65 commissions, authorities or public corporations. An employing  
66 unit is not in default if it has entered into a repayment agree-  
67 ment with the Unemployment Compensation Division of the  
68 bureau and remains in compliance with its obligations under the  
69 repayment agreement.

70 (B) The rules shall provide that, before revoking, granting,  
71 issuing or renewing any contract, license, permit, certificate or  
72 other authority to conduct a trade, profession or business to or  
73 with any employing unit, the designated agencies shall review  
74 a list or lists provided by the bureau of employers that are in  
75 default. If the employing unit’s name is not on the list, the  
76 agency, unless it has actual knowledge that the employing unit  
77 is in default with the bureau, may grant, issue or renew the  
78 contract, license, permit, certificate or other authority to  
79 conduct a trade, profession or business. The list may be  
80 provided to the agency in the form of a computerized database  
81 or databases that the agency can access. Any objections to the  
82 revocation or refusal to issue or renew shall be reviewed under  
83 the appropriate provisions of this chapter.

84 (C) The rules may be promulgated or implemented in  
85 phases so that specific agencies or specific types of contracts,  
86 licenses, permits, certificates or other authority to conduct  
87 trades, professions or businesses will be subject to the rules  
88 beginning on different dates. The presumptions of ownership or  
89 control contained in the Department of Environmental Protec-  
90 tion’s surface mining reclamation regulations promulgated  
91 under the provisions of article three, chapter twenty-two of this  
92 code are not applicable or controlling in determining the  
93 identity of employing units who are in default for the purposes  
94 of this subdivision. The rules shall also provide a procedure  
95 allowing any agency or interested person, after being covered

96 under the rules for at least one year, to petition the Bureau of  
97 Employment Programs to be exempt from the provisions of the  
98 rules;

99 (18) Deposit to the credit of the appropriate special revenue  
100 account or fund, notwithstanding any other provision of this  
101 code and to the extent allowed by federal law, all amounts of  
102 delinquent payments or overpayments, interest and penalties  
103 thereon and attorneys' fees and costs collected under the  
104 provisions of this chapter. The amounts collected shall not be  
105 treated by the Auditor or Treasurer as part of the general  
106 revenue of the state; and

107 (19) Enter into interagency agreements to assist in exchange-  
108 ing information and fulfilling the provisions of this article.



## CHAPTER 98

**(Com. Sub. for H. B. 2328 — By Delegate Amores)**



[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]



AN ACT to amend and reenact §6-9A-11 of the Code of West Virginia, 1931, as amended, relating to advisory opinions of the West Virginia Ethics Commission Committee generally and providing that reliance on a written advisory opinion is an absolute defense in certain actions.

*Be it enacted by the Legislature of West Virginia:*

That §6-9A-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:



**ARTICLE 9A. OPEN GOVERNMENTAL PROCEEDINGS.****§6-9A-11. Request for advisory opinion; maintaining confidentiality.**

1           (a) Any governing body or member thereof subject to the  
2 provisions of this article may seek advice and information from  
3 the executive director of the West Virginia Ethics Commission  
4 or request in writing an advisory opinion from the West  
5 Virginia Ethics Commission Committee on Open Governmental  
6 Meetings as to whether an action or proposed action violates the  
7 provisions of this article. The executive director may render  
8 oral advice and information upon request. The committee shall  
9 respond in writing and in an expeditious manner to a request for  
10 an advisory opinion. The opinion is binding on the parties  
11 requesting the opinion.

12           (b) Any governing body or member thereof that seeks an  
13 advisory opinion and acts in good faith reliance on the opinion  
14 has an absolute defense to any civil suit or criminal prosecution  
15 for any action taken in good faith reliance on the opinion unless  
16 the committee was willfully and intentionally misinformed as  
17 to the facts by the body or its representative.

18           (c) A governing body or member thereof that acts in good  
19 faith reliance on a written advisory opinion sought by another  
20 person or governing body has an absolute defense to any civil  
21 suit or criminal prosecution for any action taken based upon a  
22 written opinion of the West Virginia ethics commission  
23 committee, as long as underlying facts and circumstances  
24 surrounding the action were the same or substantially the same  
25 as those being addressed by the written opinion.

26           (d) The committee and commission may take appropriate  
27 action to protect from disclosure information which is properly  
28 shielded by an exception provided in section four of this article.

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## CHAPTER 99

**(S. B. 483 — By Senators Kessler, Dempsey, Fanning,  
Foster, Minard, Oliverio, White, Barnes, Caruth, Deem,  
Harrison, Lanham and Weeks)**

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[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §44-10-3 of the Code of West Virginia, 1931, as amended, relating to confidentiality of circuit court records involving guardianship of minors.

*Be it enacted by the Legislature of West Virginia:*

That §44-10-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 10. GUARDIANS AND WARDS GENERALLY.**

**§44-10-3. Appointment and revocation of guardian by county commission.**

1       (a) The circuit court or family court of the county in which  
2 the minor resides, or if the minor is a nonresident of the state,  
3 the county in which the minor has an estate, may appoint as the  
4 minor's guardian a suitable person. The father or mother shall  
5 receive priority. However, in every case, the competency and  
6 fitness of the proposed guardian and the welfare and best  
7 interests of the minor shall be given precedence by the court  
8 when appointing the guardian.

9       (b) Within five days of the filing of a petition for the  
10 appointment of a guardian, the circuit clerk shall notify the

11 court. The court shall hear the petition for the appointment of  
12 a guardian within ten days after the petition is filed.

13 (c) The court, the guardian or the minor may revoke or  
14 terminate the guardianship appointment when:

15 (1) The minor reaches the age of eighteen and executes a  
16 release stating that the guardian estate was properly adminis-  
17 tered and that the minor has received the assets of the estate  
18 from the guardian;

19 (2) The guardian or the minor dies;

20 (3) The guardian petitions the court to resign and the court  
21 enters an order approving the resignation; or

22 (4) A petition is filed by the guardian, the minor, an  
23 interested person or upon the motion of the court stating that the  
24 minor is no longer in need of the assistance or protection of a  
25 guardian.

26 (d) A guardianship may not be terminated by the court if  
27 there are any assets in the estate due and payable to the minor:  
28 *Provided*, That another guardian may be appointed upon the  
29 resignation of a guardian whenever there are assets in the estate  
30 due and payable to the minor.

31 (e) Records of a guardian proceeding involving a minor are  
32 confidential and shall not be disclosed to anyone who is not a  
33 party to the proceeding, counsel of record for the proceeding or  
34 presiding over the proceeding, absent a court order permitting  
35 examination of such records.

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## CHAPTER 100

**(S. B. 443 — By Senators Kessler, Dempsey, Fanning, Foster,  
Hunter, Jenkins, Minard, White, Barnes, Caruth, Deem,  
Lanham, McKenzie and Weeks)**

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[Passed March 10, 2006; in effect from passage.]  
[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §22-18-22 of the Code of West Virginia, 1931, as amended, relating to continuation of hazardous waste management fee.

*Be it enacted by the Legislature of West Virginia:*

That §22-18-22 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.**

**§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 five of the Constitution of West Virginia.  
4 For 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  
10 designated 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 eight. The  
53 division shall, by the thirty-first day of December of each year,  
54 report to the Joint Committee on Government and Finance  
55 regarding moneys collected into the Hazardous Waste Manage-  
56 ment Fee Fund and expenditures by the agency, including any  
57 federal matching moneys received, and providing an accounting  
58 on the collection of the fee by type of permit activity, funds  
59 being expended and current and future projected balances of the  
60 fund.

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## CHAPTER 101

**(S. B. 773 — By Senators Kessler, Dempsey, Fanning, Hunter,  
Minard, White, Barnes, Caruth, Deem, Lanham, McKenzie and Weeks)**

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[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on March 23, 2006.]

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AN ACT to amend and reenact §16-2D-1, §16-2D-5, §16-2D-6 and §16-2D-9 of the Code of West Virginia, 1931, as amended, all relating to certificate of need standards; establishing standards for and guidance to the Health Care Authority in making amendments and modifications to certificate of need standards; setting forth factors for consideration in amending or modifying certificate of need standards and rules; identifying sources for consideration in amending or modifying certificate of need standards and method-

ologies; providing that applications for a certificate of need may be made subject to criteria contained in certificate of need standards; providing that decisions may be made by the Health Care Authority on applications for certificate of need standards based upon a review conducted in accordance with certificate of need standards; and clarifying the certificate of need standards are not subject to legislative rulemaking.

*Be it enacted by the Legislature of West Virginia:*

That §16-2D-1, §16-2D-5, §16-2D-6 and §16-2D-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 2D. CERTIFICATE OF NEED.**

§16-2D-1. Legislative findings.

§16-2D-5. Powers and duties of state agency.

§16-2D-6. Minimum criteria for certificate of need reviews.

§16-2D-9. Agency to render final decision; issue certificate of need; write findings; specify capital expenditure maximum.

**§16-2D-1. Legislative findings.**

1       It is declared to be the public policy of this state:

2       (1) That the offering or development of all new institutional  
3 health services shall be accomplished in a manner which is  
4 orderly, economical and consistent with the effective develop-  
5 ment of necessary and adequate means of providing for the  
6 institutional health services of the people of this state and to  
7 avoid unnecessary duplication of institutional health services,  
8 and to contain or reduce increases in the cost of delivering  
9 institutional health services.

10       (2) That the general welfare and protection of the lives,  
11 health and property of the people of this state require that the  
12 type, level and quality of care, the feasibility of providing such  
13 care and other criteria as provided for in this article, including

14 certificate of need standards and criteria developed by the state  
15 agency pursuant to provisions of this article, pertaining to new  
16 institutional health services within this state, be subject to  
17 review and evaluation before any new institutional health  
18 services are offered or developed in order that appropriate and  
19 needed institutional health services are made available for  
20 persons in the area to be served.

**§16-2D-5. Powers and duties of state agency.**

1 (a) The state agency shall administer the certificate of need  
2 program as provided by this article.

3 (b) The state agency is responsible for coordinating and  
4 developing the health planning research efforts of the state and  
5 for amending and modifying the state health plan which  
6 includes the certificate of need standards. The state agency shall  
7 review the state health plan, including the certificate of need  
8 standards and make any necessary amendments and modifica-  
9 tions. The state agency shall also review the cost effectiveness  
10 of the certificate of need program. The state agency may form  
11 task forces to assist it in addressing these issues. The task forces  
12 shall be composed of representatives of consumers, business,  
13 providers, payers and state agencies.

14 (c) The state agency may seek advice and assistance of  
15 other persons, organizations and other state agencies in the  
16 performance of the state agency's responsibilities under this  
17 article.

18 (d) For health services for which competition appropriately  
19 allocates supply consistent with the state health plan, the state  
20 agency shall, in the performance of its functions under this  
21 article, give priority, where appropriate to advance the purposes  
22 of quality assurance, cost effectiveness and access, to actions  
23 which would strengthen the effect of competition on the supply  
24 of the services.



25 (e) For health services for which competition does not or  
26 will not appropriately allocate supply consistent with the state  
27 health plan, the state agency shall, in the exercise of its  
28 functions under this article, take actions, where appropriate to  
29 advance the purposes of quality assurance, cost effectiveness  
30 and access and the other purposes of this article, to allocate the  
31 supply of the services.

32 (f) Notwithstanding the provisions of section seven of this  
33 article, the state agency may charge a fee for the filing of any  
34 application, the filing of any notice in lieu of an application, the  
35 filing of any exemption determination request or the filing of  
36 any request for a declaratory ruling. The fees charged may vary  
37 according to the type of matter involved, the type of health  
38 service or facility involved or the amount of capital expenditure  
39 involved. The state agency shall implement this subsection by  
40 filing procedural rules pursuant to chapter twenty-nine-a of this  
41 code. The fees charged shall be deposited into a special fund  
42 known as the Certificate of Need Program Fund to be expended  
43 for the purposes of this article.

44 (g) No hospital, nursing home or other health care facility  
45 shall add any intermediate care or skilled nursing beds to its  
46 current licensed bed complement. This prohibition also applies  
47 to the conversion of acute care or other types of beds to  
48 intermediate care or skilled nursing beds: *Provided*, That  
49 hospitals eligible under the provisions of section four-a of this  
50 article and subsection (i) of this section may convert acute care  
51 beds to skilled nursing beds in accordance with the provisions  
52 of these sections, upon approval by the state agency. Further-  
53 more, no certificate of need shall be granted for the construction  
54 or addition of any intermediate care or skilled nursing beds  
55 except in the case of facilities designed to replace existing beds  
56 in unsafe existing facilities. A health care facility in receipt of  
57 a certificate of need for the construction or addition of interme-  
58 diate care or skilled nursing beds which was approved prior to

59 the effective date of this section shall incur an obligation for a  
60 capital expenditure within twelve months of the date of  
61 issuance of the certificate of need. No extensions shall be  
62 granted beyond the twelve-month period. The state agency shall  
63 establish a task force or utilize an existing task force to study  
64 the need for additional nursing facility beds in this state. The  
65 study shall include a review of the current moratorium on the  
66 development of nursing facility beds; the exemption for the  
67 conversion of acute care beds to skilled nursing facility beds;  
68 the development of a methodology to assess the need for  
69 additional nursing facility beds; and certification of new beds  
70 both by Medicare and Medicaid. The task force shall be  
71 composed of representatives of consumers, business, providers,  
72 payers and government agencies.

73 (h) No additional intermediate care facility for the mentally  
74 retarded (ICF/MR) beds shall be granted a certificate of need,  
75 except that prohibition does not apply to ICF/MR beds ap-  
76 proved under the Kanawha County circuit court order of the  
77 third day of August, one thousand nine hundred eighty-nine,  
78 civil action number MISC-81-585 issued in the case of E. H. v.  
79 Matin, 168 W.V. 248, 284 S.E.2d 232 (1981).

80 (i) Notwithstanding the provisions of subsection (g) of this  
81 section and, further notwithstanding the provisions of subsec-  
82 tion (b), section three of this article, an existing acute care  
83 hospital may apply to the Health Care Authority for a certificate  
84 of need to convert acute care beds to skilled nursing beds:  
85 *Provided*, That the proposed skilled nursing beds are Medicare  
86 certified only: *Provided, however*, That any hospital which  
87 converts acute care beds to Medicare-certified only skilled  
88 nursing beds shall not bill for any Medicaid reimbursement for  
89 any converted beds. In converting beds, the hospital shall  
90 convert a minimum of one acute care bed into one Medicare-  
91 certified only skilled nursing bed. The Health Care Authority  
92 may require a hospital to convert up to and including three

93 acute care beds for each Medicare-certified only skilled nursing  
94 bed: *Provided further*, That a hospital designated or provision-  
95 ally designated by the state agency as a rural primary care  
96 hospital may convert up to thirty beds to a distinct-part nursing  
97 facility, including skilled nursing beds and intermediate care  
98 beds, on a one-for-one basis if the rural primary care hospital is  
99 located in a county without a certified freestanding nursing  
100 facility and the hospital may bill for Medicaid reimbursement  
101 for the converted beds: *And provided further*, That if the  
102 hospital rejects the designation as a rural primary care hospital  
103 then the hospital may not bill for Medicaid reimbursement. The  
104 Health Care Authority shall adopt rules to implement this  
105 subsection which require that:

106 (1) All acute care beds converted shall be permanently  
107 deleted from the hospital's acute care bed complement and the  
108 hospital may not thereafter add, by conversion or otherwise,  
109 acute care beds to its bed complement without satisfying the  
110 requirements of subsection (b), section three of this article for  
111 which purposes an addition, whether by conversion or other-  
112 wise, shall be considered a substantial change to the bed  
113 capacity of the hospital notwithstanding the definition of that  
114 term found in subsection (ff), section two of this article.

115 (2) The hospital shall meet all federal and state licensing  
116 certification and operational requirements applicable to nursing  
117 homes including a requirement that all skilled care beds created  
118 under this subsection shall be located in distinct-part, long-term  
119 care units.

120 (3) The hospital shall demonstrate a need for the project.

121 (4) The hospital shall use existing space for the Medicare-  
122 certified only skilled nursing beds. Under no circumstances  
123 shall the hospital construct, lease or acquire additional space for  
124 purposes of this section.

125 (5) The hospital shall notify the acute care patient, prior to  
126 discharge, of facilities with skilled nursing beds which are  
127 located in or near the patient's county of residence. Nothing in  
128 this subsection negatively affects the rights of inspection and  
129 certification which are otherwise required by federal law or  
130 regulations or by this code or duly adopted rules of an autho-  
131 rized state entity.

132 (j) (1) Notwithstanding the provisions of subsection (g) of  
133 this section, a retirement life care center with no skilled nursing  
134 beds may apply to the Health Care Authority for a certificate of  
135 need for up to sixty skilled nursing beds provided the proposed  
136 skilled beds are Medicare-certified only. On a statewide basis,  
137 a maximum of one hundred eighty skilled beds which are  
138 Medicare-certified only may be developed pursuant to this  
139 subsection. The state health plan is not applicable to projects  
140 submitted under this subsection. The Health Care Authority  
141 shall adopt rules to implement this subsection which shall  
142 include a requirement that:

143 (A) The one hundred eighty beds are to be distributed on a  
144 statewide basis;

145 (B) There be a minimum of twenty beds and a maximum of  
146 sixty beds in each approved unit;

147 (C) The unit developed by the retirement life care center  
148 meets all federal and state licensing certification and opera-  
149 tional requirements applicable to nursing homes;

150 (D) The retirement center demonstrates a need for the  
151 project;

152 (E) The retirement center offers personal care, home health  
153 services and other lower levels of care to its residents; and

154 (F) The retirement center demonstrates both short- and  
155 long-term financial feasibility.

156       (2) Nothing in this subsection negatively affects the rights  
157 of inspection and certification which are otherwise required by  
158 federal law or regulations or by this code or duly adopted rules  
159 of an authorized state entity.

160       (k) The state agency may order a moratorium upon the  
161 offering or development of a new institutional health service,  
162 when criteria and guidelines for evaluating the need for the new  
163 institutional health service have not yet been adopted or are  
164 obsolete. The state agency may also order a moratorium on the  
165 offering or development of a health service, notwithstanding the  
166 provisions of subdivision (5), subsection (b), section three of  
167 this article, when it determines that the proliferation of the  
168 service may cause an adverse impact on the cost of health care  
169 or the health status of the public. A moratorium shall be  
170 declared by a written order which shall detail the circumstances  
171 requiring the moratorium. Upon the adoption of criteria for  
172 evaluating the need for the health service affected by the  
173 moratorium, or one hundred eighty days from the declaration of  
174 a moratorium, whichever is less, the moratorium shall be  
175 declared to be over and applications for certificates of need are  
176 processed pursuant to section six of this article.

177       (1) (1) The state agency shall coordinate the collection of  
178 information needed to allow the state agency to develop  
179 recommended modifications to certificate of need standards as  
180 required in this article. When the state agency proposes  
181 amendments or modifications to the certificate of need stan-  
182 dards, it shall file with the Secretary of State, for publication in  
183 the State Register, a notice of proposed action, including the  
184 text of all proposed amendments and modifications, and a date,  
185 time and place for receipt of general public comment. To  
186 comply with the public comment requirement of this section,  
187 the state agency may hold a public hearing or schedule a public  
188 comment period for the receipt of written statements or  
189 documents.

190       (2) When amending and modifying the certificate of need  
191 standards, the state agency shall identify relevant criteria  
192 contained in section six of this article or rules adopted pursuant  
193 to section eight of this article, and apply those relevant criteria  
194 to the proposed new institutional health service in a manner that  
195 promotes the public policy goals and legislative findings  
196 contained in section one of this article. In doing so, the state  
197 agency may consult with or rely upon learned treatises in health  
198 planning, recommendations and practices of other health  
199 planning agencies and organizations, recommendations from  
200 consumers, recommendations from health care providers,  
201 recommendations from third-party payors, materials reflecting  
202 the standard of care, the state agency's own developed expertise  
203 in health planning, data accumulated by the state agency or  
204 other local, state or federal agency or organization, and any  
205 other source deemed relevant to the certificate of need stan-  
206 dards proposed for amendment or modification.

207       (3) All proposed amendments and modifications to the  
208 certificate of need standards, with a record of the public hearing  
209 or written statements and documents received pursuant to a  
210 public comment period, shall be presented to the Governor.  
211 Within thirty days of receiving the proposed amendments or  
212 modifications, the Governor shall either approve or disapprove  
213 all or part of the amendments and modifications and, for any  
214 portion of amendments or modifications not approved, shall  
215 specify the reason or reasons for nonapproval. Any portions of  
216 the amendments or modifications not approved by the Governor  
217 may be revised and resubmitted.

218       (4) The certificate of need standards adopted pursuant to  
219 this section which are applicable to the provisions of this article  
220 are not subject to article three, chapter twenty-nine-a of this  
221 code. The state agency shall follow the provisions set forth in  
222 this subsection for giving notice to the public of its actions,  
223 holding hearings or receiving comments on the certificate of

224 need standards. The certificate of need standards in effect on  
225 the twenty-ninth day of November, two thousand five, and all  
226 prior versions promulgated and adopted in accordance with the  
227 provisions of this section, are and have been in full force and  
228 effect from each of their respective dates of approval by the  
229 Governor.

230 (m) The state agency may exempt from or expedite rate  
231 review, certificate of need, and annual assessment requirements  
232 and issue grants and loans to financially vulnerable health care  
233 facilities located in underserved areas that the state agency and  
234 the Office of Community and Rural Health Services determine  
235 are collaborating with other providers in the service area to  
236 provide cost effective health care services.

**§16-2D-6. Minimum criteria for certificate of need reviews.**

1 (a) Except as provided in subsection (f), section nine of this  
2 article, in making its determination as to whether a certificate  
3 of need shall be issued, the state agency shall, at a minimum,  
4 consider all of the following criteria that are applicable:  
5 *Provided*, That the criteria set forth in subsection (f) of this  
6 section apply to all hospitals, nursing homes and health care  
7 facilities when ventilator services are to be provided for any  
8 nursing facility bed:

9 (1) The relationship of the health services being reviewed  
10 to the state health plan;

11 (2) The relationship of services reviewed to the long-range  
12 development plan of the person providing or proposing the  
13 services;

14 (3) The need that the population served or to be served by  
15 the services has for the services proposed to be offered or  
16 expanded, and the extent to which all residents of the area, and  
17 in particular low income persons, racial and ethnic minorities,

18 women, handicapped persons, other medically underserved  
19 population and the elderly, are likely to have access to those  
20 services;

21 (4) The availability of less costly or more effective alterna-  
22 tive methods of providing the services to be offered, expanded,  
23 reduced, relocated or eliminated;

24 (5) The immediate and long-term financial feasibility of the  
25 proposal as well as the probable impact of the proposal on the  
26 costs of and charges for providing health services by the person  
27 proposing the new institutional health service;

28 (6) The relationship of the services proposed to the existing  
29 health care system of the area in which the services are  
30 proposed to be provided;

31 (7) In the case of health services proposed to be provided,  
32 the availability of resources, including health care providers,  
33 management personnel, and funds for capital and operating  
34 needs, for the provision of the services proposed to be provided  
35 and the need for alternative uses of these resources as identified  
36 by the state health plan and other applicable plans;

37 (8) The appropriate and nondiscriminatory utilization of  
38 existing and available health care providers;

39 (9) The relationship, including the organizational relation-  
40 ship, of the health services proposed to be provided to ancillary  
41 or support services;

42 (10) Special needs and circumstances of those entities  
43 which provide a substantial portion of their services or re-  
44 sources, or both, to individuals not residing in the health service  
45 areas in which the entities are located or in adjacent health  
46 service areas. The entities may include medical and other health  
47 professional schools, multidisciplinary clinics and specialty  
48 centers;



49       (11) In the case of a reduction or elimination of a service,  
50 including the relocation of a facility or a service, the need that  
51 the population presently served has for the service, the extent to  
52 which that need will be met adequately by the proposed  
53 relocation or by alternative arrangements, and the effect of the  
54 reduction, elimination or relocation of the service on the ability  
55 of low income persons, racial and ethnic minorities, women,  
56 handicapped persons, other medically underserved population  
57 and the elderly, to obtain needed health care;

58       (12) In the case of a construction project: (A) The cost and  
59 methods of the proposed construction, including the costs and  
60 methods of energy provision; and (B) the probable impact of  
61 the construction project reviewed on the costs of providing  
62 health services by the person proposing the construction project  
63 and on the costs and charges to the public of providing health  
64 services by other persons;

65       (13) In the case of health services proposed to be provided,  
66 the effect of the means proposed for the delivery of proposed  
67 health services on the clinical needs of health professional  
68 training programs in the area in which the services are to be  
69 provided;

70       (14) In the case of health services proposed to be provided,  
71 if the services are to be available in a limited number of  
72 facilities, the extent to which the schools in the area for health  
73 professions will have access to the services for training  
74 purposes;

75       (15) In the case of health services proposed to be provided,  
76 the extent to which the proposed services will be accessible to  
77 all the residents of the area to be served by the services;

78       (16) In accordance with section five of this article, the  
79 factors influencing the effect of competition on the supply of  
80 the health services being reviewed;

81 (17) Improvements or innovations in the financing and  
82 delivery of health services which foster competition, in  
83 accordance with section five of this article, and serve to  
84 promote quality assurance and cost effectiveness;

85 (18) In the case of health services or facilities proposed to  
86 be provided, the efficiency and appropriateness of the use of  
87 existing services and facilities similar to those proposed;

88 (19) In the case of existing services or facilities, the quality  
89 of care provided by the services or facilities in the past;

90 (20) In the case where an application is made by an  
91 osteopathic or allopathic facility for a certificate of need to  
92 construct, expand or modernize a health care facility, acquire  
93 major medical equipment or add services, the need for that  
94 construction, expansion, modernization, acquisition of equip-  
95 ment or addition of services shall be considered on the basis of  
96 the need for and the availability in the community of services  
97 and facilities for osteopathic and allopathic physicians and their  
98 patients. The state agency shall consider the application in  
99 terms of its impact on existing and proposed institutional  
100 training programs for doctors of osteopathy and medicine at the  
101 student, internship and residency training levels;

102 (21) The special circumstances of health care facilities with  
103 respect to the need for conserving energy;

104 (22) The contribution of the proposed service in meeting  
105 the health-related needs of members of medically underserved  
106 populations which have traditionally experienced difficulties in  
107 obtaining equal access to health services, particularly those  
108 needs identified in the state health plan as deserving of priority.  
109 For the purpose of determining the extent to which the proposed  
110 service will be accessible, the state agency shall consider:

111 (A) The extent to which medically underserved populations  
112 currently use the applicant's services in comparison to the

113 percentage of the population in the applicant's service area  
114 which is medically underserved, and the extent to which  
115 medically underserved populations are expected to use the  
116 proposed services if approved;

117 (B) The performance of the applicant in meeting its  
118 obligation, if any, under any applicable federal regulations  
119 requiring provision of uncompensated care, community service  
120 or access by minorities and handicapped persons to programs  
121 receiving federal financial assistance, including the existence of  
122 any civil rights access complaints against the applicant;

123 (C) The extent to which Medicare, Medicaid and medically  
124 indigent patients are served by the applicant; and

125 (D) The extent to which the applicant offers a range of  
126 means by which a person will have access to its services,  
127 including, but not limited to, outpatient services, admission by  
128 a house staff and admission by personal physician;

129 (23) The existence of a mechanism for soliciting consumer  
130 input into the health care facility's decision-making process.

131 (b) The state agency may include additional criteria which  
132 it prescribes by rules adopted pursuant to section eight of this  
133 article.

134 (c) Criteria for reviews may vary according to the purpose  
135 for which a particular review is being conducted or the types of  
136 health services being reviewed.

137 (d) An application for a certificate of need may not be made  
138 subject to any criterion not contained in this article, in rules  
139 adopted pursuant to section eight of this article or in the  
140 certificate of need standards approved pursuant to section five  
141 of this article.

142 (e) In the case of any proposed new institutional health  
143 service, the state agency may not grant a certificate of need  
144 under its certificate of need program unless, after consideration  
145 of the appropriateness of the use of existing facilities providing  
146 services similar to those being proposed, the state agency  
147 makes, in addition to findings required in section nine of this  
148 article, each of the following findings in writing: (1) That  
149 superior alternatives to the services in terms of cost, efficiency  
150 and appropriateness do not exist and the development of  
151 alternatives is not practicable; (2) that existing facilities  
152 providing services similar to those proposed are being used in  
153 an appropriate and efficient manner; (3) that in the case of new  
154 construction, alternatives to new construction, such as modern-  
155 ization or sharing arrangements, have been considered and have  
156 been implemented to the maximum extent practicable; (4) that  
157 patients will experience serious problems in obtaining care of  
158 the type proposed in the absence of the proposed new service;  
159 and (5) that in the case of a proposal for the addition of beds for  
160 the provision of skilled nursing or intermediate care services,  
161 the addition will be consistent with the plans of other agencies  
162 of the state responsible for the provision and financing of long-  
163 term care facilities or services including home health services.

164 (f) In the case where an application is made by a hospital,  
165 nursing home or other health care facility to provide ventilator  
166 services which have not previously been provided for a nursing  
167 facility bed, the state agency shall consider the application in  
168 terms of the need for the service and whether the cost exceeds  
169 the level of current Medicaid services. No facility may, by  
170 providing ventilator services, provide a higher level of service  
171 for a nursing facility bed without demonstrating that the change  
172 in level of service by provision of the additional ventilator  
173 services will result in no additional fiscal burden to the state.

174 (g) In the case where application is made by any person or  
175 entity to provide personal care services which are to be billed

176 for Medicaid reimbursement, the state agency shall consider the  
177 application in terms of the need for the service and whether the  
178 cost exceeds the level of the cost of current Medicaid services.  
179 No person or entity may provide personal care services to be  
180 billed for Medicaid reimbursement without demonstrating that  
181 the provision of the personal care service will result in no  
182 additional fiscal burden to the state: *Provided*, That a certificate  
183 of need is not required for a person providing specialized foster  
184 care personal care services to one individual and those services  
185 are delivered in the provider's home. The state agency shall  
186 also consider the total fiscal liability to the state for all applica-  
187 tions which have been submitted.

**§16-2D-9. Agency to render final decision; issue certificate of  
need; write findings; specify capital expenditure  
maximum.**

1 (a) Only the state agency, or the appropriate administrative  
2 or judicial review body, may issue, deny or withdraw certifi-  
3 cates of need, grant exemptions from certificate of need reviews  
4 or determine that certificate of need reviews are not required.

5 (b) A certificate of need may only be issued if the proposed  
6 new institutional health service is:

7 (1) Found to be needed; and

8 (2) Except in emergency circumstances that pose a threat to  
9 public health, consistent with the state health plan.

10 (c) The state agency shall render a final decision on every  
11 application for a certificate of need or application for exemption  
12 in the form of an approval, a denial or an approval with  
13 conditions. Any decision of the state agency with respect to a  
14 certificate of need, or exemption, shall be based solely on:

15 (1) The review of the state agency conducted in accordance  
16 with procedures and criteria in this article, in rules adopted

17 pursuant to section eight of this article and in the certificate of  
18 need standards approved pursuant to section five of this article;  
19 and

20 (2) The record established in administrative proceedings  
21 held with respect to the certificate of need or exemption.

22 (d) Approval with conditions does not give the state agency  
23 authority to mandate new institutional health services not  
24 proposed by the health care facility or health maintenance  
25 organization. Issuance of a certificate of need or exemption may  
26 not be made subject to any condition unless the condition  
27 directly relates to criteria in this article, in rules adopted  
28 pursuant to section eight of this article or in the certificate of  
29 need standards approved pursuant to section five of this article.  
30 Conditions may be imposed upon the operations of the health  
31 care facility or health maintenance organization for no longer  
32 than a three-year period. Compliance with such conditions may  
33 be enforced through the mechanisms detailed in section thirteen  
34 of this article.

35 (e) (1) For each proposed new institutional health service  
36 it approves, the state agency shall, in addition to the written  
37 findings required in subsection (e), section six of this article,  
38 make a written finding, which shall take into account the  
39 current accessibility of the facility as a whole, on the extent to  
40 which the new institutional health service will meet the criteria  
41 in subdivisions (3), (11) and (22), subsection (a), section six of  
42 this article, regarding the needs of medically underserved  
43 population, except in the following cases:

44 (A) Where the proposed new institutional health service is  
45 one described in subsection (f) of this section to eliminate or  
46 prevent certain imminent safety hazards or to comply with  
47 certain licensure or accreditation standards; or

48 (B) Where the new institutional health service is a proposed  
49 capital expenditure not directly related to the provision of  
50 health services or to beds or major medical equipment.

51 (2) If the state agency disapproves a proposed new institu-  
52 tional health service for failure to meet the needs of medically  
53 underserved populations, it shall so state in a written finding.

54 (f) (1) Notwithstanding review criteria in section six of this  
55 article, an application for a certificate of need shall be ap-  
56 proved, if the state agency finds that the facility or service with  
57 respect to which such capital expenditure is proposed to be  
58 made is needed and that the obligation of such capital expendi-  
59 ture is consistent with the state health plan, for a capital  
60 expenditure which is required:

61 (A) To eliminate or prevent imminent safety hazards as  
62 defined by federal, state or local fire, building or life safety  
63 codes, rules or regulations;

64 (B) To comply with state licensure standards; or

65 (C) To comply with accreditation or certification standards,  
66 compliance with which is required to receive reimbursements  
67 under Title XVIII of the Social Security Act or payments under  
68 the state plan for medical assistance approved under Title XIX  
69 of such act.

70 (2) An application for a certificate of need approved under  
71 this subsection shall be approved only to the extent that the  
72 capital expenditure is required to eliminate or prevent the  
73 hazards described in subparagraph (A), subdivision (1),  
74 subsection (f) of this section, or to comply with the standards  
75 described in either subparagraph (B) or (C), subdivision (1),  
76 subsection (f) of this section.

77 (g) The state agency shall send its decision along with  
78 written findings to the person proposing the new institutional  
79 health service or exemption and shall make it available to  
80 others upon request.

81 (h) In the case of a final decision to approve or approve  
82 with conditions a proposal for a new institutional health service,  
83 the state agency shall issue a certificate of need to the person  
84 proposing the new institutional health service.

85 (i) The state agency shall specify in the certificate the  
86 maximum amount of capital expenditures which may be  
87 obligated under such certificate. The state agency shall pre-  
88 scribe the method used to determine capital expenditure  
89 maximums and shall adopt rules pursuant to section eight of  
90 this article for the review of approved new institutional health  
91 services for which the capital expenditure maximum is ex-  
92 ceeded or is expected to be exceeded.

93 (j) If the state agency fails to make a decision within the  
94 time period specified for the review, the applicant may, within  
95 one year following the expiration of such period, bring an  
96 action, at the election of the applicant, in either the circuit court  
97 of Kanawha County, or with the judge thereof in vacation, or in  
98 the circuit court of the county in which the applicant or any one  
99 of the applicants resides or does business, or with the judge  
100 thereof in vacation to require the state agency to approve or  
101 disapprove the application. An application for a proposed new  
102 institutional health service or exemption may not be approved  
103 or denied by the circuit court solely because the state agency  
104 failed to reach a decision.



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## CHAPTER 102

(S. B. 772 — By Senator Prezioso)

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5Q-4, relating to subrogation rights of the Department of Health and Human Resources on behalf of the James “Tiger” Morton Catastrophic Illness Commission from personal insurance or other sources; legal assignment of rights; setting forth effect of subrogation; allowing action for compensatory damages; notice to the Department of Health and Human Resources of intent to enter judgment, award or settlement; giving the Department of Health and Human Resources right to assert interest through assignment; and providing for attorney fees.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §16-5Q-4, to read as follows:

**ARTICLE 5Q. THE JAMES “TIGER” MORTON CATASTROPHIC ILLNESS FUND.**

**§16-5Q-4. Assignment of rights; right of subrogation by the James “Tiger” Morton Catastrophic Illness Commission to the rights of recipients of medical assistance; rules as to effect of subrogation.**

1       (a) (1) Submission of an application to the Catastrophic  
2 Illness Commission for medical assistance is, as a matter of  
3 law, an assignment of the right of the applicant, or legal  
4 representative thereof, to recovery from personal insurance or  
5 other sources, including, but not limited to, liable third parties,  
6 to the extent of the cost of medical services paid for by the  
7 Catastrophic Illness Commission's Medical Assistance  
8 Program.

9       (2) At the time the application is made, the Catastrophic  
10 Illness Commission shall include a statement along with such  
11 application that explains that the applicant has assigned all such  
12 rights to the Catastrophic Illness Commission, and the legal  
13 implications of making such assignment as provided in this  
14 section.

15       (3) If medical assistance is paid or will be paid by the  
16 Catastrophic Illness Commission to a provider of medical care  
17 on behalf of a recipient of medical assistance because of a  
18 "catastrophic illness", as defined by this article, and another  
19 person is legally liable for such expense, either pursuant to  
20 contract, negligence or otherwise, the Department of Health and  
21 Human Resources, on behalf of the Catastrophic Illness  
22 Commission, shall have the right to recover full reimbursement  
23 from any award or settlement for such medical assistance from  
24 such other person, or from the recipient of such assistance if he  
25 has been reimbursed by the other person. The Department of  
26 Health and Human Resources shall be legally assigned the  
27 rights of the recipient against the person so liable, but only to  
28 the extent of the reasonable value of the medical assistance paid  
29 and attributable to the catastrophic illness for which the  
30 recipient has received damages.

31       (4) When an action or claim is brought by a medical  
32 assistance recipient, or by someone on his or her behalf, against  
33 a third party who may be liable for the catastrophic illness or  
34 death of a medical assistance recipient, any settlement, judg-

35 ment or award obtained is subject to the claim of the Depart-  
36 ment of Health and Human Resources, on behalf of the  
37 Catastrophic Illness Commission for reimbursement of an  
38 amount sufficient to reimburse the Department of Health and  
39 Human Resources the full amount of benefits paid on behalf of  
40 the recipient under the Catastrophic Illness Commission's  
41 Medical Assistance Program for the catastrophic illness of the  
42 medical assistance recipient. The claim of the Department of  
43 Health and Human Resources on behalf of the Catastrophic  
44 Illness Commission, assigned by such recipient shall not exceed  
45 the amount of medical expenses for the catastrophic illness of  
46 the recipient paid by the Department of Health and Human  
47 Resources on behalf of the recipient. The right of subrogation  
48 created in this section includes all portions of the cause of  
49 action, by either settlement, compromise, judgment or award,  
50 notwithstanding any settlement allocation or apportionment that  
51 purports to dispose of portions of the cause of action not subject  
52 to the subrogation. Any settlement, compromise, judgement or  
53 award that excludes or limits the cost of actual medical services  
54 or care shall not preclude the Department of Health and Human  
55 Resources from enforcing its rights under this section. The  
56 Secretary of the Department of Health and Human Resources  
57 may compromise, settle and execute a release of any such claim  
58 in whole or in part.

59 (b) (1) Nothing in this section shall be construed so as to  
60 prevent the recipient of medical assistance from maintaining an  
61 action for injuries received by him against any other person and  
62 from including therein, as part of the compensatory damages  
63 sought to be recovered, the amount or amounts of his or her  
64 medical expenses, even though such person received medical  
65 assistance in the payment of such medical expenses in whole or  
66 in part.

67 (2) If the action be tried by a jury, the jury shall not be  
68 informed as to the interest of the Department of Health and  
69 Human Resources on behalf of the Catastrophic Illness

70 Commission, if any, and such fact shall not be disclosed to the  
71 jury at any time. The trial judge shall, upon the entry of  
72 judgment on the verdict, direct that an amount equal to the  
73 amount of medical assistance given by the commission be  
74 withheld and paid over to the Department of Health and Human  
75 Resources on behalf of the commission. Irrespective of whether  
76 the case be terminated by judgment or by settlement without  
77 trial, from the amount required to be paid to the Department of  
78 Health and Human Resources on behalf of the Catastrophic  
79 Illness Commission, there shall be deducted the attorney fees  
80 attributable to such amount in accordance with and in propor-  
81 tion to the fee arrangement made between the recipient and his  
82 or her attorney of record so that the Department of Health and  
83 Human Resources shall bear the pro rata portion of such  
84 attorney fees. Nothing in this section shall preclude any person  
85 who has received medical assistance from settling any cause of  
86 action which he or she may have against another person and  
87 delivering to the Department of Health and Human Resources  
88 from the proceeds of such settlement the sums received by him  
89 or her from the commission or paid by the commission for his  
90 or her medical assistance. If such other person is aware of or  
91 has been informed of the interest of the Department of Health  
92 and Human Resources on behalf of the commission in the  
93 matter, it shall be the duty of the person to whose benefit the  
94 release inures to withhold so much of the settlement as may be  
95 necessary to reimburse the Department of Health and Human  
96 Resources, to the extent of its interest in the settlement. No  
97 judgment, award of or settlement in any action or claim by a  
98 medical assistance recipient or his representative to recover  
99 damages for a catastrophic illness or death, in which the  
100 Department of Health and Human Resources on behalf of the  
101 commission has an interest, shall be satisfied without first  
102 giving the Department of Health and Human Resources notice  
103 and reasonable opportunity to establish its interest. The  
104 Department of Health and Human Resources shall have sixty  
105 days from the receipt of such written notice to advise the  
106 recipient or his or her representative in writing of its desire to

107 establish its interest through the assignment. If no such written  
108 intent is received within the sixty-day period, then the recipient  
109 may proceed and in the event of full recovery forward to the  
110 Department of Health and Human Resources the portion of the  
111 recovery proceeds less the Department of Health and Human  
112 Resources's share of attorney's fees and costs expended in the  
113 matter. In the event of less than full recovery the recipient and  
114 the Department of Health and Human Resources shall agree as  
115 to the amount to be paid to it for its claim. If there is no  
116 recovery, the Department of Health and Human Resources shall  
117 under no circumstances be liable for any costs or attorney fees  
118 expended in the matter. If, after being notified in writing of a  
119 subrogation claim and possible liability of the recipient,  
120 guardian, attorney or personal representative for failure to  
121 subrogate the Department of Health and Human Resources, a  
122 recipient, his or her guardian, attorney or personal representa-  
123 tive disposes of the funds representing the judgment, settlement  
124 or award without the written approval of the Department of  
125 Health and Human Resources, that person shall be liable to the  
126 Department of Health and Human Resources for any amount  
127 that, as a result of the disposition of the funds, is not recover-  
128 able by the Department of Health and Human Resources. In the  
129 event that a controversy arises concerning the subrogation  
130 claims by the Department of Health and Human Resources, an  
131 attorney shall interplead, pursuant to Rule 22 of the Rules of  
132 Civil Procedure, the portion of the recipient's settlement that  
133 will satisfy the Department of Health and Human Resources  
134 exclusive of attorney fees and costs regardless of any contrac-  
135 tual arrangement between the client and the attorney.

136 (c) Nothing contained herein shall authorize the Department  
137 of Health and Human Resources or the Catastrophic Illness  
138 Commission to institute a class action or multiple plaintiff  
139 action against any manufacturer, distributor or vendor of any  
140 product to recover medical care expenditures paid for by the  
141 Catastrophic Illness Commission's Medical Assistance  
142 Program.

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## CHAPTER 103

**(H. B. 4383 — By Delegates Leach, Craig, Morgan and Stephens)**

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[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §16-29F-1 of the Code of West Virginia, 1931, as amended, relating to continuing the pilot program offered through a Community Access Program to coordinate health care provider reimbursements indefinitely as determined by the insurance commissioner.

*Be it enacted by the Legislature of West Virginia:*

That §16-29F-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 29F. UNINSURED AND UNDERINSURED PILOT PROGRAMS.**

**§16-29F-1. Uninsured and underinsured health coverage assistance; pilot program.**

1       (a) The United States Department of Health and Human  
2 Services has established a federal grant program to encourage  
3 innovative integrated health care delivery systems to serve  
4 uninsured and underinsured persons with greater efficiency and  
5 improved quality of care and to further maximize reimburse-  
6 ments to health care providers which provide these services.  
7 The “Community Access Program” grants as authorized in the  
8 federal register: February 4, 2000 (volume 65, number 24),  
9 allow for the establishment of local programs to reorganize and  
10 reintegrate local health care delivery systems. This section

11 authorizes, on a trial basis, the establishment of pilot programs  
12 in the state which receive a grant under the community access  
13 program to coordinate health care provider reimbursements, to  
14 allow an opportunity for innovations in payment for health care  
15 services to be tested and, if successful, to be permanently  
16 implemented.

17 (b) An entity receiving a community access program grant  
18 may initiate a program that comports to the federal grant  
19 requirements and meets the requirements of this section. The  
20 pilot program may enroll persons to participate in this pilot  
21 program who currently do not have insurance and whose  
22 income does not exceed two hundred fifty percent of the federal  
23 poverty level. The pilot program may coordinate payments  
24 from enrollees and businesses employing enrollees to be  
25 utilized to capture available federal moneys to assist in provid-  
26 ing reimbursements to enrollee's health care providers. The  
27 pilot program shall coordinate reimbursements limited to areas  
28 not covered by other federal reimbursement programs such as  
29 the children's health insurance agency within the Department  
30 of Administration and the Federal Medicaid Program. In no  
31 instance may the pilot program allow health care reimburse-  
32 ments to enrollees and to health care providers that limit or  
33 otherwise impede the eligibility of the enrollee or the health  
34 care provider to be eligible for these or other federal health care  
35 cost reimbursement programs.

36 (c) Notwithstanding the provisions of chapter thirty-three  
37 of this code to the contrary, any grant program created and  
38 authorized pursuant to this section is not to be considered as  
39 providing insurance or as offering insurance services. Commu-  
40 nity access pilot programs are specifically excluded from the  
41 definitions of "insurance" and "insurer" as defined in article  
42 one, chapter thirty-three of this code, and except as provided in  
43 this section, these programs are not subject to regulation by the  
44 insurance commissioner, nor are they unauthorized insurers

45 pursuant to section four, article forty-four of chapter thirty-three  
46 of this code.

47 (d) The community access pilot program is authorized to  
48 enter into agreements with health care providers to coordinate  
49 and otherwise provide services to enrollees. These agreements  
50 must be contingent on the health care provider agreeing to  
51 accept payment from the community access pilot program  
52 based on available funding to the program for the health care  
53 services being provided. If the health care provider decides to  
54 no longer accept the community access pilot program's  
55 enrollee's reimbursement, the health care provider must  
56 provide, at a minimum, thirty days' notice of discontinuance of  
57 providing services and further acceptance of enrollee's pay-  
58 ments.

59 (e) The community access pilot program must provide  
60 enrollees and the participating employer with a minimum of  
61 thirty days' notice of discontinuance or reduction of enrollee  
62 benefits.

63 (f) The community access pilot program must submit  
64 quarterly reports to the Legislative Oversight Commission of  
65 Health and Human Resources accountability as established in  
66 article twenty-nine-e of this chapter and to the insurance  
67 commissioner. The report shall include at a minimum, analysis  
68 of the financial status, the number of health care provider  
69 reimbursements, enrollee services utilized and other informa-  
70 tion as requested by the commission and the insurance commis-  
71 sioner.

72 (g) The authorization for the existence of a pilot program as  
73 established pursuant to this section expires on the thirtieth day  
74 of June, two thousand seven, unless the insurance commissioner  
75 continues the authorization for such periods as he or she  
76 determines.



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## CHAPTER 104

**(H. B. 4685 — By Delegates Leach, Morgan, Perdue and Long)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 30, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated § 16-5U-1, § 16-5U-2 and § 16-5U-3, all relating to the “Arthritis Prevention Education Act”; establishing an arthritis prevention and treatment education program; requiring the Bureau for Public Health to establish strategies to promote and maintain an arthritis prevention education program; and establishing an interagency council on arthritis.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated § 16-5U-1, § 16-5U-2 and § 16-5U-3, all to read as follows:

**ARTICLE 5U. ARTHRITIS PREVENTION EDUCATION ACT.**

§ 16-5U-1. Short title.

§ 16-5U-2. Responsibilities of Bureau for Public Health.

§ 16-5U-3. Interagency council on arthritis.

**§ 16-5U-1. Short title.**

- 1 This article may be known and cited as the “West Virginia
- 2 Arthritis Prevention Education Act.”

**§ 16-5U-2. Responsibilities of Bureau for Public Health.**

1 (a) The Bureau for Public Health shall establish strategies  
2 to promote and maintain an arthritis prevention education  
3 program in order to raise public awareness, to educate consum-  
4 ers and to educate and train health professionals, teachers and  
5 human service providers, to include the following components:

6 (1) The bureau shall develop strategies for raising public  
7 awareness of the causes and nature of arthritis, personal risk  
8 factors, the value of prevention and early detection and options  
9 for diagnosing and treating the disease that include, but are not  
10 limited to, the following:

11 (A) Community forums;

12 (B) Health information and risk factor assessment at public  
13 events;

14 (C) Targeting at-risk populations;

15 (D) Providing reliable information to policymakers; and

16 (E) Distributing information through county health depart-  
17 ments, schools, area agencies on aging, employer wellness  
18 programs, physicians, hospitals, health maintenance organiza-  
19 tions, women's groups, nonprofit organizations, community-  
20 based organizations and departmental offices;

21 (2) The bureau shall develop strategies for educating  
22 consumers about risk factors, diet and exercise, diagnostic  
23 procedures and their indications for use, risks and benefits of  
24 drug therapies currently approved by the United States Food  
25 and Drug Administration, environmental safety and injury  
26 prevention and the availability of self-help diagnostic, treatment  
27 and rehabilitation services;

28 (3) The bureau may develop strategies for educating  
29 physicians and health professionals and training community

30 service providers on the most up-to-date, accurate scientific and  
31 medical information on arthritis prevention, diagnosis and  
32 treatment, therapeutic decision-making, including guidelines for  
33 detecting and treating the disease in special populations, risks  
34 and benefits of medications and research advances;

35 (4) The bureau may conduct a needs assessment to identify:

36 (A) Research being conducted within the state;

37 (B) Available up-to-date technical assistance and educa-  
38 tional materials and programs nationwide;

39 (C) The level of public and professional awareness about  
40 arthritis;

41 (D) The needs of arthritis patients, their families and  
42 caregivers;

43 (E) The needs of health care providers, including physi-  
44 cians, nurses, managed care organizations and other health care  
45 providers;

46 (F) The services available to the arthritis patient;

47 (G) The existence of arthritis treatment programs;

48 (H) The existence of arthritis support groups;

49 (I) The existence of rehabilitation services; and

50 (5) The bureau may replicate and use successful arthritis  
51 programs and enter into contracts and purchase materials or  
52 services from organizations with appropriate expertise and  
53 knowledge of arthritis.

54 (b) Based on the needs assessment conducted pursuant to  
55 this section, the bureau may develop and maintain a resource

56 guide to include arthritis-related services. This guide shall  
57 include a description of diagnostic testing procedures, appropri-  
58 ate indications for their use, drug therapies currently approved  
59 by the United States Food and Drug Administration, and a  
60 cautionary statement about the current status of arthritis  
61 research, prevention and treatment. The statement shall also  
62 indicate that the bureau does not license, certify, or in any way  
63 approve arthritis programs or centers in the state.

64 (c) The bureau may promulgate rules in accordance with  
65 the provisions of article three, chapter twenty-nine-a of this  
66 code necessary to implement the provisions of this article.

67 (d) Nothing in this article may be construed or interpreted  
68 to mean that arthritis treatment or arthritis education are  
69 required to be provided by the bureau or the council created in  
70 section three of this article. Nothing contained in this article  
71 may be construed to mandate funding for arthritis education or  
72 any of the programs contained in this article or to require any  
73 appropriation by the Legislature.

### **§16-5U-3. Interagency council on arthritis.**

1 (a) There is hereby established the interagency council on  
2 arthritis. The Director of Public Health shall chair the council.  
3 The council shall have representatives from appropriate state  
4 departments and agencies including, but not limited to, the  
5 entities with responsibility for aging, health care reform  
6 implementation, education and public welfare.

7 (b) The council shall:

8 (1) Coordinate arthritis programs conducted by or through  
9 the Bureau for Public Health;

10 (2) Establish a mechanism for sharing information on  
11 arthritis among all officials and employees involved in carrying  
12 out arthritis-related programs;

13 (3) Review and coordinate the most promising areas of  
14 education, prevention and treatment concerning arthritis;

15 (4) Assist the Bureau for Public Health and other offices in  
16 developing and coordinating plans for education and health  
17 promotion on arthritis;

18 (5) Establish mechanisms to use the results of research  
19 concerning arthritis in the development of relevant policies and  
20 programs; and

21 (6) Prepare a report that describes educational initiatives on  
22 arthritis and transmit the report to the Legislature and the  
23 Governor and make the report available to the public.

24 (c) The council shall establish and coordinate the advisory  
25 panel on arthritis which will provide nongovernmental input  
26 regarding the program. Membership shall include, but is not  
27 limited to, persons with arthritis, public health educators,  
28 arthritis experts, providers of arthritis health care, persons  
29 knowledgeable in health promotion and education and represen-  
30 tatives of national arthritis organizations or their state and  
31 regional affiliates.

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## CHAPTER 105

**(Com. Sub. for H. B. 4488 — By Delegates Perdue, Hatfield, Brown,  
Webster, Wakim, Doyle, Longstreth, Marshall, Moore and Hrutkay)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new article, designated §16-42-1, §16-42-2,

§16-42-3, §16-42-4, §16-42-5, §16-42-6 and §16-42-7, all relating to a study of the behavioral health system of West Virginia; creating a commission of public and private citizens; creating an advisory board; setting forth findings and the purpose; setting forth the requirements of the study; requiring the commission to submit periodic and final reports; requiring the Department of Health and Human Resources to submit periodic reports; providing for compensation of commission and advisory board members; and including a date certain for the conclusion of the commission's work.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-42-1, §16-42-2, §16-42-3, §16-42-4, §16-42-5, §16-42-6 and §16-42-7, all to read as follows:

**ARTICLE 42. COMPREHENSIVE BEHAVIORAL HEALTH COMMISSION.**

§16-42-1. Legislative findings.

§16-42-2. Purpose.

§16-42-3. Comprehensive Behavioral Health Commission.

§16-42-4. Study.

§16-42-5. Report.

§16-42-6. Certificate of need standards.

§16-42-7. Expiration of commission.

**§16-42-1. Legislative findings.**

1       The Legislature finds as follows:

2       (1) That the behavioral health system in West Virginia is  
3 rapidly moving toward a state of crisis as a result of overcrowd-  
4 ing of the beds in state facilities and prisons, and inadequate  
5 community support services to prevent these problems;

6       (2) That untreated and inadequately treated behavioral  
7 illness and substance abuse and ongoing domestic violence

8 have placed a significant impediment upon West Virginia  
9 businesses and have placed heavy fiscal pressures on many  
10 West Virginia government and non-profit agencies;

11 (3) That these untreated problems and lack of services are  
12 directly linked to increases in fatalities, penal incarcerations,  
13 suicides, utilization of public assistance, homelessness,  
14 increased school dropout rates, teenage pregnancy, excessive  
15 employee absenteeism, underemployment, unemployment,  
16 higher workers' compensation costs and many other health,  
17 criminal justice, social and personal problems which cost our  
18 state millions of dollars each year; and

19 (4) That the health and economic well-being of the state  
20 and its citizens requires the development of the Comprehensive  
21 Behavioral Health Commission to conduct a comprehensive  
22 study and review of the behavioral health care system of West  
23 Virginia and the total public and private dollars actually being  
24 spent on prevention, treatment, education and other services  
25 related to mental illness, substance abuse and domestic violence  
26 in West Virginia.

#### **§16-42-2. Purpose.**

1 This article is enacted to provide a framework within which  
2 the departments and divisions of state government, working  
3 collaboratively with the applicable individuals and organiza-  
4 tions in the private sector that provide or are in need of behav-  
5 ioral health services, can study the current system of behavioral  
6 health services offered within West Virginia, the financing of  
7 those services, and proposed changes to both. It is the purpose  
8 of the Legislature to encourage the long-term, well-planned  
9 development of a comprehensive and cost-effective system of  
10 care.

#### **§16-42-3. Comprehensive Behavioral Health Commission.**

1 (a) There is created within the Department of Health and  
2 Human Resources the Comprehensive Behavioral Health  
3 Commission to study the current behavioral health system,  
4 including substance abuse and domestic violence when those  
5 conditions have an effect upon or are impacted by the system.

6 (b) The commission consists of a representative of the  
7 circuit and family court system, as appointed by the Chief  
8 Justice of the West Virginia Supreme Court of Appeals, a  
9 representative of the Commissioner of the Division of Correc-  
10 tions, the Commissioner of the Bureau of Senior Services, the  
11 Secretary of the Department of Health and Human Resources,  
12 the Commissioner of the Bureau for Behavioral Health and  
13 Health Facilities, the Commissioner of the Bureau for Children  
14 and Families; the Executive Director of the West Virginia  
15 Chapter of the National Alliance on Mental Illness; the  
16 Chancellor for Higher Education and one physician with a  
17 speciality in psychiatry appointed by the Governor from a list  
18 provided by the West Virginia Medical Association. Each ex  
19 officio member may appoint a designee. One member of the  
20 House of Delegates, appointed by the Speaker and one member  
21 of the Senate, appointed by the President, serve as non-voting  
22 members. The Governor shall appoint a chairperson.

23 (c) The commission shall meet at times and places as it  
24 finds necessary and shall be staffed by the Bureau for Behav-  
25 ioral Health and Health Facilities and the Health Care Author-  
26 ity.

27 (d) An advisory board shall be created to serve in a  
28 consulting role to the commission members. The advisory  
29 board members shall be appointed by the Governor as follows:

30 (1) One member from a list provided by the West Virginia  
31 Chapter of the National Association of Social Workers;

32 (2) One member from a list provided by the West Virginia  
33 Hospital Association;



34 (3) One member who is a psychologist from a list provided  
35 by the West Virginia Psychological Association;

36 (4) One citizen member from a list of two nominees from  
37 each medical school;

38 (5) One member from a list of five nominees provided by  
39 the Primary Care Association;

40 (6) One member from a list provided by the West Virginia  
41 Behavioral Healthcare Providers Association;

42 (7) One member from a list provided by the West Virginia  
43 Child Care Association; and

44 (8) One member from a list provided by the Council of  
45 Churches.

46 (e) Each member of the Commission and advisory board is  
47 entitled to receive compensation and expense reimbursement  
48 for attending official meetings or engaging in official duties not  
49 to exceed the amount paid to members of the Legislature for  
50 their interim duties as recommended by the Citizens Legislative  
51 Compensation Commission and authorized by law. A commis-  
52 sion member may not receive compensation for travel days that  
53 are not on the same day as the official meeting or official  
54 duties.

**§16-42-4. Study.**

1 The commission shall study the current status of preven-  
2 tion, treatment, education, related services and appropriate  
3 workforce development for behavioral health, including  
4 substance abuse and domestic violence when those conditions  
5 have an effect upon the system. Each item studied shall be  
6 reported for children, adults and seniors. The report shall  
7 include recommendations on system changes needed to meet  
8 the needs of those served by the system and a determination of

9 the total public and private dollars spent for each item listed in  
10 this section. The commission may coordinate its activities with  
11 those of the Department of Health and Human Resources and  
12 its consultants. The commission may appoint subcommittees  
13 and workgroups composed of consumers, providers and  
14 representative groups as it deems necessary to perform its  
15 duties and responsibilities pursuant to this article.

#### **§16-42-5. Report.**

1 The commission shall submit a preliminary report of its  
2 progress in its study to the Governor and the Legislature by the  
3 first day of January, two thousand seven and a final report  
4 including its recommendations by the first day of January, two  
5 thousand eight. The Department of Health and Human Re-  
6 sources shall submit a report to the Governor and the Legisla-  
7 ture by the first day of July, two thousand eight regarding  
8 implementation of the recommendations of the commission.  
9 The department shall report no less than quarterly to the  
10 Legislative Oversight Commission on Health and Human  
11 Resources Accountability.

#### **§16-42-6. Certificate of need standards.**

1 Pursuant to the provisions of article two-d of this chapter,  
2 the West Virginia Health Care Authority shall provide the  
3 commission with information needed to complete the study  
4 required in this article. The staff of the authority shall work  
5 jointly with the staff of the Bureau for Behavioral Health and  
6 Health Facilities in providing services to the commission. The  
7 commission shall make recommendations in its final report  
8 relating to the certificate of need standards.

#### **§16-42-7. Expiration of commission.**

1 The commission ceases to exist on the thirty-first day of  
2 January, two thousand nine, or after the submission of the  
3 commission's final report, whichever occurs first.

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## CHAPTER 106

**(Com. Sub. for H. B. 4021— By Mr. Speaker,  
Mr. Kiss, and Delegate Trump)  
[By Request of the Executive]**

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[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16B-6d; to amend and reenact §9-2-9 of said code; to amend said code by adding thereto a new article, designated §16-2J-1, §16-2J-2, §16-2J-3, §16-2J-4, §16-2J-5, §16-2J-6, §16-2J-7, §16-2J-8 and §16-2J-9; to amend said code by adding thereto a new article, designated §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4, and §16-29H-5; and to amend said code by adding thereto a new article, designated §33-15D-1, §33-15D-2, §33-15D-3, §33-15D-4, §33-15D-5, §33-15D-6, §33-15D-7, §33-15D-8, §33-15D-9, §33-15D-10 and §33-15D-11, all relating to health care programs, authorizing an expansion of the children's health insurance program; providing criteria for the expansion; providing limitations based on funding availability; providing for a Medicaid management reporting system; providing for quarterly financial reports from the Medicaid claims management system to the Legislative Oversight Commission on Health and Human Resources Accountability; requiring specific utilization data from the Medicaid claims management system; creating a pilot program authorizing participating health care clinics and private medical practitioners to provide primary and preventive health services for a prepaid fee; declaring legislative intent; authorizing approval of participants based on guidelines by the Health Care Authority and the Insurance Commissioner; requiring licensure by the Health Care

Authority; authorizing the Insurance Commissioner to approve fees, marketing materials and forms and to certify financial soundness; authorizing study of the program by the Health Care Authority; providing for legislative rules; mandating a Health Care Authority report to the Legislative Oversight Commission on Health and Human Resources Accountability; setting grounds for revocation, suspension and failure to renew licenses; setting forth goals for health care reform; providing for an Interagency Health Council; providing for membership on the council; requiring council develop appropriate incentives, initiatives and assessments; providing for council to evaluate and recommend alternative reimbursement mechanisms; providing for council to establish an advisory committee; providing for council to measure and report on specific benchmarks; providing for council to make recommendations to the Legislative Oversight Commission on Health and Human Resources Accountability regarding the strategies to be used to meet the state's goals; requiring council to hold public hearings for the purpose of receiving relevant input; authorizing individual limited health benefits insurance plans; including preventive and primary care services; requiring approval of plans by Insurance Commissioner; providing eligibility requirements; setting forth statutory or regulatory provisions that do not apply to such plans; providing underwriting standards; continuing use of existing reimbursement rates; establishing criteria for filing and approval of premium rates; requiring certification of creditable coverage; authorizing Insurance Commissioner to promulgate emergency rules; mandating disclaimer on policies; exempting plans from premium taxes; providing for severability; providing rule of construction; and creating penalties.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §5-16B-6d; that §9-2-9 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §16-2J-1, §16-2J-2, §16-2J-3,

§16-2J-4, §16-2J-5, §16-2J-6, §16-2J-7, §16-2J-8 and §16-2J-9; that said code be amended by adding thereto a new article, designated §16-29H-1, §16-29H-2, §16-29H-3, §16-29H-4 and §16-29H-5; and that said code be amended by adding thereto a new article, designated §33-15D-1, §33-15D-2, §33-15D-3, §33-15D-4, §33-15D-5, §33-15D-6, §33-15D-7, §33-15D-8, §33-15D-9, §33-15D-10 and §33-15D-11, all to read as follows:

**Chapter**

- 5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**
- 9. Human Services.**
- 16. Public Health.**
- 33. Insurance.**

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

**ARTICLE 16B. WEST VIRGINIA CHILDREN'S HEALTH INSURANCE  
PROGRAM.**

**§5-16B-6d. Modified benefit plan implementation.**

1 (a) Upon approval by the Centers for Medicare and  
2 Medicaid Services, the board shall implement a program for  
3 uninsured children of families with income between two  
4 hundred and three hundred percent of the federal poverty level.

5 (b) The benefit plans offered pursuant to this section shall  
6 include services determined to be appropriate for children, but  
7 may vary from those currently offered by the board.

8 (c) The board shall structure the benefit plans for this  
9 expansion to include premiums, co-insurance or co-pays and  
10 deductibles. The board shall develop the cost sharing features

11 in such a manner as to keep the program fiscally stable without  
12 creating a barrier to enrollment. Such features may include  
13 different cost-sharing features within this group based upon the  
14 percentage of the federal poverty level.

15 (d) Children covered by an employer sponsored health  
16 insurance plan during the previous twelve month period are not  
17 eligible for coverage under this expansion, unless that coverage  
18 is lost due to the parent's loss of employment.

19 (e) Provider reimbursement schedules shall be no lower  
20 than the reimbursement provided for the same services under  
21 the plans offered in article sixteen of this chapter.

22 (f) All provisions of this article are applicable to this  
23 expansion unless expressly addressed in this section.

24 (g) Nothing in this section may be construed to require any  
25 appropriation of state general revenue funds for the payment of  
26 any benefit provided pursuant to this section, except for the  
27 state appropriation used to match the federal financial participa-  
28 tion funds. In the event that federal funds are no longer  
29 authorized for participation by individuals eligible at income  
30 levels above two hundred percent, the board shall take immedi-  
31 ate steps to terminate the expansion provided for in this section  
32 and notify all enrollees of such termination. In the event federal  
33 appropriations decrease for the programs created pursuant to  
34 Title XXI of the Social Security Act of 1997, the board is  
35 directed to make those decreases in this expansion program  
36 before making changes to the programs created for those  
37 children whose family income is less than two hundred percent  
38 of the federal poverty level.

39 (h) The board is directed to report no less than quarterly to  
40 the Legislative Oversight Commission on Health and Human  
41 Resources Accountability on the development, implementation  
42 and progress of the expansion authorized in this section.

**CHAPTER 9. HUMAN SERVICES.****ARTICLE 2. COMMISSIONER OF HUMAN SERVICES; POWERS, DUTIES  
AND RESPONSIBILITIES GENERALLY.****§9-2-9. Secretary to develop medicaid monitoring and case  
management.**

1 (a) The secretary of the department of health and human  
2 resources shall:

3 (1) Develop a managed care system to monitor the services  
4 provided by the medicaid program to individual clients;

5 (2) Develop an independent referral service, including the  
6 review of individual cases for abuses of the program; and

7 (3) Develop a schedule for implementation of the managed  
8 care and independent referral system. The managed care system  
9 shall focus on, but not be limited to, the behavioral health and  
10 mental health services.

11 (b) In addition thereto, and in accordance with applicable  
12 federal medicaid laws, the secretary shall prepare recommenda-  
13 tions, to be submitted to the joint committee on government and  
14 finance. In developing recommendations the secretary shall  
15 consider as options the following:

16 (1) Review of medicaid services which are optional under  
17 federal medicaid law and identification of services to be  
18 retained, reduced or eliminated;

19 (2) The elimination, reduction or phase-out of: (i) Services  
20 which are not generally available to West Virginia citizens not  
21 covered under the state's medicaid program; or (ii) services  
22 which are not generally covered under group policies of  
23 insurance made available to employees of employers within the  
24 state;

25 (3) The elimination or reduction of services, or reduction of  
26 provider reimbursement rates, for identified services of  
27 marginal utility;

28 (4) Higher reimbursement rates for primary and preventive  
29 care;

30 (5) Changes in fee structure, which may include a system  
31 of prospective payments, and may include establishment of  
32 global fees for identified services or diagnoses including  
33 maternity care;

34 (6) Utilization caps for certain health care procedures;

35 (7) Restriction of coverage for cosmetic procedures;

36 (8) Identification of excessive use of certain health care  
37 procedures by individuals and a policy to restrict excessive use;

38 (9) Identification of services which reduce the need for  
39 more costly options for necessary care and retention or expan-  
40 sion of those programs;

41 (10) Identification of services for which preauthorization is  
42 a requirement for medicaid reimbursement;

43 (11) Recommendations relating to the development of a  
44 demonstration project on long-term care, which demonstration  
45 project may be limited to patients with alzheimer's disease;

46 (12) A policy concerning the department's procedures for  
47 compliance, monitoring and inspection; and

48 (13) Such other options as may be developed.

49 (c) The secretary shall utilize in-state health care facilities  
50 for inpatient treatment when such facilities are available. Prior  
51 authorization, consistent with applicable federal law, shall be  
52 required for out-of-state inpatient treatment.



53 (d) The secretary shall report to the joint committee on  
54 government and finance on the development and implementa-  
55 tion of medicaid programs that provide incentives to working  
56 persons. The secretary shall consider: Subsidies for low income  
57 working persons; individual or small employer buy-ins to the  
58 state medicaid fund; prospective payment systems for primary  
59 care physicians in underserved areas; and a system to improve  
60 monitoring of collections, expenditures, service delivery and  
61 utilization.

62 (e) The secretary shall report quarterly to the joint commit-  
63 tee on government and finance regarding provider and facility  
64 compliance with federal and state medicaid laws, including, but  
65 not limited to, the following: The number of inspections  
66 conducted during the previous quarter; description of programs,  
67 services and facilities reviewed; findings; and recommendations  
68 for corrections.

69 (f) The secretary shall, upon federal certification of the  
70 claims management system, ensure that the claims management  
71 system processing medicaid claims provides:

72 (1) Detailed quarterly financial reports to the Legislative  
73 Oversight Commission on Health and Human Resources  
74 Accountability;

75 (2) A management reporting system no later than the first  
76 day of July, two thousand six; and

77 (3) Specific utilization data by provider, member eligibility  
78 groups and service no later than the first day of October, two  
79 thousand six.

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 2J. PREVENTIVE CARE PILOT PROGRAM.**

§16-2J-1. Legislative findings and statement of purpose.

§16-2J-2. Definitions.

- §16-2J-3. Authorization of preventive care pilot program; number of participants and sites; Health Care Authority considerations in selection of participating providers; funding.
- §16-2J-4. License for preventive care pilot program.
- §16-2J-5. Insurance Commissioner approval of fees, marketing materials and forms and certification of financial condition; statement of services.
- §16-2J-6. Rule-making authority.
- §16-2J-7. Participating provider plan requirements; primary care services; prior coverage restrictions; notice of discontinuance or reduction of benefits.
- §16-2J-8. Guidelines for evaluation of the pilot program; report to Legislative Oversight Commission on Health and Human Resources Accountability.
- §16-2J-9. Grounds for refusal to renew; revocation and suspension of pilot program license; penalties; termination of suspension, reissuance and renewal of license.

**§16-2J-1. Legislative findings and statement of purpose.**

1       (a) The Legislature finds that a program that would allow  
2 health clinics and private medical practitioners to provide  
3 primary and preventive health services for a prepaid fee would  
4 enable more West Virginians to gain access to affordable health  
5 care and to establish a medical home for purposes of receiving  
6 primary and preventative healthcare services. By establishing  
7 a pilot project for clinic-based health care, the Legislature  
8 intends to enable state health and insurance officials to study  
9 this method of delivering health services, to encourage all West  
10 Virginians to establish a medical home and to determine the  
11 success, continued need and feasibility of expanding such a  
12 program and allowing similar programs to operate on a  
13 statewide basis.

14       (b) In carrying out this pilot program, it is the intent of the  
15 Legislature to eliminate legal, statutory and regulatory barriers  
16 to the establishment of pilot programs providing preventive and  
17 primary care services for a prepaid fee; to encourage residents  
18 of this State to establish and use a medical home; to expand  
19 preventive and primary care services for the uninsured; and to  
20 exempt health providers participating in the pilot program from

21 regulation as an insurer, the operation of insurance laws of the  
22 state and all other laws inconsistent with the purposes of this  
23 article.

**§16-2J-2. Definitions.**

1 For the purposes of this article, the following definitions  
2 apply:

3 (1) “Dependent” has the same meaning set forth in subsec-  
4 tion (d), section one-a, article sixteen, chapter thirty-three of  
5 this code;

6 (2) “Family” means a subscriber and his or her dependents;

7 (3) “Medical home” means a team approach to providing  
8 health care and care management. Whether involving a primary  
9 care provider, specialist or sub-specialist, care management  
10 includes the development of a plan of care, the determination of  
11 the outcomes desired, facilitation and navigation of the health  
12 care system, provision of follow-up and support for achieving  
13 the identified outcomes. The medical home maintains a  
14 centralized, comprehensive record of all health related services  
15 to provide continuity of care;

16 (4) “Participating provider” means a provider under this  
17 article that has been granted a license under this article to  
18 operate as part of the pilot program;

19 (5) “Primary care” means basic or general health care  
20 which emphasizes the point when the patient first seeks  
21 assistance from the medical care system and the care of the  
22 simpler and more common illnesses;

23 (6) “Provider” has the same meaning as “ambulatory health  
24 care facility” set forth in subsection (b), section two, article  
25 two-d of this chapter or “private office practice” as set forth in  
26 subsection (a)(1), section four of said article;

27 (7) “Qualifying event” means loss of coverage due to: (i)  
28 Emancipation and resultant loss of coverage under a parent or  
29 guardian’s plan; (ii) divorce and loss of coverage under the  
30 former spouse’s plan; (iii) termination of employment and  
31 resultant loss of coverage under an employer group plan:  
32 *Provided*, That any rights of coverage under a COBRA  
33 continuation plan as that term is defined in section three-m,  
34 article sixteen, chapter thirty-three of this code, shall not be  
35 considered coverage under an employer group health plan; (iv)  
36 involuntary termination of coverage under a group health  
37 benefit plan except for termination due to nonpayment of  
38 premiums or fraud by the insured; or (v) exhaustion of COBRA  
39 benefits;

40 (8) “Subscriber” means any individual who subscribes to a  
41 prepaid program approved and operated in accordance with the  
42 provisions of this article, including an employee of any  
43 employer that has purchased a group enrollment on behalf of its  
44 employees.

**§16-2J-3. Authorization of preventive care pilot program; number of participants and sites; Health Care Authority considerations in selection of participating providers; funding.**

1 (a) The Health Care Authority shall, in consultation with  
2 the Insurance Commissioner, develop and implement during the  
3 fiscal year beginning the first day of July, two thousand six, a  
4 pilot program that permits no more than eight providers to  
5 market and sell prepaid memberships entitling subscribers to  
6 obtain preventive and primary health care from the participating  
7 providers. Participating providers shall not be allowed to offer  
8 their qualifying services at more than three separate sites. The  
9 pilot program will be three years in length.

10 (b) Subject to the provisions of this article, the Health Care  
11 Authority is vested with discretion to select providers using

12 diversity in practice organization, geographical diversity and  
13 other criteria it deems appropriate. The Health Care Authority  
14 also shall give consideration to providers located in rural areas  
15 or serving a high percentage or large numbers of uninsured.

16 (c) In furtherance of the objectives of this article, the Health  
17 Care Authority is authorized to accept any and all gifts, grants  
18 and matching funds whether in the form of money or services:  
19 *Provided*, That no gifts, grants and matching funds shall be  
20 provided to the Health Care Authority by the State of West  
21 Virginia to further the objectives of this article.

**§16-2J-4. License for preventive care pilot program.**

1 (a) No provider may participate in the pilot program  
2 without first obtaining a preventive care pilot program license  
3 from the Health Care Authority.

4 (b) The Health Care Authority shall determine the eligibil-  
5 ity of providers to obtain licenses on the basis of applications  
6 filed by providers on forms developed by the Health Care  
7 Authority.

8 (c) Upon approval of the application, the participating  
9 provider shall be granted a license to market and sell prepaid  
10 health services under such terms as may be established in  
11 guidelines developed by the Health Care Authority and the  
12 Insurance Commissioner.

**§16-2J-5. Insurance Commissioner approval of fees, marketing materials and forms and certification of financial condition; statement of services.**

1 (a) The Insurance Commissioner shall develop guidelines  
2 for all forms, marketing materials and fees proposed by  
3 program applicants and participating providers under the same  
4 criteria generally applicable to accident and sickness insurance  
5 policies.

6 (b) All fees, marketing materials and forms proposed to be  
7 used by any program applicant or participating provider are  
8 subject to prior approval of the Insurance Commissioner, which  
9 the Insurance Commissioner shall communicate to the Health  
10 Care Authority. Fees may not be excessive, inadequate, or  
11 unfairly discriminatory.

12 (c) The Insurance Commissioner must certify whether a  
13 program applicant or, upon the request of the Health Care  
14 Authority, an already participating provider is in a sound  
15 financial condition and capable of operating in a manner that is  
16 not hazardous to its prospective subscribers or the people of  
17 West Virginia.

18 (d) Every subscriber is entitled to evidence of program  
19 membership that shall contain a clear, concise and complete  
20 statement of the services provided by the participating provider  
21 and the benefits, if any, to which the subscriber is entitled; any  
22 exclusions or limitations on the service, kind of service,  
23 benefits, or kind of benefits, to be provided, including any  
24 copayments; and where and in what manner information is  
25 available as to how a service may be obtained.

26 (e) Fees paid to participating providers are not subject to  
27 premium taxes and surcharges imposed on insurance compa-  
28 nies.

29 (f) Notwithstanding the provisions of chapter thirty-three of  
30 this code to the contrary, participation by providers in the  
31 preventive care clinic-based pilot program created and autho-  
32 rized pursuant to this article is not to be considered as providing  
33 insurance or as offering insurance services. Such providers and  
34 services are specifically excluded from the definitions of  
35 “insurer” and “insurance” as defined in article one, chapter  
36 thirty-three of this code, and are not subject to regulation by the  
37 Insurance Commissioner except to the extent set forth in this  
38 article, nor are participating providers unauthorized insurers

39 pursuant to section four, article forty-four of chapter thirty-three  
40 of this code.

**§16-2J-6. Rule-making authority.**

1 The Health Care Authority and the Insurance Commis-  
2 sioner shall promulgate joint rules as necessary to implement  
3 the provisions of this article, including emergency rules,  
4 promulgated pursuant to, chapter twenty-nine-a of this code.

**§16-2J-7. Participating provider plan requirements; primary  
care services; prior coverage restrictions; notice  
of discontinuance or reduction of benefits.**

1 In addition to the provisions of this article and any guide-  
2 lines established by the Health Care Authority and Insurance  
3 Commissioner, the plans offered pursuant to this article shall be  
4 subject to the following:

5 (1) Each participating provider and site must offer a  
6 minimum set of preventive and primary care services as  
7 established by the Health Care Authority.

8 (2) No participating provider may offer: (i) an individual  
9 plan to any individual who currently has a health benefit plan  
10 or who was covered by a health benefit plan within the preced-  
11 ing twelve months unless said coverage was lost due to a  
12 qualifying event; (ii) a family plan to any family that includes  
13 an adult to be covered who currently has a health benefit plan  
14 or who was covered by a health benefit plan within the preced-  
15 ing twelve months unless said coverage was lost due to a  
16 qualifying event; or (iii) an employee group plan to any  
17 employer that currently has a group health benefit plan or had  
18 a group health benefit plan covering its employees within the  
19 preceding twelve months.

20 (3) The Health Care Authority and the Insurance Commis-  
21 sioner may, by legislative rule, permit participation by an

22 employer with a comprehensive high deductible plan if such  
23 employer is able to demonstrate that such participation will not  
24 negatively impact the coverage currently offered by such  
25 employer.

26 (4) A participating provider must provide subscribers and,  
27 where applicable, subscribers' employers with a minimum of  
28 thirty days' notice of discontinuance or reduction of subscriber  
29 benefits.

**§16-2J-8. Guidelines for evaluation of the pilot program; report  
to Legislative Oversight Commission on Health  
and Human Resources Accountability.**

1 (a) The Health Care Authority shall establish by guidelines  
2 criteria to evaluate the pilot program and may require partici-  
3 pating providers to submit such data and other information  
4 related to the pilot program as may be required by the Health  
5 Care Authority: *Provided*, That all personal income tax returns  
6 filed pursuant to this article shall be treated as confidential  
7 pursuant to the provisions of section five-d, article ten, chapter  
8 11 of this code. For purposes of this article, this information  
9 shall be exempt from disclosure under the freedom of informa-  
10 tion act in article one, chapter twenty-nine-b of this code.

11 (b) No later than the first day of December, two thousand  
12 seven and annually thereafter during the operation of the pilot  
13 program, the Health Care Authority must submit a report to the  
14 Legislative Oversight Commission of Health and Human  
15 Resources Accountability as established in article twenty-nine-e  
16 of this chapter on progress made by the pilot project including  
17 suggested legislation, necessary changes to the pilot program  
18 and suggested expansion of the pilot program.

**§16-2J-9. Grounds for refusal to renew; revocation and suspen-  
sion of pilot program license; penalties; termina-  
tion of suspension, reissuance and renewal of  
license.**



1 (a) The Health Care Authority may after notice and hearing  
2 refuse to renew, or may revoke or suspend the license of a  
3 participating provider, in addition to other grounds therefor in  
4 this article, if the participating provider:

5 (1) Violates any provision of this article;

6 (2) Fails to comply with any lawful rule or order of the  
7 Health Care Authority;

8 (3) Is operating in an illegal, improper or unjust manner;

9 (4) Is found by the Insurance Commissioner to be in an  
10 unsound condition or in such condition as to render its further  
11 operation in West Virginia hazardous to its subscribers or to the  
12 people of West Virginia;

13 (5) Compels subscribers under its contract to accept less  
14 service than due them or to bring suit against it to secure full  
15 service when it has no substantial defense;

16 (6) Refuses to be examined or to produce its accounts,  
17 records and files for examination by the insurance commis-  
18 sioner when requested to do so pursuant to section five of this  
19 article;

20 (7) Fails to pay any final judgment rendered against it in  
21 West Virginia within thirty days after the judgment became  
22 final or time for appeal expired, whichever is later;

23 (8) Fails to pay when due to the state of West Virginia any  
24 taxes, fees, charges or penalties.

25 (b) In addition to or in lieu of refusing to renew, revoking  
26 or suspending the license of a participating provider in any  
27 case, the Health Care Authority may, by order, require the  
28 participating provider to pay to the state of West Virginia a

29 penalty in a sum not exceeding five thousand dollars for each  
30 violation. Upon the failure of the provider to pay such penalty  
31 within thirty days after notice thereof, the Health Care Author-  
32 ity shall revoke or suspend the license of such participating  
33 provider.

34 (c) When any license has been revoked or suspended or  
35 renewal thereof refused, the Health Care Authority may reissue,  
36 terminate the suspension of or renew such license when it is  
37 determined that the conditions causing such revocation,  
38 suspension or refusal to renew have ceased to exist and are  
39 unlikely to recur.

#### **ARTICLE 29H. INTERAGENCY HEALTH COUNCIL.**

§16-29H-1. Purpose and scope.

§16-29H-2. Legislative findings and goals.

§16-29H-3. Interagency council created; duties.

§16-29H-4. Benchmarks and schedule.

§16-29H-5. Public notice and hearings.

##### **§16-29H-1. Purpose and scope.**

1 The purpose of this article is to establish the standards and  
2 criteria for evaluating the unmet health care needs within this  
3 state, to evaluate methods to meet those needs and to set forth  
4 recommendations related to services provided and services  
5 needed, access issues, and related financing proposals.

##### **§16-29H-2. Legislative findings and goals.**

1 (a) The Legislature finds that the general welfare and well-  
2 being of the citizens of the state is greatly affected by their  
3 health status. The Legislature further finds that many of the  
4 citizens have unmet health care needs, which impairs their  
5 ability to lead full and productive lives. The Legislature further  
6 finds that the current health care system is sufficiently funded  
7 to meet those needs, but is not currently structured to ade-

8 quately and uniformly meet the state-wide needs of the  
9 population. The Legislature further finds that reforms to the  
10 health care delivery system, including the reimbursement  
11 structure, may address the inequities in access, the inequities in  
12 funding and result in a modified system that meets the needs of  
13 the state and its citizens.

14 (b) In consideration of the need for health care reform, the  
15 Legislature adopts the following goals:

16 (1) Access. West Virginia policy will reflect that access to  
17 health care is a public good. West Virginia shall develop  
18 strategies for having an integrated health care system that will  
19 attempt to provide all West Virginians, regardless of their age,  
20 employment, economic status, or their town of residency,  
21 access to affordable, high quality health care that is financed in  
22 a fair and equitable manner.

23 (A) In order to develop an integrated health care delivery  
24 system, the state shall consider promoting local or regional  
25 collaborative efforts among provider groups that are designed  
26 to use available resources in a more equitable and efficient  
27 fashion.

28 (B) To improve access to health care, the state shall  
29 consider methods to expand benefits over time after meeting  
30 appropriate benchmarks set forth in section four of this article.  
31 A process will be developed to define the benefits, taking into  
32 consideration scientific evidence, available funds and the values  
33 and priorities of West Virginia citizens.

34 (2) It is of critical importance that health care costs are  
35 brought under control. Likewise, it is essential that cost  
36 containment initiatives address both the financing of health care  
37 and the delivery and quality of health services offered in West  
38 Virginia. To ensure financial sustainability of any proposed  
39 plan, the state is committed to the extent possible to slow the

40 rate of growth of health care costs by the year two thousand ten.  
41 Strategies for containing costs may include consideration of:

42 (A) A budgeting process for hospitals and other health care  
43 providers as determined by the council established pursuant to  
44 this article;

45 (B) Increased consumer access to health care price and  
46 quality information;

47 (C) Promotion of self-care and healthy lifestyles;

48 (D) Enhanced prescription drug initiatives;

49 (E) Funding of chronic care initiatives;

50 (F) Investments in health information technology;

51 (G) Alignment of health care professional reimbursement  
52 with best practices and outcomes rather than utilization; and

53 (H) Development of a long-term strategy for integrating the  
54 health care delivery system as well as a strategy for integrating  
55 health care policy, planning, and regulation within government.

56 (3) Quality. West Virginia's health delivery system should  
57 model continuous improvement of health care quality and  
58 safety. The tools and resources necessary to make informed use  
59 of all health care services should be available to all West  
60 Virginians. The state should look to incentives to health care  
61 professionals and facilities to provide the best and most  
62 appropriate care to West Virginians. The state's role in improv-  
63 ing quality and safety should be through coordination of health  
64 care policy, planning and regulation.

65 (4) Equitable Financing. The health care system in West  
66 Virginia should be funded fairly and equitably. All residents  
67 should have access to health care and all participating residents  
68 should contribute to its cost.

69 (c) No private cause of action, either express or implied, is  
70 created by or otherwise arises from the enactment, provisions  
71 or implementation of this article.

**§16-29H-3. Interagency council created; duties.**

1 (a) There is hereby created the “Interagency Health  
2 Council” consisting of the chairperson of the Health Care  
3 Authority, the Insurance Commissioner, the secretary of the  
4 Department for Health and Human Resources, the director of  
5 the Public Employees Insurance Agency, and the director of the  
6 Children’s Health Insurance Program, and such other govern-  
7 ment agency persons as may be deemed necessary by the  
8 council. Each ex-officio member of the council may appoint a  
9 designee. The council shall be chaired jointly by the chairper-  
10 son of the Health Care Authority and the Insurance Commis-  
11 sioner until the Governor appoints another chairperson or co-  
12 chairpersons. The council shall:

13 (1) Identify and report emerging trends and behaviors  
14 among various participants in the health care system;

15 (2) Develop incentives to contain costs and methods to  
16 assess the effectiveness of cost-containment efforts;

17 (3) Develop quality of care initiatives;

18 (4) Direct the studies required to accomplish the goals of  
19 this section;

20 (5) Assess the feasibility of a publicly financed reinsurance  
21 program for all health plans doing business in West Virginia;

22 (6) Recommend alternative reimbursement mechanisms for  
23 health services that encourage cost effectiveness, improve the  
24 quality of care, increase efficiency, reward primary care  
25 practices that prevent chronic illnesses, avoid preventable  
26 hospitalizations, and reduce long-term costs to the system;

27 (7) Assess whether any federal programs including, but not  
28 limited to, Medicaid and the Children's Health Insurance  
29 Program could be used to expand services if it is determined to  
30 be the most cost effective means available;

31 (8) Receive reports and analysis from the West Virginia  
32 Health Information Network established in article twenty-nine-  
33 g, chapter sixteen of this code and ensure that this information  
34 is integrated into health planning;

35 (9) Collaborate with any entity charged with responsibility  
36 for the development of a behavioral health plan to ensure a fully  
37 integrated system including both physical and mental health;

38 (10) Receive input and make recommendations, generally,  
39 to the Senate and House committees on Health and Finance, and  
40 the Joint Committee on Government and Finance regarding the  
41 long-term development of policies and programs designed to  
42 ensure that West Virginia is moving towards an integrated  
43 system of care that provides all citizens of West Virginia access  
44 to affordable, high quality health care that is financed in a fair  
45 and equitable manner.

46 (b) The council shall establish committees and subcommit-  
47 tees to assist in their work.

48 (c) The council shall propose demonstration or pilot  
49 projects designed to contain health care costs and improve the  
50 delivery and quality of health care including, but not limited to,  
51 a demonstration project to establish a regional system with  
52 providers and hospitals working cooperatively to provide and  
53 coordinate health care for all residents of the region.

54 (d) The council shall establish an advisory committee to  
55 study a payment and regulatory system that provides incentives  
56 to improve patient safety and quality while controlling the rate  
57 of growth of health care expenditures below current projected

58 growth rates. The study shall include consideration of such  
59 items as hospital services, budgeting processes, efficient and  
60 economic operations, performance standards, utilization and  
61 inflation benchmarks, estimated cost shifts, uncompensated  
62 care, government payors, and the impact of the state health  
63 plan. The council shall review the work of the advisory  
64 committee and report its findings and recommendations to the  
65 Legislature prior to the first day of January, two thousand eight.

66 (e) The council shall report to the Joint Committee on  
67 Government and Finance on an annual basis the estimated cost  
68 shift to the private sector created by the federal and state  
69 government payors. Government payors include, but are not  
70 limited to, the Bureau for Medical Services, the Children's  
71 Health Insurance Program, Workers' Compensation and the  
72 Public Employees Insurance Agency.

73 (f) The council may request analysis from appropriate state  
74 agencies as needed. The agencies shall report this information  
75 at such times as determined necessary to fulfill the council's  
76 oversight responsibilities.

#### **§16-29H-4. Benchmarks and schedule.**

1 (a) On or before the first day of January, two thousand  
2 seven and each year thereafter, the council shall recommend to  
3 the Legislative Commission on Health and Human Resources  
4 Accountability those strategies that could move the state toward  
5 the goals established in this article.

6 (b) Prior to making recommendations the council shall find  
7 that the appropriate benchmarks for the strategy being recom-  
8 mended have been met:

9 (1) Financing necessary to support the recommendations is  
10 cost-neutral or less expensive with respect to the health care  
11 system and will not require more money than is projected to be

12 spent in the existing system by West Virginia employers and  
13 individuals through taxes, premiums, and out-of-pocket  
14 expenses;

15 (2) Administrative bureaucracy and costs will decrease as  
16 a percentage of total health care spending;

17 (3) Quality of care will be improved; and

18 (4) The future costs of health care will be less than the  
19 current growth rate, or the resources will be allocated in a  
20 manner that is more efficient and cost-effective, based on  
21 progress in implementing the following cost containment  
22 measures:

23 (A) Payment system to hospitals;

24 (B) Increased consumer access to health care price and  
25 quality information;

26 (C) Promotion of self-care and healthy lifestyles;

27 (D) Enhanced prescription drug initiatives developed in  
28 cooperation with the pharmaceutical advocate;

29 (E) Funding of chronic care initiatives;

30 (F) Investments in health information technology;

31 (G) Alignment of health care professional reimbursement  
32 with best practices and outcomes rather than utilization; and

33 (H) The creation of additional federally qualified health  
34 centers (FQHC) or FQHC look-alikes if data supports this effort  
35 and the federal government so approves.

36 (c) Recommendations to the Legislature shall include an  
37 assessment of the cost savings or the reallocation of resources,



38 increased access, improvements in quality and delivery,  
39 administrative simplification, fairness and equity in financing,  
40 continuity of coverage, and financial sustainability.

#### **§16-29H-5. Public notice and hearings.**

1 (a) In recognition of the importance of public engagement,  
2 the council shall have four public hearings prior to the first day  
3 of January, two thousand seven to solicit input from citizens,  
4 employers, hospitals, health care professionals, insurers, other  
5 stakeholders, and interested parties about health care.

6 (b) The council shall report no less than quarterly to the  
7 Legislative Commission on Health and Human Resource  
8 Accountability and the Joint Committee on Government and  
9 Finance on their activities and recommendations in health care  
10 reform to date.

### **CHAPTER 33. INSURANCE.**

#### **ARTICLE 15D. INDIVIDUAL LIMITED HEALTH BENEFITS PLANS.**

- §33-15D-1. Declaration of legislative intent.
- §33-15D-2. Individual limited health benefits plans; approval by commissioner; eligibility of individuals.
- §33-15D-3. Applicability of certain provisions; commissioner's authority to forbear from applying certain provisions.
- §33-15D-4. Underwriting standards for individual plans.
- §33-15D-5. Reimbursement rates for individual plans.
- §33-15D-6. Filing and approval of rates.
- §33-15D-7. Certification of creditable coverage.
- §33-15D-8. Emergency rules authorized.
- §33-15D-9. Disclaimer.
- §33-15D-10. Exemption from premium taxes.
- §33-15D-11. Severability; controlling provisions.

#### **§33-15D-1. Declaration of legislative intent.**

1 The Legislature recognizes that health insurance is priced  
2 beyond the reach of many citizens who could benefit from a

3 basic health plan. One of the ways affordable premiums can be  
4 obtained is by some combination of limiting benefits and  
5 increasing copays or deductibles. In order to provide greater  
6 access to such affordable plans, the Legislature has determined  
7 that authorization of the sale of insurance policies with limited  
8 benefits that would include physician, inpatient and outpatient  
9 care, with an emphasis on preventive and primary care, will  
10 serve to bring insurance coverage to many of those West  
11 Virginians without any insurance coverage. It is, therefore, the  
12 intent of the Legislature to introduce flexibility in the design of  
13 health insurance plans to allow insurers to offer basic benefits,  
14 including preventive and primary care services, at affordable  
15 prices. This article may be known as the Affordable Health  
16 Insurance Act.

**§33-15D-2. Individual limited health benefits plans; approval by  
commissioner; eligibility of individuals.**

1 (a) As used in this article, “individual plan” means any plan  
2 approved by the commissioner as an “individual limited health  
3 benefits plan” in accordance with this article. Each such plan  
4 constitutes a “particular type of accident and sickness insurance  
5 coverage” for the purposes of subsection (a), section two-e,  
6 article fifteen of this chapter.

7 (b) Notwithstanding any other provision of this code,  
8 including provisions mandating the inclusion of certain benefits  
9 in individual health insurance plans, upon filing with and  
10 approval by the commissioner as an individual plan, any  
11 insurer, including a health maintenance organization or health  
12 service corporation, may offer the plan and rates associated  
13 with the plan to individuals subject to the conditions of this  
14 article.

15 (c) Any plan approved as an individual plan may, notwith-  
16 standing any other provisions of this chapter and subject to any

17 other limitations on eligibility in this article or that may be  
18 contained in rules proposed by the commissioner for approval  
19 of the Legislature in accordance with article three, chapter  
20 twenty-nine-a of this code, only be offered to an adult between  
21 the ages of eighteen and sixty-four, inclusive, who:

22 (1) Has not had a health benefit plan covering him or her  
23 for at least the prior twelve consecutive months: *Provided*, That  
24 such a plan may not be offered to an employee of an employer  
25 that offers a health benefits plan to its employees unless that  
26 employee does not qualify for coverage under such employer  
27 plan; or

28 (2) Has lost coverage due to a qualifying event. A qualify-  
29 ing event shall include loss of coverage due to: (i) Emancipa-  
30 tion and resultant loss of coverage under a parent's or guard-  
31 ian's plan; (ii) divorce and loss of coverage under the former  
32 spouse's plan; (iii) termination of employment and resultant  
33 loss of coverage under an employer group plan except for loss  
34 of employment for gross misconduct; or (iv) involuntary  
35 termination of coverage under a group health benefit plan  
36 except for termination due to nonpayment of premiums or fraud  
37 by the insured.

38 (d) Every individual plan offered pursuant to this article  
39 may limit eligibility on the basis of health status and an  
40 individual who has been treated for a health condition in the  
41 prior twelve months may have that condition excluded from  
42 coverage for the first twelve months of the policy term.

**§33-15D-3. Applicability of certain provisions; commissioner's  
authority to forbear from applying certain provi-  
sions.**

1 (a) Only the following provisions of article fifteen of this  
2 chapter apply to insurers offering individual plans pursuant to  
3 this article: Sections two-a, two-b, two-d, two-e, three, four,

4 four-e, four-g, five, six, seven, eight, nine, eighteen and  
5 nineteen: *Provided*, That the provisions of subsection (a),  
6 section two-b, article fifteen of this chapter do not apply to such  
7 plans if the Secretary of the United States Department of Health  
8 and Human Services finds that the state is implementing an  
9 acceptable alternative mechanism in accordance with the  
10 provisions of 42 U. S. C. §300gg-44.

11 (b) Notwithstanding any other provision of this code, the  
12 provisions of article twenty-eight of this chapter and legislative  
13 rules regulating individual accident and sickness policies,  
14 including the rule contained in series 12, title 114 of the West  
15 Virginia Code of State Rules, do not apply to individual plans  
16 issued pursuant to this article unless and to the extent specifi-  
17 cally incorporated in rules promulgated pursuant to the author-  
18 ity conferred by section seven of this article.

19 (c) The commissioner may forbear from applying any other  
20 statutory or regulatory requirements to an insurer offering an  
21 individual plan approved pursuant to this article, including any  
22 requirements in articles twenty-four and twenty-five-a, pro-  
23 vided that the commissioner first determines that such forbear-  
24 ance serves the principles set forth in section one of this article.

#### **§33-15D-4. Underwriting standards for individual plans.**

1 Insurers shall underwrite individual plans in a comparable  
2 manner as they underwrite other individual health insurance  
3 plans governed by this chapter.

#### **§33-15D-5. Reimbursement rates for individual plans.**

1 Insurers shall reimburse providers pursuant to reimburse-  
2 ment rates previously negotiated with the providers.

#### **§33-15D-6. Filing and approval of rates.**

1 (a) Premium rate charges for any individual plans shall:

2 (1) Be reasonable in relation to the benefits available under  
3 the policy; and

4 (2) Notwithstanding the provisions of section one, article  
5 sixteen-b of this chapter, be filed with the commissioner for a  
6 waiting period of thirty days before the charges become  
7 effective. At the expiration of thirty days the premium rate  
8 charges filed are deemed approved unless prior thereto the  
9 charges have been affirmatively approved or disapproved by the  
10 commissioner.

11 (b) The commissioner shall disapprove premium rates that  
12 are not in compliance with the requirements of any rule  
13 promulgated pursuant to section seven of this article. The  
14 commissioner shall send written notice of the disapproval to the  
15 insurer. The commissioner may approve the premium rates  
16 before the thirty-day period expires by giving written notice of  
17 approval.

#### **§33-15D-7. Certification of creditable coverage.**

1 An insurer offering individual plans pursuant to the  
2 provisions of this article shall provide certification of creditable  
3 coverage in the same manner as provided in section three-m,  
4 article sixteen of this chapter.

#### **§33-15D-8. Emergency rules authorized.**

1 The commissioner shall promulgate emergency and  
2 legislative rules under the provisions of article three, chapter  
3 twenty-nine-a of this code on or before the first day of Septem-  
4 ber, two thousand six, to prescribe requirements regarding  
5 ratemaking, which may include rules establishing loss ratio  
6 standards for individual plans; to place further limitations on  
7 the eligibility of individuals; to determine what medical  
8 treatments, procedures and related health services benefits must  
9 be included in such individual plans; and to provide for any

10 other matters deemed necessary to further the intent of this  
11 article. In determining what medical treatments, procedures and  
12 related health services benefits must be included in such plans,  
13 the commissioner shall consider their effectiveness in improv-  
14 ing the health status of individuals, their impact on maintaining  
15 and improving health and on reducing the unnecessary con-  
16 sumption of health care services and their impact on the  
17 affordability of health care coverage.

**§33-15D-9. Disclaimer.**

1 Each individual plan issued pursuant to this article shall  
2 include the following disclaimer printed in boldface type and  
3 located in a prominent portion of each policy, subscriber  
4 contract and certificate of coverage: “THIS LIMITED INDI-  
5 VIDUAL HEALTH BENEFITS PLAN DOES NOT PROVIDE  
6 COMPREHENSIVE MEDICAL COVERAGE. IT IS A BASIC  
7 OR LIMITED BENEFITS POLICY AND CONTAINS  
8 SPECIFIC DOLLAR LIMITS THAT WILL BE PAID FOR  
9 MEDICAL SERVICES WHICH MAY NOT BE EXCEEDED.  
10 IF THE COST OF SERVICES EXCEEDS THOSE LIMITS,  
11 THE BENEFICIARY AND NOT THE INSURER IS RESPON-  
12 SIBLE FOR PAYMENT OF THE EXCESS AMOUNTS”.

**§33-15D-10. Exemption from premium taxes.**

1 Products authorized under this article are exempt from the  
2 premium taxes and surcharges assessed under article three of  
3 this chapter.

**§33-15D-11. Severability; controlling provisions.**

1 (a) If any provision of this act or the application thereof to  
2 any person or circumstance is for any reason held to be invalid,  
3 the remainder of the act and application of such provision to  
4 other persons or circumstances shall not be affected thereby.

5 (b) To the extent that provisions of this article differ from  
6 those contained elsewhere in this chapter, the provisions of this  
7 article control.

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## CHAPTER 107

**(Com. Sub. for S. B. 170 — By Senators Tomblin,  
Mr. President, and Sprouse)  
[By Request of the Executive]**

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[Passed March 9, 2006; in effect ninety days from passage.]  
[Approved by the Governor on March 22, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-29G-1, §16-29G-2, §16-29G-3, §16-29G-4, §16-29G-5, §16-29G-6, §16-29G-7 and §16-29G-8, all relating to the establishment of the West Virginia Health Information Network; establishing purpose of the network; setting up a board of directors; establishing membership of the board; terms of office of the board; permitting promulgation of legislative rules; establishing the powers and duties of the network; setting up a special revenue account; immunity from liability; property rights; dispute resolution; and confidentiality and privacy of records.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §16-29G-1, §16-29G-2, §16-29G-3, §16-29G-4, §16-29G-5, §16-29G-6, §16-29G-7 and §16-29G-8, all to read as follows:

**ARTICLE 29G. WEST VIRGINIA HEALTH INFORMATION NETWORK.**

§16-29G-1. Purpose.

§16-29G-2. Creation of West Virginia Health Information Network board of directors; powers of the board of directors.

§16-29G-3. Powers and duties.

§16-29G-4. Creation of the West Virginia Health Information Network account; authorization of Health Care Authority to expend funds to support the network.

§16-29G-5. Immunity from suit; limitation of liability.

§16-29G-6. Property rights.

§16-29G-7. Legislative rule-making authority; resolution of disputes.

§16-29G-8. Privacy; protection of information.

### **§16-29G-1. Purpose.**

1           (a) The purpose of this article is to create the West Virginia  
2 Health Information Network under the oversight of the Health  
3 Care Authority to promote the design, implementation,  
4 operation and maintenance of a fully interoperable statewide  
5 network to facilitate public and private use of health care  
6 information in the state.

7           (b) It is intended that the network be a public-private  
8 partnership for the benefit of all of the citizens of this state.

9           (c) The network is envisioned to support and facilitate the  
10 following types of electronic transactions or activities:

11           (1) Automatic drug-drug interaction and allergy alerts;

12           (2) Automatic preventive medicine alerts;

13           (3) Electronic access to the results of laboratory, X ray, or  
14 other diagnostic examinations;

15           (4) Disease management;

16           (5) Disease surveillance and reporting;

17           (6) Educational offerings for health care providers;



- 18 (7) Health alert system and other applications related to  
19 homeland security;
- 20 (8) Links to evidence-based medical practice;
- 21 (9) Links to patient educational materials;
- 22 (10) Medical record information transfer to other providers  
23 with the patient's consent;
- 24 (11) Physician order entry;
- 25 (12) Prescription drug tracking;
- 26 (13) Registries for vital statistics, cancer, case management,  
27 immunizations and other public health registries;
- 28 (14) Secured electronic consultations between providers  
29 and patients;
- 30 (15) A single-source insurance credentialing system for  
31 health care providers;
- 32 (16) Electronic health care claims submission and process-  
33 ing; and
- 34 (17) Any other electronic transactions or activities as  
35 determined by legislative rules promulgated pursuant to this  
36 article.
- 37 (d) The network shall ensure the privacy of patient health  
38 care information.

**§16-29G-2. Creation of West Virginia Health Information Network board of directors; powers of the board of directors.**

- 1 (a) The network is created under the Health Care Authority  
2 for administrative, personnel and technical support purposes.

3 The network shall be managed and operated by a board of  
4 directors. The board of directors is an independent, self-  
5 sustaining board with the powers specified in this article.

6 (b) The board is part-time. Each member shall devote the  
7 time necessary to carry out the duties and obligations of  
8 members on the board.

9 (c) Members appointed by the Governor may pursue and  
10 engage in another business or occupation or gainful employ-  
11 ment that is not in conflict with his or her duties as a member  
12 of the board.

13 (d) The board shall meet at such times as the chair may  
14 decide. Eight members of the board are a quorum for the  
15 purposes of the transaction of business and for the performance  
16 of any duty.

17 (e) A majority vote of the members present is required for  
18 any final determination by the board. Voting by proxy is not  
19 allowed.

20 (f) The Governor may remove any board member for  
21 incompetence, misconduct, gross immorality, misfeasance,  
22 malfeasance or nonfeasance in office.

23 (g) The board shall consist of seventeen members, desig-  
24 nated as follows:

25 (1) The Dean of the West Virginia University School of  
26 Medicine or his or her designee;

27 (2) The Dean of the Marshall University John C. Edwards  
28 School of Medicine or his or her designee;

29 (3) The President of the West Virginia School of Osteo-  
30 pathic Medicine or his or her designee;

31 (4) The Secretary of the Department of Health and Human  
32 Resources or his or her designee;

33 (5) The President of the West Virginia Board of Pharmacy  
34 or his or her designee;

35 (6) The Director of the Public Employees Insurance Agency  
36 or his or her designee;

37 (7) The Chief Technology Officer of the Office of Technol-  
38 ogy or his or her designee;

39 (8) The Chair of the Health Care Authority or his or her  
40 designee;

41 (9) The President of the West Virginia Hospital Association  
42 or his or her designee;

43 (10) The President of the West Virginia State Medical  
44 Association or his or her designee;

45 (11) The Chief Executive Officer of the West Virginia  
46 Health Care Association or his or her designee;

47 (12) The Executive Director of the West Virginia Primary  
48 Care Association or his or her designee; and

49 (13) Five public members that serve at the will and pleasure  
50 of the Governor and are appointed by the Governor with advice  
51 and consent of the Senate as follows:

52 (i) One member with legal expertise in matters concerning  
53 the privacy and security of health care information;

54 (ii) Two physicians actively engaged in the practice of  
55 medicine in the state;

56 (iii) One member engaged in the business of health  
57 insurance who is employed by a company that has its headquar-  
58 ters in West Virginia; and

59 (iv) The chief executive officer of a West Virginia corpora-  
60 tion working with West Virginia health care providers, insurers,  
61 businesses and government to facilitate the use of information  
62 technology to improve the quality, efficiency and safety of  
63 health care for West Virginians.

64 (h) The Governor shall appoint one of the board members  
65 to serve as chair of the board at the Governor's will and  
66 pleasure. The board shall annually select one of its members to  
67 serve as vice chair. The Chair of the Health Care Authority  
68 shall serve as the secretary-treasurer of the board.

69 (i) The public members of the board shall serve a term of  
70 four years and may serve two consecutive terms. At the end of  
71 a term, a member of the board shall continue to serve until a  
72 successor is appointed. Those members designated in subdivi-  
73 sions (1) through (12), inclusive, subsection (g) of this section  
74 shall serve on the board only while holding the position that  
75 entitle them to membership on the board.

76 (j) The board may propose the adoption or amendment of  
77 rules to the Health Care Authority to carry out the objectives of  
78 this article.

79 (k) The board may appoint committees or subcommittees  
80 to investigate and make recommendations to the full board.  
81 Members of such committees or subcommittees need not be  
82 members of the board.

83 (l) Each member of the board and the board's committees  
84 and subcommittees is entitled to be reimbursed for actual and  
85 necessary expenses incurred for each day or portion thereof  
86 engaged in the discharge of official duties in a manner consis-

87 tent with guidelines of the Travel Management Office of the  
88 Department of Administration.

**§16-29G-3. Powers and duties.**

1 The network shall have the following duties:

2 (1) To develop a community-based health information  
3 network to facilitate communication of patient clinical and  
4 financial information designed to:

5 (A) Promote more efficient and effective communication  
6 among multiple health care providers, including, but not limited  
7 to, hospitals, physicians, payers, employers, pharmacies,  
8 laboratories and other health care entities;

9 (B) Create efficiencies in health care costs by eliminating  
10 redundancy in data capture and storage and reducing adminis-  
11 trative, billing and data collection costs;

12 (C) Create the ability to monitor community health status;  
13 and

14 (D) Provide reliable information to health care consumers  
15 and purchasers regarding the quality and cost-effectiveness of  
16 health care, health plans and health care providers;

17 (2) To develop or design other initiatives in furtherance of  
18 the network's purpose;

19 (3) To report and make recommendations to the Health  
20 Care Authority.

21 The network is granted all other incidental powers,  
22 including, but not limited to, the following:

23 (A) Make and enter into all contracts and agreements and  
24 execute all instruments necessary or incidental to the perfor-

25 mance of its duties and the execution of its powers, subject to  
26 the availability of funds: *Provided*, That the provisions of  
27 article three, chapter five-a of this code do not apply to the  
28 agreements and contracts executed under the provisions of this  
29 article;

30 (B) Acquire by gift or purchase, hold or dispose of real and  
31 personal property in the exercise of its powers and performance  
32 of its duties as set forth in this article;

33 (C) Receive and dispense funds appropriated for its use by  
34 the Legislature or other funding sources or solicit, apply for and  
35 receive any funds, property or services from any person,  
36 governmental agency or organization to carry out its statutory  
37 duties;

38 (D) Represent the state with respect to national health  
39 information network initiatives;

40 (E) Perform any and all other activities in furtherance of its  
41 purpose or as directed by the Health Care Authority.

**§16-29G-4. Creation of the West Virginia Health Information  
Network account; authorization of Health Care  
Authority to expend funds to support the network.**

1 (a) All moneys collected shall be deposited in a special  
2 revenue account in the State Treasury known as the West  
3 Virginia Health Information Network Account. Expenditures  
4 from the fund shall be for the purposes set forth in this article  
5 and are not authorized from collections but are to be made only  
6 in accordance with appropriation by the Legislature and in  
7 accordance with the provisions of article three, chapter twelve  
8 of this code and upon fulfillment of the provisions of article  
9 two, chapter eleven-b of this code: *Provided*, That for the fiscal  
10 year ending the thirtieth day of June, two thousand seven,  
11 expenditures are authorized from collections rather than  
12 pursuant to appropriations by the Legislature.

13 (b) Consistent with section eight, article twenty-nine-b of  
14 this chapter, the Health Care Authority's provision of adminis-  
15 trative, personnel, technical and other forms of support to the  
16 network is necessary to support the activities of the Health Care  
17 Authority board and constitutes a legitimate, lawful purpose of  
18 the Health Care Authority board. Therefore, the Health Care  
19 Authority is hereby authorized to expend funds from its Health  
20 Care Cost Review Fund, established under section eight, article  
21 twenty-nine-b of this chapter, to support the network's adminis-  
22 trative, personnel and technical needs and any other network  
23 activities the Health Care Authority deems necessary.

**§16-29G-5. Immunity from suit; limitation of liability.**

1 The network is not a health care provider and is not subject  
2 to claims under article seven-b, chapter fifty-five of this code.  
3 No person who participates or subscribes to the services or  
4 information provided by the network is liable in any action for  
5 damages or costs of any nature, in law or equity, which result  
6 solely from that person's use or failure to use network informa-  
7 tion or data that was imputed or retrieved in accordance with  
8 the Health Insurance Portability and Accountability Act of 1996  
9 and any amendments and regulations under the act, state  
10 confidentiality laws and the rules of the network as approved by  
11 the Health Care Authority. In addition, no person is subject to  
12 antitrust or unfair competition liability based on membership or  
13 participation in the network, which provides an essential  
14 governmental function for the public health and safety and  
15 enjoys state action immunity.

**§16-29G-6. Property rights.**

1 (a) All persons providing information and data to the  
2 network shall retain a property right in that information or data,  
3 but grant to the other participants or subscribers a nonexclusive  
4 license to retrieve and use that information or data in accor-

5 dance with the Health Insurance Portability and Accountability  
6 Act of 1996 and any amendments and regulations under the act,  
7 state confidentiality laws and the rules proposed by the Health  
8 Care Authority.

9 (b) All processes or software developed, designed or  
10 purchased by the network shall remain its property subject to  
11 use by participants or subscribers in accordance with the rules  
12 or regulations proposed by the Health Care Authority.

**§16-29G-7. Legislative rule-making authority; resolution of  
disputes.**

1 (a) The Health Care Authority is hereby authorized to  
2 propose rules under and pursuant to article twenty-nine-b of this  
3 chapter to carry out the objectives of this article.

4 (b) To resolve disputes under this article or the rules  
5 proposed herein among participants, subscribers or the public,  
6 the Health Care Authority is hereby authorized to conduct  
7 hearings and render decisions under and pursuant to section  
8 twelve, article twenty-nine-b of this chapter.

**§16-29G-8. Privacy; protection of information.**

1 (a) The Health Care Authority shall ensure that patient  
2 specific protected health information be disclosed only in  
3 accordance with the patient's authorization or best interest to  
4 those having a need to know, in compliance with state confiden-  
5 tiality laws and the Health Insurance Portability and Account-  
6 ability Act of 1996 and any amendments and regulations under  
7 the act.

8 (b) The health information, data and records of the network  
9 shall be exempt from disclosure under the provisions of chapter  
10 twenty-nine-b of this code.



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## CHAPTER 108

**(Com. Sub. for S. B. 603 — By Senators Caruth, McKenzie,  
Deem, Harrison, Yoder, Minear and McCabe)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 5, 2006.]

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AN ACT to amend and reenact §2-2-1 of the Code of West Virginia, 1931, as amended, relating to renaming the day after Thanksgiving Day as Lincoln's Day.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 2. LEGAL HOLIDAYS; SPECIAL MEMORIAL DAYS; CONSTRUCTION OF STATUTES; DEFINITIONS.**

**§2-2-1. Legal holidays; official acts or court proceedings.**

- 1       (a) The following days are legal holidays:
- 2       (1) The first day of January is “New Year’s Day”;
- 3       (2) The third Monday of January is “Martin Luther King’s
- 4       Birthday”;
- 5       (3) The third Monday of February is “Presidents’ Day”;
- 6       (4) The last Monday in May is “Memorial Day”;
- 7       (5) The twentieth day of June is “West Virginia Day”;

- 8 (6) The fourth day of July is “Independence Day”;
- 9 (7) The first Monday of September is “Labor Day”;
- 10 (8) The second Monday of October is “Columbus Day”;
- 11 (9) The eleventh day of November is “Veterans’ Day”;
- 12 (10) The fourth Thursday of November is “Thanksgiving  
13 Day”;
- 14 (11) The day after Thanksgiving Day is “Lincoln’s Day”;
- 15 (12) The twenty-fifth day of December is “Christmas Day”;
- 16 (13) Any day on which a general, primary or special  
17 election is held is a holiday throughout the state, a political  
18 subdivision of the state, a district or an incorporated city, town  
19 or village in which the election is conducted;
- 20 (14) General election day on even years shall be designated  
21 Susan B. Anthony Day, in accordance with the provisions of  
22 subsection (b), section one-a of this article; and
- 23 (15) Any day proclaimed or ordered by the Governor or the  
24 President of the United States as a day of special observance or  
25 Thanksgiving, or a day for the general cessation of business, is  
26 a holiday.
- 27 (b) If a holiday otherwise described in subsection (a) of this  
28 section falls on a Sunday, then the following Monday is the  
29 legal holiday. If a holiday otherwise described in subsection (a)  
30 of this section falls on a Saturday, then the preceding Friday is  
31 the legal holiday: *Provided*, That this subsection (b) shall not  
32 apply to subdivisions (13), (14) and (15), subsection (a) of this  
33 section.

34 (c) Any day or part thereof designated by the Governor as  
35 time off, without charge against accrued annual leave, for state  
36 employees statewide may also be time off for county employees  
37 if the county commission elects to designate the day or part  
38 thereof as time off, without charge against accrued annual leave  
39 for county employees. Any entire or part statewide day off  
40 designated by the Governor may, for all courts, be treated as if  
41 it were a legal holiday.

42 (d) In computing any period of time prescribed by any  
43 applicable provision of this code or any legislative rule or other  
44 administrative rule or regulation promulgated pursuant to the  
45 provisions of this code, the day of the act, event, default or  
46 omission from which the applicable period begins to run is not  
47 included. The last day of the period so computed is included,  
48 unless it is a Saturday, a Sunday, a legal holiday or a designated  
49 day off in which event the prescribed period of time runs until  
50 the end of the next day that is not a Saturday, Sunday, legal  
51 holiday or designated day off.

52 (e) If any applicable provision of this code or any legisla-  
53 tive rule or other administrative rule or regulation promulgated  
54 pursuant to the provisions of this code designates a particular  
55 date on, before or after which an act, event, default or omission  
56 is required or allowed to occur, and if the particular date  
57 designated falls on a Saturday, Sunday, legal holiday or  
58 designated day off, then the date on which the act, event,  
59 default or omission is required or allowed to occur is the next  
60 day that is not a Saturday, Sunday, legal holiday or designated  
61 day off.

62 (f) With regard to the courts of this state, the computation  
63 of periods of time, the specific dates or days when an act, event,  
64 default or omission is required or allowed to occur and the  
65 relationship of those time periods and dates to Saturdays,  
66 Sundays, legal holidays, or days designated as weather or other

67 emergency days pursuant to section two of this article are  
68 governed by rules promulgated by the Supreme Court of  
69 Appeals.

70 (g) The provisions of this section do not increase or  
71 diminish the legal school holidays provided in section two,  
72 article five, chapter eighteen-a of this code.

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## CHAPTER 109

**(Com. Sub. for H. B. 4008 — By Delegates Cann, Beane and Ennis)**

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[Passed March 10, 2006; in effect ninety days from passage.]  
[Approved by the Governor on March 29, 2006.]

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AN ACT to amend and reenact §16-15-1 and §16-15-3a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-15-3b, all relating to authorizing mergers to form regional housing authorities; providing definitions; authorizing subsequent joining of local and regional housing authorities; authorizing housing authorities to initiate merger by joint resolution; providing that contents of joint resolution include transfer of assets and liabilities, membership of authority and adoption of a plan of merger; and conferring on the regional housing authority the powers and duties of authorities it succeeds.

*Be it enacted by the Legislature of West Virginia:*

That §16-15-1 and §16-15-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-15-3b, all to read as follows:

**ARTICLE 15. STATE HOUSING LAW.**

§16-15-1. Definitions.

§16-15-3a. Regional housing authorities.

§16-15-3b. Consolidated housing authorities.

**§16-15-1. Definitions.**

1       The following terms, wherever used or referred to in this  
2 article, shall have the following respective meanings, unless in  
3 any case a different meaning clearly appears from the context:

4       (1) “Affiliate” means any corporation, entity, partnership,  
5 venture, syndicate or arrangement in which a housing authority  
6 participates by holding an ownership interest or participating in  
7 its governance, including both controlled and noncontrolled  
8 affiliates as herein defined.

9       (2) “Affordable housing” means dwelling units that may be  
10 rented or purchased, as the case may be, by persons of eligible  
11 income, as defined herein.

12       (3) “Annual sinking fund payment” means the amount of  
13 money specified in the resolution or resolutions authorizing  
14 term bonds as payable into a sinking fund during a particular  
15 calendar year for the retirement of term bonds at maturity after  
16 such calendar year, but shall not include any amount payable by  
17 reason only of the maturity of a bond.

18       (4) “Area of operation” means the geographical area within  
19 which a housing authority owns or operates housing develop-  
20 ments or administers other housing programs including any  
21 city, county or combination thereof in which it was operating  
22 on the effective date of this article.

23       (5) “Arrangement” means a legal relationship with another  
24 party that may include, but not be limited to, a general or  
25 limited partnership; joint venture; syndicate or syndication;

26 corporation; limited liability cooperative, corporation or  
27 partnership; an unincorporated association; a cooperative; a  
28 consortium; and all other structures, organizations, and forms  
29 of legal relationships with third parties.

30 (6) “Authority” or “housing authority” means a corporate  
31 body organized in accordance with the provisions of this article  
32 for the purposes, with the powers, and subject to the restrictions  
33 hereinafter set forth. Where the context requires or permits, this  
34 term shall be deemed to include regional housing authorities  
35 and/or controlled affiliates of a housing authority.

36 (7) “Bond” or “bonds” means any bonds, notes, interim  
37 certificates, debentures, or other obligations issued by an  
38 authority pursuant to this article.

39 (8) “City” means and includes any political subdivision of  
40 this state, whether incorporated or unincorporated, known as a  
41 city, municipality, town or village. With respect to the provi-  
42 sions of other sections of this article and their application to  
43 housing authorities of counties, the term “city” shall be  
44 construed as referring to a county unless a different meaning  
45 clearly appears from the context.

46 (9) “Clerk” means the clerk or recorder of the city or the  
47 clerk of the county, as the case may be, or the officer charged  
48 with the duties customarily imposed on the clerk or recorder.

49 (10) “Commissioner” means one of the members of the  
50 governing board of a housing authority appointed in accordance  
51 with the provisions of this article.

52 (11) “Community facilities” means lands, buildings and  
53 equipment, real and personal property suitable for recreational,  
54 or social assembly, for educational, health, or welfare purposes  
55 and other necessary activities for the use and benefit of the  
56 occupants of housing developments and the public.

57 (12) "Controlled affiliate" means any affiliate of a housing  
58 authority: (i) In which commissioners, officers, employees and  
59 agents of the authority constitute a majority of the governing  
60 body; or (ii) in which the authority holds a majority of the  
61 ownership interests.

62 (13) "Council" means the chief legislative body of the city.

63 (14) "County" means and includes any political subdivision  
64 of this state known as a county.

65 (15) "Development" or "housing development" means and  
66 includes all dwellings and associated appurtenances, including  
67 real and personal property, and all other facilities and improve-  
68 ments of every kind and description, which a housing authority  
69 may own or operate or in which it may hold an interest under  
70 the provisions of this article, all land upon which such dwell-  
71 ings, appurtenances, and facilities are situate; all work and  
72 activities undertaken by a housing authority or others relating  
73 to the creation of such property; all tangible and intangible  
74 personal property relating thereto, including all leases, licenses,  
75 agreements, and other instruments and all rights and obligations  
76 arising thereunder, establishing or confirming ownership, title,  
77 or right of use or possession in or to any such property by a  
78 housing authority, all as more particularly described and  
79 authorized in this article.

80 (16) "Farmers of low or moderate income" means persons  
81 or families who at the time of their admission to occupancy in  
82 a dwelling of the authority: (A) Live under unsafe and unsani-  
83 tary housing conditions; (B) derive their principal income from  
84 operating or working upon a farm; and (C) had an aggregate  
85 average annual net income for the three years preceding their  
86 admission that was less than the amount determined by the  
87 authority to be necessary, within its area of operation, to enable  
88 them, without financial assistance, to obtain decent, safe and  
89 sanitary housing.

90 (17) “Governing body” means, in the case of a city, the  
91 council of the city, and in the case of a county, the county  
92 commission.

93 (18) “Government” means the state and federal govern-  
94 ments and any subdivisions, authority or instrumentality,  
95 corporate or otherwise, of either of them.

96 (19) “Guest” means any person, not a resident of the  
97 développement, who is present within the development, or within  
98 a dwelling in a development, as an invitee of or otherwise with  
99 the express or implied consent of a resident of the development  
100 or dwelling.

101 (20) “Hold an interest” means ownership or control of, or  
102 participation in an arrangement with respect to, a development  
103 by a housing authority or any affiliate thereof.

104 (21) “Low-cost housing” shall include any housing  
105 accommodations which are or are to be rented at not in excess  
106 of a maximum rate per room, or maximum average rate per  
107 room, which shall be specified or provided by the housing  
108 authority of the city in which such housing accommodations are  
109 or are to be located, or the Legislature, or a duly constituted  
110 agency of the state, or of the United States of America.

111 (22) “Mayor” means the chief executive of the city,  
112 whether the official designation of his office be mayor, city  
113 manager or otherwise: *Provided*, That the term “mayor” may  
114 also be the chief elected officer of the municipality regardless  
115 of whether or not the corporate charter provides for a city  
116 manager appointed by the city council who is the chief execu-  
117 tive officer.

118 (23) “Noncontrolled affiliate” means affiliate in which a  
119 housing authority participates, but does not constitute a



120 majority of the governing body nor have a majority ownership  
121 interest.

122 (24) “Obligee of the authority” or “obligee” means any  
123 bondholder, trustee or trustees for any bondholders, or lessor  
124 demising to an authority property used in connection with a  
125 housing development, or any assignee or assignees of the  
126 lessor’s interest or any part thereof, and the federal government  
127 when it is a party to any contract with the authority.

128 (25) “Person” means a family and, where the context so  
129 requires, a household.

130 (26) “Persons of eligible income” means individuals or  
131 families as defined by a public housing authority within the  
132 applicable local, state and federal funding guidelines.

133 (27) “Public agency” means and includes: (i) Any county;  
134 city; village; township; any school, drainage, tax, improvement  
135 or other district; any department, division, or political subdivi-  
136 sion of this state or another state; any housing authority,  
137 housing finance authority, or housing trust of this state or  
138 another state; and any other agency, bureau, office, authority,  
139 or instrumentality of this state or another state; (ii) any board,  
140 agency, commission, division or other instrumentality of a city  
141 or county; and (iii) any board, commission, agency, department,  
142 or other instrumentality of the United States, or any political  
143 subdivision or governmental unit of any of them.

144 (28) “Regional housing authority” means a housing  
145 authority formed by two or more cities, counties or housing  
146 authorities pursuant to the authority provided in sections three-a  
147 and three-b of this article.

148 (29) “Resident” means a person residing in a development  
149 of a housing authority, with the consent of such authority,  
150 according to its policies, rules and procedures.

151 (30) "Slum clearance" means the removal of housing  
152 conditions which shall be considered by the housing authority  
153 of the city in which such conditions exist to be unsanitary or  
154 substandard or a menace to public health.

155 (31) "State" means the State of West Virginia and its duly  
156 constituted government.

**§16-15-3a. Regional housing authorities.**

1 (a) Any two or more cities or counties, or any combination  
2 thereof, may, by resolution of their separate governing bodies,  
3 establish a regional housing authority, by adopting a joint  
4 resolution declaring that there is a need for a regional housing  
5 authority to provide decent, safe and sanitary housing that is  
6 affordable to persons of low and moderate income residing in  
7 a multijurisdictional area and that this need would be more  
8 efficiently served by the establishment of a regional housing  
9 authority: *Provided*, That any authority in existence prior to the  
10 effective date of this article that is providing services outside of  
11 the city or county boundaries will continue to have jurisdiction  
12 in the areas where the authority is providing services on the  
13 effective date of this article.

14 (b) Upon adoption of a resolution by two or more cities or  
15 counties, or a combination thereof, a regional housing authority  
16 shall be established and, except as otherwise provided in this  
17 article, the regional housing authority shall have perpetual  
18 existence, unless dissolved in accordance with law. Each  
19 regional housing authority established pursuant to this section,  
20 shall adopt a name for all legal and operating purposes.

21 (c) A certified copy of the resolutions establishing a  
22 regional housing authority shall serve as conclusive evidence  
23 that the authority has been properly established, is authorized  
24 to transact business, and exercise its powers under this article.

25 (d) After a regional housing authority has been established,  
26 any additional city, county or housing authority may elect to  
27 participate as a member of the regional housing authority, upon  
28 adoption of a resolution to that effect: *Provided*, That a majority  
29 of the existing commissioners of the regional housing authority  
30 and all participating political subdivisions, by action of their  
31 respective governing bodies, shall consent to the additional  
32 member or members.

33 (e) Any city or county may withdraw from participation in  
34 the regional housing authority by resolution of its governing  
35 body. Any withdrawal from participation shall be subject to the  
36 following conditions:

37 (1) The regional housing authority has no bonds, notes, or  
38 other obligations outstanding, or adequate provision for  
39 payment of bonds, notes, or other obligations, by escrow or  
40 otherwise, has been made. Past performance without breach or  
41 default of an obligation secured only by one or more develop-  
42 ments or the income thereof shall be deemed to be “adequate  
43 provision”;

44 (2) The withdrawing city or county shall make adequate  
45 provision for the performance of all of its outstanding obliga-  
46 tions and responsibilities as a participant in the regional housing  
47 authority;

48 (3) The withdrawing city or county shall give six months  
49 written notice to the regional housing authority and all other  
50 cities and counties participating therein; or

51 (4) The commissioner or commissioners appointed by the  
52 withdrawing city or county shall be deemed to have resigned as  
53 of the date upon which the withdrawal is effective. Vacancies  
54 on the board of commissioners created by withdrawal of a city  
55 or county shall be filled in such manner as the cities and  
56 counties remaining as participants shall agree.

57 Notwithstanding the withdrawal of any participating city or  
58 county, the legal title to and operating responsibility for any  
59 development located outside the area of operation of the  
60 regional housing authority remaining after such withdrawal has  
61 occurred shall continue to be vested in the regional housing  
62 authority, unless a different arrangement is made.

63 (f) If only one city or county remains as a participant in any  
64 regional housing authority, the regional housing authority shall  
65 become the housing authority of the remaining city or county  
66 at the discretion of its governing body, or the regional housing  
67 authority shall be dissolved and its assets and liabilities  
68 transferred to another existing housing authority or to a city or  
69 county or other public agency.

**§16-15-3b. Consolidated housing authorities.**

1 (a) Two or more cities or counties may, by joint resolution  
2 of their governing bodies, merge their housing authorities to  
3 establish a regional housing authority: *Provided*, That each city  
4 or county considering the merger shall hold a public hearing in  
5 its area of operation prior to adopting the joint resolution.

6 (b) The joint resolution must provide for:

7 (1) The transfer of assets and liabilities and the perfor-  
8 mance of all outstanding obligations and responsibilities;

9 (2) The membership, terms and manner of appointment of  
10 commissioners of the regional housing authority; and

11 (3) The preparation, adoption and implementation of a plan  
12 of merger.

13 (c) Consolidations by merger pursuant to this section are  
14 subject to all of the provisions of article eleven, chapter thirty-  
15 one-e of this code except where inconsistent with the provisions  
16 of this article and except as to those provisions of article eleven,  
17 chapter thirty-one-e which have no practical application.

18 (d) A regional housing authority established pursuant to this  
19 section acquires and succeeds to all rights, obligations, duties  
20 and privileges of the housing authorities of which it is a  
21 successor, and will be considered for all purposes a regional  
22 housing authority established pursuant to section three-a of this  
23 article and subject to all applicable provisions of this article.

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## CHAPTER 110

(Com. Sub. for H. B. 4456 — By Delegates Stemple,  
Poling, Varner and Pethtel)

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[Passed March 11, 2006; in effect ninety days from passage.]  
[Approved by the Governor on April 3, 2006.]

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AN ACT to amend and reenact §20-2-20 of the Code of West Virginia, 1931, as amended, relating to beaver trapping; removing limitations on numbers and location of traps; allowing disturbance of structures constructed by beavers when trapping; and removing certain duties for persons who unintentionally trap or kill beavers.

*Be it enacted by the Legislature of West Virginia:*

That §20-2-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 2. WILDLIFE RESOURCES.**

#### **§20-2-20. Trapping beaver.**

1 A person may not have in his possession an untagged  
2 beaver hide, or part thereof, within the period beginning thirty  
3 days after the end of the open season and ending with the first  
4 day of the next succeeding open season for beavers.

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## CHAPTER 111

**(Com. Sub. for H. B. 4272 — By Mr. Speaker, Mr. Kiss, and Delegates  
Beane, Amores, Michael, Mahan and Beach)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §20-2-42v of the Code of West Virginia, 1931, as amended, relating to clarifying the language regarding requirements for a Class BG stamp.

*Be it enacted by the Legislature of West Virginia:*

That §20-2-42v of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 2. WILDLIFE RESOURCES.**

#### **§20-2-42v. Class BG resident big game stamp.**

1       A Class BG stamp is a resident big game stamp and entitles  
2 the Class A licensee to hunt deer during the deer archery and  
3 muzzleloader seasons, and bear, wild turkey and wild boar  
4 during the respective seasons, except as prohibited by rules of  
5 the Director or Natural Resources Commission: *Provided*, That  
6 the licensee possesses all other required permits and/or stamps.  
7 The fee for the stamp is ten dollars. The stamp, issued in a form  
8 prescribed by the director, shall be in addition to a Class A  
9 license. This stamp requires that the licensee purchase the  
10 appropriate base license before participating in the activities  
11 specified in this section, except as noted.

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## CHAPTER 112

**(H. B. 4487 — By Delegates Stemple,  
Varner, Poling and Pethtel)**

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[Passed March 11, 2006; in effect ninety days from passage.]  
[Approved by the Governor on April 3, 2006.]

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AN ACT to amend and reenact §20-2-46e of the Code of West Virginia, 1931, as amended, relating to allowing an individual, who is at least sixteen years of age, to be in the vehicle to assist the Class Q permittee.

*Be it enacted by the Legislature of West Virginia:*

That §20-2-46e of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 2. WILDLIFE RESOURCES.**

#### **§20-2-46e. Class Q special hunting permit for disabled persons.**

1       (a) A Class Q permit is a special statewide hunting permit  
2       entitling the permittee to hunt all legal species of game during  
3       the designated hunting seasons from a motor vehicle in  
4       accordance with the provisions of this section.

5       (b) A permit form shall be furnished by the director to an  
6       applicant who meets the following requirements:

7       (1) He or she is permanently disabled in the lower extremi-  
8       ties; and

9           (2) He or she holds a valid resident or nonresident statewide  
10 hunting license, a senior citizens license or is otherwise exempt  
11 from the license requirement.

12           (c) A licensed physician must certify the applicant's  
13 permanent disability by completing the permit form. When  
14 completed, the permit form constitutes a Class Q permit. The  
15 Class Q permit and a completed license application shall be  
16 submitted to the division, which will issue a wallet sized card  
17 to the permittee. The card and all other documents and identifi-  
18 cation required to be carried by this article shall be in the  
19 permittee's possession when hunting.

20           (d) A Class Q permit entitles the holder to hunt from a  
21 motor vehicle and, notwithstanding the provisions of subdivi-  
22 sion (9), section five of this article, to possess a loaded firearm  
23 in a motor vehicle, but only under the following circumstances:

24           (1) The motor vehicle is stationary;

25           (2) The engine of the motor vehicle is not operating;

26           (3) The permittee and one individual, who is at least sixteen  
27 years of age, to assist the permittee are the only occupants of  
28 the vehicle;

29           (4) The individual assisting the permittee may not hunt with  
30 a firearm, bow or cross-bow while assisting the permittee;

31           (5) The vehicle is not parked on the right-of-way of any  
32 public road or highway; and

33           (6) The permittee observes all other pertinent laws and  
34 regulations.

35           (e) The director may propose rules for legislative approval  
36 in accordance with the provisions of article three, chapter



- 37 twenty-nine-a of this code setting forth the qualifications of  
38 applicants and the permitting process.

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## CHAPTER 113

**(Com. Sub. for H. B. 4379 — By Delegates Brown, Hatfield,  
Webster, Leach, Mahan, Poling, Frich, Spencer,  
Hrutkay, Longstreth and Rowan)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 29, 2006.]

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AN ACT to amend and reenact §5-16-7 and §5-16-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-15-4c of said code; to amend and reenact §33-16-3g of said code; to amend and reenact §33-24-7b of said code; to amend and reenact §33-25-8a of said code; and to amend and reenact §33-25A-8a of said code, all relating to insurance coverage for mammograms, pap smears and human papilloma virus testing; modifying required benefits for public employees insurance, accident and sickness insurance, group accident and sickness insurance, hospital service corporations, medical service corporations, dental service corporations, health service corporations, healthcare corporations and health maintenance organizations, and requiring insurance policies and medical benefit plans to include certain coverages when medically appropriate and consistent with relevant national guidelines.

*Be it enacted by the Legislature of West Virginia:*

That §5-16-7 and §5-16-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-15-4c of said code be amended and reenacted; that §33-16-3g of said code be amended and

reenacted; that §33-24-7b of said code be amended and reenacted; that §33-25-8a of said code be amended and reenacted; and that §33-25A-8a of said code be amended and reenacted, all to read as follows:

**Chapter**

**5. General Powers and Authority of the Governor, Secretary of State and Attorney General; Board of Public Works; Miscellaneous Agencies, Commissions, Offices, Programs, Etc.**

**33. Insurance.**

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

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.

§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.

**§5-16-7. Authorization to establish group hospital and surgical insurance plan, group major medical insurance plan, group prescription drug plan and group life and accidental death insurance plan; rules for administration of plans; mandated benefits; what plans may provide; optional plans; separate rating for claims experience purposes.**

- 1 (a) The agency shall establish a group hospital and surgical
- 2 insurance plan or plans, a group prescription drug insurance

3 plan or plans, a group major medical insurance plan or plans  
4 and a group life and accidental death insurance plan or plans for  
5 those employees herein made eligible, and to establish and  
6 promulgate rules for the administration of these plans, subject  
7 to the limitations contained in this article. Those plans shall  
8 include:

9 (1) Coverages and benefits for X-ray and laboratory  
10 services in connection with mammograms when medically  
11 appropriate and consistent with current guidelines from the  
12 United States Preventive Services Task Force; pap smears,  
13 either conventional or liquid-based cytology, whichever is  
14 medically appropriate and consistent with the current guidelines  
15 from either the United States Preventive Services Task Force or  
16 The American College of Obstetricians and Gynecologists; and  
17 a test for the human papilloma virus (HPV) when medically  
18 appropriate and consistent with current guidelines from either  
19 the United States Preventive Services Task Force or The  
20 American College of Obstetricians and Gynecologists, when  
21 performed for cancer screening or diagnostic services on a  
22 woman age eighteen or over;

23 (2) Annual checkups for prostate cancer in men age fifty  
24 and over;

25 (3) For plans that include maternity benefits, coverage for  
26 inpatient care in a duly licensed health care facility for a mother  
27 and her newly born infant for the length of time which the  
28 attending physician considers medically necessary for the  
29 mother or her newly born child: *Provided*, That no plan may  
30 deny payment for a mother or her newborn child prior to  
31 forty-eight hours following a vaginal delivery, or prior to  
32 ninety-six hours following a caesarean section delivery, if the  
33 attending physician considers discharge medically inappropri-  
34 ate;

35 (4) For plans which provide coverages for post-delivery  
36 care to a mother and her newly born child in the home, cover-  
37 age for inpatient care following childbirth as provided in  
38 subdivision (3) of this subsection if inpatient care is determined  
39 to be medically necessary by the attending physician. Those  
40 plans may also include, among other things, medicines, medical  
41 equipment, prosthetic appliances, and any other inpatient and  
42 outpatient services and expenses considered appropriate and  
43 desirable by the agency; and

44 (5) Coverage for treatment of serious mental illness.

45 (A) The coverage does not include custodial care, residen-  
46 tial care or schooling. For purposes of this section, "serious  
47 mental illness" means an illness included in the American  
48 psychiatric association's diagnostic and statistical manual of  
49 mental disorders, as periodically revised, under the diagnostic  
50 categories or subclassifications of: (i) Schizophrenia and other  
51 psychotic disorders; (ii) bipolar disorders; (iii) depressive  
52 disorders; (iv) substance-related disorders with the exception of  
53 caffeine-related disorders and nicotine-related disorders; (v)  
54 anxiety disorders; and (vi) anorexia and bulimia. With regard  
55 to any covered individual who has not yet attained the age of  
56 nineteen years, "serious mental illness" also includes attention  
57 deficit hyperactivity disorder, separation anxiety disorder and  
58 conduct disorder.

59 (B) Notwithstanding any other provision in this section to  
60 the contrary, in the event that the agency can demonstrate  
61 actuarially that its total anticipated costs for the treatment of  
62 mental illness for any plan will exceed or have exceeded two  
63 percent of the total costs for such plan in any experience period,  
64 then the agency may apply whatever cost containment measures  
65 may be necessary, including, but not limited to, limitations on  
66 inpatient and outpatient benefits, to maintain costs below two  
67 percent of the total costs for the plan.

68 (C) The agency shall not discriminate between medical-  
69 surgical benefits and mental health benefits in the administra-  
70 tion of its plan. With regard to both medical-surgical and  
71 mental health benefits, it may make determinations of medical  
72 necessity and appropriateness, and it may use recognized health  
73 care quality and cost management tools, including, but not  
74 limited to, limitations on inpatient and outpatient benefits,  
75 utilization review, implementation of cost containment mea-  
76 sures, preauthorization for certain treatments, setting coverage  
77 levels, setting maximum number of visits within certain time  
78 periods, using capitated benefit arrangements, using fee-for-  
79 service arrangements, using third-party administrators, using  
80 provider networks and using patient cost sharing in the form of  
81 copayments, deductibles and coinsurance.

82 (b) The agency shall make available to each eligible  
83 employee, at full cost to the employee, the opportunity to  
84 purchase optional group life and accidental death insurance as  
85 established under the rules of the agency. In addition, each  
86 employee is entitled to have his or her spouse and dependents,  
87 as defined by the rules of the agency, included in the optional  
88 coverage, at full cost to the employee, for each eligible depend-  
89 ent; and with full authorization to the agency to make the  
90 optional coverage available and provide an opportunity of  
91 purchase to each employee.

92 (c) The finance board may cause to be separately rated for  
93 claims experience purposes: (1) All employees of the State of  
94 West Virginia; (2) all teaching and professional employees of  
95 state public institutions of higher education and county boards  
96 of education; (3) all nonteaching employees of the university of  
97 West Virginia board of trustees or the board of directors of the  
98 state college system and county boards of education; or (4) any  
99 other categorization which would ensure the stability of the  
100 overall program.

**§5-16-9. Authorization to execute contracts for group hospital and surgical insurance, group major medical insurance, group prescription drug insurance, group life and accidental death insurance and other accidental death insurance; mandated benefits; limitations; awarding of contracts; reinsurance; certificates for covered employees; discontinuance of contracts.**

1           (a) The director is hereby given exclusive authorization to  
2 execute such contract or contracts as are necessary to carry out  
3 the provisions of this article and to provide the plan or plans of  
4 group hospital and surgical insurance coverage, group major  
5 medical insurance coverage, group prescription drug insurance  
6 coverage and group life and accidental death insurance cover-  
7 age selected in accordance with the provisions of this article,  
8 such contract or contracts to be executed with one or more  
9 agencies, corporations, insurance companies or service organi-  
10 zations licensed to sell group hospital and surgical insurance,  
11 group major medical insurance, group prescription drug  
12 insurance and group life and accidental death insurance in this  
13 state.

14           (b) The group hospital or surgical insurance coverage and  
15 group major medical insurance coverage herein provided for  
16 shall include coverages and benefits for X-ray and laboratory  
17 services in connection with mammogram and pap smears when  
18 performed for cancer screening or diagnostic services and  
19 annual checkups for prostate cancer in men age fifty and over.  
20 Such benefits shall include, but not be limited to, the following:

21           (1) Mammograms when medically appropriate and consis-  
22 tent with the current guidelines from the United States Preven-  
23 tive Services Task Force.

24           (2) A pap smear, either conventional or liquid-based  
25 cytology, whichever is medically appropriate and consistent

26 with the current guidelines from the United States Preventative  
27 Services Task Force or The American College of Obstetricians  
28 and Gynecologists, for women age eighteen and over;

29 (3) A test for the human papilloma virus (HPV) for women  
30 age eighteen or over, when medically appropriate and consis-  
31 tent with the current guidelines from either the United States  
32 Preventive Services Task Force or The American College of  
33 Obstetricians and Gynecologists for women age eighteen and  
34 over; and

35 (4) A checkup for prostate cancer annually for men age  
36 fifty or over.

37 (c) The group life and accidental death insurance herein  
38 provided for shall be in the amount of ten thousand dollars for  
39 every employee. The amount of the group life and accidental  
40 death insurance to which an employee would otherwise be  
41 entitled shall be reduced to five thousand dollars upon such  
42 employee attaining age sixty-five.

43 (d) All of the insurance coverage to be provided for under  
44 this article may be included in one or more similar contracts  
45 issued by the same or different carriers.

46 (e) The provisions of article three, chapter five-a of this  
47 code, relating to the division of purchases of the Department of  
48 Finance and Administration, shall not apply to any contracts for  
49 any insurance coverage or professional services authorized to  
50 be executed under the provisions of this article. Before entering  
51 into any contract for any insurance coverage, as authorized in  
52 this article, the director shall invite competent bids from all  
53 qualified and licensed insurance companies or carriers, who  
54 may wish to offer plans for the insurance coverage desired:  
55 *Provided*, That the director shall negotiate and contract directly  
56 with health care providers and other entities, organizations and  
57 vendors in order to secure competitive premiums, prices and

58 other financial advantages. The director shall deal directly with  
59 insurers or health care providers and other entities, organiza-  
60 tions and vendors in presenting specifications and receiving  
61 quotations for bid purposes. No commission or finder's fee, or  
62 any combination thereof, shall be paid to any individual or  
63 agent; but this shall not preclude an underwriting insurance  
64 company or companies, at their own expense, from appointing  
65 a licensed resident agent, within this state, to service the  
66 companies' contracts awarded under the provisions of this  
67 article. Commissions reasonably related to actual service  
68 rendered for the agent or agents may be paid by the underwrit-  
69 ing company or companies: *Provided, however,* That in no  
70 event shall payment be made to any agent or agents when no  
71 actual services are rendered or performed. The director shall  
72 award the contract or contracts on a competitive basis. In  
73 awarding the contract or contracts the director shall take into  
74 account the experience of the offering agency, corporation,  
75 insurance company or service organization in the group hospital  
76 and surgical insurance field, group major medical insurance  
77 field, group prescription drug field and group life and accidental  
78 death insurance field, and its facilities for the handling of  
79 claims. In evaluating these factors, the director may employ the  
80 services of impartial, professional insurance analysts or  
81 actuaries or both. Any contract executed by the director with a  
82 selected carrier shall be a contract to govern all eligible  
83 employees subject to the provisions of this article. Nothing  
84 contained in this article shall prohibit any insurance carrier  
85 from soliciting employees covered hereunder to purchase  
86 additional hospital and surgical, major medical or life and  
87 accidental death insurance coverage.

88 (f) The director may authorize the carrier with whom a  
89 primary contract is executed to reinsure portions of the contract  
90 with other carriers which elect to be a reinsurer and who are  
91 legally qualified to enter into a reinsurance agreement under the  
92 laws of this state.



93 (g) Each employee who is covered under any contract or  
94 contracts shall receive a statement of benefits to which the  
95 employee, his or her spouse and his or her dependents are  
96 entitled under the contract, setting forth the information as to  
97 whom the benefits are payable, to whom claims shall be  
98 submitted, and a summary of the provisions of the contract or  
99 contracts as they affect the employee, his or her spouse and his  
100 or her dependents.

101 (h) The director may at the end of any contract period  
102 discontinue any contract or contracts it has executed with any  
103 carrier and replace the same with a contract or contracts with  
104 any other carrier or carriers meeting the requirements of this  
105 article.

106 (i) The director shall provide by contract or contracts  
107 entered into under the provisions of this article the cost for  
108 coverage of children's immunization services from birth  
109 through age sixteen years to provide immunization against the  
110 following illnesses: Diphtheria, polio, mumps, measles, rubella,  
111 tetanus, hepatitis-b, haemophilus influenza-b and whooping  
112 cough. Additional immunizations may be required by the  
113 Commissioner of the Bureau of Public Health for public health  
114 purposes. Any contract entered into to cover these services shall  
115 require that all costs associated with immunization, including  
116 the cost of the vaccine, if incurred by the health care provider,  
117 and all costs of vaccine administration, be exempt from any  
118 deductible, per visit charge and/or copayment provisions which  
119 may be in force in these policies or contracts. This section does  
120 not require that other health care services provided at the time  
121 of immunization be exempt from any deductible and/or  
122 copayment provisions.

## CHAPTER 33. INSURANCE.

### Article

15. Accident and Sickness Insurance.
16. Group Accident and Sickness Insurance.

24. **Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.**

25. **Health Care Corporations.**

25A. **Health Maintenance Organization Act.**

**ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.**

**§33-15-4c. Third party reimbursement for mammography, pap smear or human papilloma virus testing.**

1 (a) Notwithstanding any provision of any policy, provision,  
2 contract, plan or agreement to which this article applies,  
3 whenever reimbursement or indemnity for laboratory or X-ray  
4 services are covered, reimbursement or indemnification shall  
5 not be denied for any of the following when performed for  
6 cancer screening or diagnostic purposes, at the direction of a  
7 person licensed to practice medicine and surgery by the board  
8 of medicine:

9 (1) Mammograms when medically appropriate and consis-  
10 tent with the current guidelines from the United States Preven-  
11 tive Services Task Force.

12 (2) A pap smear, either conventional or liquid-based  
13 cytology, whichever is medically appropriate and consistent  
14 with the current guidelines from either the United States  
15 Preventive Services Task Force or The American College of  
16 Obstetricians and Gynecologists for women age eighteen or  
17 over; or

18 (3) A test for the human papilloma virus (HPV), for women  
19 age eighteen or over when medically appropriate and consistent  
20 with the current guidelines from either the United States  
21 Preventive Services Task Force or The American College of  
22 Obstetricians and Gynecologists for women age eighteen and  
23 over.

24 (b) A policy, provision, contract, plan or agreement may  
25 apply to mammograms, pap smears or human papilloma virus

26 (HPV) test the same deductibles, coinsurance and other  
27 limitations as apply to other covered services.

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

**§33-16-3g. Third party reimbursement for mammography, pap  
smear or human papilloma virus testing.**

1 Notwithstanding any provision of any policy, provision,  
2 contract, plan or agreement to which this article applies,  
3 whenever reimbursement or indemnity for laboratory or X-ray  
4 services are covered, reimbursement or indemnification shall  
5 not be denied for any of the following when performed for  
6 cancer screening or diagnostic purposes, at the direction of a  
7 person licensed to practice medicine and surgery by the board  
8 of medicine:

9 (1) Mammograms when medically appropriate and consis-  
10 tent with the current guidelines from the United States Preven-  
11 tive Services Task Force.

12 (2) A pap smear, either conventional or liquid-based  
13 cytology, whichever is medically appropriate and consistent  
14 with the current guidelines from the United States Preventive  
15 Services Task Force or The American College of Obstetricians  
16 and Gynecologists, for women age eighteen or over; and

17 (3) A test for the human papilloma virus (HPV) for women  
18 age eighteen or over, when medically appropriate and consis-  
19 tent with the current guidelines from either the United States  
20 Preventive Services Task Force or The American College of  
21 Obstetricians and Gynecologists for women age eighteen and  
22 over.

23 A policy, provision, contract, plan or agreement may apply  
24 to mammograms, pap smears or human papilloma virus (HPV)  
25 test the same deductibles, coinsurance and other limitations as  
26 apply to other covered services.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.**

**§33-24-7b. Third party reimbursement for mammography, pap smear or human papilloma virus testing.**

1 (a) Notwithstanding any provision of any policy, provision,  
2 contract, plan or agreement to which this article applies,  
3 whenever reimbursement or indemnity for laboratory or X-ray  
4 services are covered, reimbursement or indemnification shall  
5 not be denied for any of the following when performed for  
6 cancer screening or diagnostic purposes, at the direction of a  
7 person licensed to practice medicine and surgery by the board  
8 of medicine:

9 (1) Mammograms when medically appropriate and consis-  
10 tent with the current guidelines from the United States Preven-  
11 tive Services Task Force;

12 (2) A pap smear, either conventional or liquid-based  
13 cytology, whichever is medically appropriate and consistent  
14 with the current guidelines from either the United States  
15 Preventive Services Task Force or The American College of  
16 Obstetricians and Gynecologists, for women age eighteen or  
17 over; or

18 (3) A test for the human papilloma virus (HPV), when  
19 medically appropriate and consistent with the current guidelines  
20 from either the United States Preventive Services Task Force or  
21 The American College of Obstetricians and Gynecologists, for  
22 women age eighteen or over.

23 (b) A policy, provision, contract, plan or agreement may  
24 apply to mammograms, pap smears or human papilloma virus  
25 (HPV) test the same deductibles, coinsurance and other  
26 limitations as apply to other covered services.

**ARTICLE 25. HEALTH CARE CORPORATIONS.****§33-25-8a. Third party reimbursement for mammography or pap smear or human papilloma virus testing.**

1           (a) Notwithstanding any provision of any policy, provision,  
2 contract, plan or agreement to which this article applies,  
3 whenever reimbursement or indemnity for laboratory or X-ray  
4 services are covered, reimbursement or indemnification shall  
5 not be denied for any of the following when performed for  
6 cancer screening or diagnostic purposes, at the direction of a  
7 person licensed to practice medicine and surgery by the board  
8 of medicine:

9           (1) Mammograms when medically appropriate and consis-  
10 tent with the current guidelines from the United States Preven-  
11 tive Services Task Force;

12           (2) A pap smear, either conventional or liquid-based  
13 cytology, whichever is medically appropriate and consistent  
14 with the current guidelines from either the United States  
15 Preventive Services Task Force or The American College of  
16 Obstetricians and Gynecologists, for women age eighteen or  
17 over; and

18           (3) A test for the human papilloma virus (HPV) for women  
19 age eighteen or over, when medically appropriate and consis-  
20 tent with the current guidelines from either the United States  
21 Preventive Services Task Force or The American College of  
22 Obstetricians and Gynecologists for women age eighteen and  
23 over.

24           (b) A policy, provision, contract, plan or agreement may  
25 apply to mammograms, pap smears or human papilloma virus  
26 (HPV) test the same deductibles, coinsurance and other  
27 limitations as apply to other covered services.

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.****§33-25A-8a. Third party reimbursement for mammography, pap smear or human papilloma virus testing.**

1 (a) Notwithstanding any provision of any policy, provision,  
2 contract, plan or agreement to which this article applies,  
3 whenever reimbursement or indemnity for laboratory or X-ray  
4 services are covered, reimbursement or indemnification shall  
5 not be denied for any of the following when performed for  
6 cancer screening or diagnostic purposes, at the direction of a  
7 person licensed to practice medicine and surgery by the board  
8 of medicine:

9 (1) Mammograms when medically appropriate and consis-  
10 tent with the current guidelines from the United States Preven-  
11 tive Services Task Force or The American College of Obstetri-  
12 cians and Gynecologists.

13 (2) A pap smear, either conventional or liquid-based  
14 cytology, whichever is medically appropriate and consistent  
15 with the current guidelines from the United States Preventive  
16 Services Task Force or The American College of Obstetricians  
17 and Gynecologists, for women age eighteen or over; or

18 (3) A test for the human papilloma virus (HPV) for women  
19 age eighteen or over, when medically appropriate and consis-  
20 tent with the current guidelines from either the United States  
21 Preventive Services Task Force or The American College of  
22 Obstetricians and Gynecologists for women age eighteen and  
23 over.

24 (b) A policy, provision, contract, plan or agreement may  
25 apply to mammograms, pap smears or human papilloma virus  
26 (HPV) test the same deductibles, coinsurance and other  
27 limitations as apply to other covered services.

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## CHAPTER 114

(S. B. 223 — By Senator Minard)

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to amend and reenact §33-2-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §33-20-12 of said code; to amend and reenact §33-24-4 of said code; to amend and reenact §33-25-10 of said code; and to amend and reenact §33-25D-18 of said code, all relating to examinations of insurance and health care entities; increasing the time in which insurers, rating organizations and certain health care entities may respond to examination reports from the Insurance Commissioner; clarifying that the Insurance Fraud Prevention Act applies to certain health care entities; and increasing the minimum period in which examinations of certain health care entities must be conducted by the Insurance Commissioner.

*Be it enacted by the Legislature of West Virginia:*

That §33-2-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §33-20-12 of said code be amended and reenacted; that §33-24-4 of said code be amended and reenacted; that §33-25-10 of said code be amended and reenacted; and that §33-25D-18 of said code be amended and reenacted, all to read as follows:

**Article**

- 2. Insurance Commissioner.**
- 20. Rates and Rating Organizations.**
- 24. Hospital Service Corporations, Medical Service Corporations, Dental Service Corporations and Health Service Corporations.**

**25. Health Care Corporations.****25D. Prepaid Limited Health Service Organization Act.****ARTICLE 2. INSURANCE COMMISSIONER.****§33-2-9. Examination of insurers, agents, brokers and solicitors;  
access to books, records, etc.**

1 (a) The purpose of this section is to provide an effective and  
2 efficient system for examining the activities, operations,  
3 financial condition and affairs of all persons transacting the  
4 business of insurance in this state and all persons otherwise  
5 subject to the jurisdiction of the commissioner. The provisions  
6 of this section are intended to enable the commissioner to adopt  
7 a flexible system of examinations which directs resources as  
8 may be considered appropriate and necessary for the adminis-  
9 tration of the insurance and insurance-related laws of this state.

10 (b) For purposes of this section, the following definitions  
11 shall apply:

12 (1) "Commissioner" means the Commissioner of Insurance  
13 of this state;

14 (2) "Company" or "insurance company" means any person  
15 engaging in or proposing or attempting to engage in any  
16 transaction or kind of insurance or surety business and any  
17 person or group of persons who may otherwise be subject to the  
18 administrative, regulatory or taxing authority of the commis-  
19 sioner, including, but not limited to, any domestic or foreign  
20 stock company, mutual company, mutual protective association,  
21 farmers mutual fire companies, fraternal benefit society,  
22 reciprocal or interinsurance exchange, nonprofit medical care  
23 corporation, nonprofit health care corporation, nonprofit  
24 hospital service association, nonprofit dental care corporation,  
25 health maintenance organization, captive insurance company,  
26 risk retention group or other insurer regardless of the type of  
27 coverage written, benefits provided or guarantees made by  
28 each;



29       (3) “Department” means the Department of Insurance of  
30 this state; and

31       (4) “Examiners” means the Commissioner of Insurance or  
32 any individual or firm having been authorized by the commis-  
33 sioner to conduct an examination pursuant to this section,  
34 including, but not limited to, the commissioner’s deputies, other  
35 employees, appointed examiners or other appointed individuals  
36 or firms who are not employees of the Department of Insurance.

37       (c) The commissioner or his or her examiners may conduct  
38 an examination under this section of any company as often as  
39 the commissioner in his or her discretion considers appropriate.  
40 The commissioner or his or her examiners shall at least once  
41 every five years visit each domestic insurer and thoroughly  
42 examine its financial condition and methods of doing business  
43 and ascertain whether it has complied with all the laws and  
44 regulations of this state. The commissioner may also examine  
45 the affairs of any insurer applying for a license to transact any  
46 insurance business in this state.

47       (d) The commissioner or his or her examiners shall, at a  
48 minimum, conduct an examination of every foreign or alien  
49 insurer licensed in this state not less frequently than once every  
50 five years. The examination of an alien insurer may be limited  
51 to its United States business: *Provided*, That in lieu of an  
52 examination under this section of any foreign or alien insurer  
53 licensed in this state, the commissioner may accept an examina-  
54 tion report on the company as prepared by the insurance  
55 department for the company’s state of domicile or port-of-entry  
56 state until the first day of January, one thousand nine hundred  
57 ninety-four. Thereafter, the reports may only be accepted if:

58       (1) The insurance department was at the time of the  
59 examination accredited under the National Association of  
60 Insurance Commissioners’ Financial Regulation Standards and  
61 Accreditation Program; or

62           (2) The examination is performed under the supervision of  
63 an accredited insurance department or with the participation of  
64 one or more examiners who are employed by an accredited state  
65 insurance department and who, after a review of the examina-  
66 tion work papers and report, state under oath that the examina-  
67 tion was performed in a manner consistent with the standards  
68 and procedures required by their insurance department.

69           (e) In scheduling and determining the nature, scope and  
70 frequency of examinations conducted pursuant to this section,  
71 the commissioner may consider such matters as the results of  
72 financial statement analyses and ratios, changes in management  
73 or ownership, actuarial opinions, reports of independent  
74 certified public accountants and other criteria as set forth in the  
75 examiners' handbook adopted by the National Association of  
76 Insurance Commissioners and in effect when the commissioner  
77 exercises discretion under this section.

78           (f) For purposes of completing an examination of any  
79 company under this section, the commissioner may examine or  
80 investigate any person, or the business of any person, insofar as  
81 the examination or investigation is, in the sole discretion of the  
82 commissioner, necessary or material to the examination of the  
83 company.

84           (g) The commissioner may also cause to be examined, at  
85 the times as he or she considers necessary, the books, records,  
86 papers, documents, correspondence and methods of doing  
87 business of any agent, broker, excess lines broker or solicitor  
88 licensed by this state. For these purposes, the commissioner or  
89 his or her examiners shall have free access to all books, records,  
90 papers, documents and correspondence of all the agents,  
91 brokers, excess lines brokers and solicitors wherever the books,  
92 records, papers, documents and records are situate. The  
93 commissioner may revoke the license of any agent, broker,  
94 excess lines broker or solicitor who refuses to submit to the  
95 examination.

96 (h) In addition to conducting an examination, the commis-  
97 sioner or his or her examiners may, as the commissioner  
98 considers necessary, analyze or review any phase of the  
99 operations or methods of doing business of an insurer, agent,  
100 broker, excess lines broker, solicitor or other individual or  
101 corporation transacting or attempting to transact an insurance  
102 business in the State of West Virginia. The commissioner may  
103 use the full resources provided by this section in carrying out  
104 these responsibilities, including any personnel and equipment  
105 provided by this section as the commissioner considers  
106 necessary.

107 (i) Examinations made pursuant to this section shall be  
108 conducted in the following manner:

109 (1) Upon determining that an examination should be  
110 conducted, the commissioner or his or her designee shall issue  
111 an examination warrant appointing one or more examiners to  
112 perform the examination and instructing them as to the scope of  
113 the examination. The appointment of any examiners pursuant  
114 to this section by the commissioner shall not be subject to the  
115 requirements of article three, chapter five-a of this code, except  
116 that the contracts and agreements shall be approved as to form  
117 and conformity with applicable law by the Attorney General. In  
118 conducting the examination, the examiner shall observe those  
119 guidelines and procedures set forth in the examiners' handbook  
120 adopted by the National Association of Insurance Commission-  
121 ers. The commissioner may also employ any other guidelines  
122 or procedures as the commissioner may consider appropriate;

123 (2) Every company or person from whom information is  
124 sought, its officers, directors and agents shall provide to the  
125 examiners appointed under subdivision (1) of this subsection  
126 timely, convenient and free access at all reasonable hours at its  
127 offices to all books, records, accounts, papers, documents and  
128 any or all computer or other recordings relating to the property,

129 assets, business and affairs of the company being examined.  
130 The officers, directors, employees and agents of the company  
131 or person shall facilitate the examination and aid in the exami-  
132 nation so far as it is in their power to do so;

133 (3) The refusal of any company, by its officers, directors,  
134 employees or agents, to submit to examination or to comply  
135 with any reasonable written request of the examiners shall be  
136 grounds for suspension, revocation, refusal or nonrenewal of  
137 any license or authority held by the company to engage in an  
138 insurance or other business subject to the commissioner's  
139 jurisdiction. Any proceedings for suspension, revocation,  
140 refusal or nonrenewal of any license or authority shall be  
141 conducted pursuant to section eleven of this article;

142 (4) The commissioner or his or her examiners shall have the  
143 power to issue subpoenas, to administer oaths and to examine  
144 under oath any person as to any matter pertinent to the exami-  
145 nation, analysis or review. The subpoenas shall be enforced  
146 pursuant to the provisions of section six of this article;

147 (5) When making an examination, analysis or review under  
148 this section, the commissioner may retain attorneys, appraisers,  
149 independent actuaries, independent certified public accountants,  
150 professionals or specialists with training or experience in  
151 reinsurance, investments or information systems or other  
152 professionals and specialists as examiners, the cost of which  
153 shall be borne by the company which is the subject of the  
154 examination, analysis or review or, in the commissioner's  
155 discretion, paid from the Commissioner's Examination  
156 Revolving Fund. The commissioner may recover costs paid  
157 from the Commissioner's Examination Revolving Fund  
158 pursuant to this subdivision from the company upon which the  
159 examination, analysis or review is conducted unless the subject  
160 of the examination, analysis or review is an individual de-  
161 scribed in subdivision (2), subsection (q) of this section;

162       (6) Nothing contained in this section may be construed to  
163 limit the commissioner's authority to terminate or suspend any  
164 examination, analysis or review in order to pursue other legal  
165 or regulatory action pursuant to the insurance laws of this state.  
166 The commissioner or his or her examiners may at any time  
167 testify and offer other proper evidence as to information  
168 secured during the course of an examination, analysis or review  
169 whether or not a written report of the examination has at that  
170 time either been made, served or filed in the commissioner's  
171 office;

172       (7) Nothing contained in this section may be construed to  
173 limit the commissioner's authority to use and, if appropriate, to  
174 make public any final or preliminary examination report, any  
175 examiner or company workpapers or other documents or any  
176 other information discovered or developed during the course of  
177 any examination, analysis or review in the furtherance of any  
178 legal or regulatory action which the commissioner may, in his  
179 or her sole discretion, consider appropriate. An examination  
180 report, when filed, shall be admissible in evidence in any action  
181 or proceeding brought by the commissioner against an insur-  
182 ance company, its officers or agents and shall be prima facie  
183 evidence of the facts stated therein.

184       (j) Examination reports prepared pursuant to the provisions  
185 of this section shall comply with the following requirements:

186       (1) All examination reports shall be comprised of only facts  
187 appearing upon the books, records or other documents of the  
188 company, its agents or other persons examined or as ascertained  
189 from the testimony of its officers or agents or other persons  
190 examined concerning its affairs and any conclusions and  
191 recommendations the examiners find reasonably warranted  
192 from the facts;

193       (2) No later than sixty days following completion of the  
194 examination the examiner in charge shall file with the commis-

195 sioner a verified written report of examination under oath. Upon  
196 receipt of the verified report, the commissioner shall transmit  
197 the report to the company examined, together with a notice  
198 which shall afford the company examined a reasonable  
199 opportunity of not more than thirty days to make a written  
200 submission or rebuttal with respect to any matters contained in  
201 the examination report;

202 (3) Within thirty days of the end of the period allowed for  
203 the receipt of written submissions or rebuttals the commissioner  
204 shall fully consider and review the report, together with any  
205 written submissions or rebuttals and any relevant portions of the  
206 examiner's workpapers and enter an order:

207 (A) Adopting the examination report as filed or with  
208 modification or corrections. If the examination report reveals  
209 that the company is operating in violation of any law, rule or  
210 prior order of the commissioner, the commissioner may order  
211 the company to take any action the commissioner considers  
212 necessary and appropriate to cure the violation; or

213 (B) Rejecting the examination report with directions to the  
214 examiners to reopen the examination for purposes of obtaining  
215 additional data, documentation or information and refileing  
216 pursuant to subdivision (2) of this subsection; or

217 (C) Calling for an investigatory hearing with no less than  
218 twenty days' notice to the company for purposes of obtaining  
219 additional documentation, data, information and testimony;

220 (4) All orders entered pursuant to this subsection shall be  
221 accompanied by findings and conclusions resulting from the  
222 commissioner's consideration and review of the examination  
223 report, relevant examiner workpapers and any written submis-  
224 sions or rebuttals. Any order issued pursuant to paragraph (A),  
225 subdivision (3) of this subsection shall be considered a final  
226 administrative decision and may be appealed pursuant to

227 section fourteen of this article and shall be served upon the  
228 company by certified mail, together with a copy of the adopted  
229 examination report. Within thirty days of the issuance of the  
230 adopted report the company shall file affidavits executed by  
231 each of its directors stating under oath that they have received  
232 a copy of the adopted report and related orders.

233 (k) Hearings conducted pursuant to this section shall be  
234 subject to the following requirements:

235 (1) Any hearing conducted pursuant to this section by the  
236 commissioner or the commissioner's authorized representative  
237 shall be conducted as a nonadversarial, confidential investiga-  
238 tory proceeding as necessary for the resolution of any inconsis-  
239 tencies, discrepancies or disputed issues apparent upon the face  
240 of the filed examination report or raised by or as a result of the  
241 commissioner's review of relevant workpapers or by the written  
242 submission or rebuttal of the company. Within twenty days of  
243 the conclusion of any hearing, the commissioner shall enter an  
244 order pursuant to paragraph (A), subdivision (3), subsection (j)  
245 of this section;

246 (2) The commissioner may not appoint an examiner as an  
247 authorized representative to conduct the hearing. The hearing  
248 shall proceed expeditiously with discovery by the company  
249 limited to the examiner's workpapers which tend to substantiate  
250 any assertions set forth in any written submission or rebuttal.  
251 The commissioner or the commissioner's representative may  
252 issue subpoenas for the attendance of any witnesses or the  
253 production of any documents considered relevant to the  
254 investigation whether under the control of the commissioner,  
255 the company or other persons. The documents produced shall  
256 be included in the record and testimony taken by the commis-  
257 sioner or the commissioner's representative shall be under oath  
258 and preserved for the record. Nothing contained in this section  
259 shall require the commissioner to disclose any information or

260 records which would indicate or show the existence or content  
261 of any investigation or activity of a criminal justice agency;

262 (3) The hearing shall proceed with the commissioner or the  
263 commissioner's representative posing questions to the persons  
264 subpoenaed. Thereafter, the company and the department may  
265 present testimony relevant to the investigation. Cross-examina-  
266 tion may be conducted only by the commissioner or the  
267 commissioner's representative. The company and the commis-  
268 sioner shall be permitted to make closing statements and may  
269 be represented by counsel of their choice.

270 (1) Adoption of the examination report shall be subject to  
271 the following requirements:

272 (1) Upon the adoption of the examination report under  
273 paragraph (A), subdivision (3), subsection (j) of this section, the  
274 commissioner may continue to hold the content of the examina-  
275 tion report as private and confidential information for a period  
276 of ninety days except to the extent provided in subdivision (6),  
277 subsection (i) of this section. Thereafter, the commissioner may  
278 open the report for public inspection so long as no court of  
279 competent jurisdiction has stayed its publication;

280 (2) Nothing contained in this section may prevent or be  
281 construed as prohibiting the commissioner from disclosing the  
282 content of an examination report, preliminary examination  
283 report or results or any matter relating thereto or the results of  
284 any analysis or review to the insurance department of this or  
285 any other state or country or to law-enforcement officials of this  
286 or any other state or agency of the federal government at any  
287 time, so long as the agency or office receiving the report or  
288 matters relating thereto agrees in writing to hold it confidential  
289 and in a manner consistent with this section;

290 (3) In the event the commissioner determines that regula-  
291 tory action is appropriate as a result of any examination,



292 analysis or review, he or she may initiate any proceedings or  
293 actions as provided by law;

294 (4) All working papers, recorded information, documents  
295 and copies thereof produced by, obtained by or disclosed to the  
296 commissioner or any other person in the course of an examina-  
297 tion, analysis or review made under this section must be given  
298 confidential treatment and are not subject to subpoena and may  
299 not be made public by the commissioner or any other person,  
300 except to the extent provided in subdivision (5), subsection (i)  
301 of this section. Access may also be granted in accordance with  
302 section nineteen of this article. The parties must agree in  
303 writing prior to receiving the information to provide to it the  
304 same confidential treatment as required by this section unless  
305 the prior written consent of the company to which it pertains  
306 has been obtained.

307 (m) The commissioner may require any examiner to furnish  
308 a bond in such amount as commissioner may determine to be  
309 appropriate and the bond shall be approved, filed and premium  
310 paid, with suitable proof submitted to the commissioner, prior  
311 to commencement of employment by the commissioner. No  
312 examiner may be appointed by the commissioner if the  
313 examiner, either directly or indirectly, has a conflict of interest  
314 or is affiliated with the management of or owns a pecuniary  
315 interest in any person subject to examination under this section.  
316 This section shall not be construed to automatically preclude an  
317 examiner from being:

318 (1) A policyholder or claimant under an insurance policy;

319 (2) A grantor of a mortgage or similar instrument on the  
320 examiner's residence to a regulated entity if done under  
321 customary terms and in the ordinary course of business;

322 (3) An investment owner in shares of regulated diversified  
323 investment companies; or

324 (4) A settlor or beneficiary of a “blind trust” into which any  
325 otherwise impermissible holdings have been placed;

326 (5) Notwithstanding the requirements of this subsection, the  
327 commissioner may retain, from time to time, on an individual  
328 basis qualified actuaries, certified public accountants or other  
329 similar individuals who are independently practicing their  
330 professions even though these persons may, from time to time,  
331 be similarly employed or retained by persons subject to  
332 examination under this section.

333 (n) Personnel conducting examinations, analyses or reviews  
334 of either a domestic, foreign or alien insurer shall be compen-  
335 sated for each day worked at a rate set by the commissioner.  
336 The personnel shall also be reimbursed for their travel and  
337 living expenses at the rate set by the commissioner. Other  
338 individuals who are not employees of the Department of  
339 Insurance shall all be compensated for their work, travel and  
340 living expenses at rates approved by the commissioner or as  
341 otherwise provided by law. As used in this section, the costs of  
342 an examination, analysis or review means:

343 (1) The entire compensation for each day worked by all  
344 personnel, including those who are not employees of the  
345 Department of Insurance, the conduct of the examination,  
346 analysis or review calculated as hereinbefore provided;

347 (2) Travel and living expenses of all personnel, including  
348 those who are not employees of the Department of Insurance,  
349 directly engaged in the conduct of the examination, analysis or  
350 review calculated at the rates as hereinbefore provided for;

351 (3) All other incidental expenses incurred by or on behalf  
352 of the personnel in the conduct of any authorized examination,  
353 analysis or review.

354 (o) (1) All property and casualty insurers subject to the  
355 provisions of this section shall annually pay to the commis-

356 sioner on or before the first day of July, one thousand nine  
357 hundred ninety-one, and every first day of July thereafter an  
358 examination assessment fee of up to five thousand dollars. Four  
359 hundred fifty dollars of this fee shall be paid to the Treasurer of  
360 the state to the credit of a special revolving fund to be known as  
361 the Commissioner's Examination Revolving Fund which is  
362 hereby established; up to four thousand two hundred dollars  
363 shall be paid to the Treasurer of the state to the credit of the  
364 Unfair Claims Settlement Practice Trust Fund established in  
365 section four-b, article eleven of this chapter and three hundred  
366 fifty dollars shall be paid to the Treasurer of the state. If the  
367 trust fund has moneys in excess of one million dollars, the  
368 examination assessment fee shall be eight hundred dollars and  
369 the five thousand dollar fee shall only be reinstated at whatever  
370 amount the commissioner deems necessary to maintain the  
371 fund, if the fund value goes below one million dollars. The  
372 commissioner may at his or her discretion, upon notice to the  
373 insurers subject to this subsection, increase this examination  
374 assessment fee or levy an additional examination assessment  
375 fee of two hundred fifty dollars. In no event may the total  
376 examination assessment fee, including any additional examina-  
377 tion assessment fee levied, exceed five thousand two hundred  
378 fifty dollars per insurer in any calendar year.

379 (2) All insurers other than property and casualty insurers  
380 subject to the provisions of this section shall annually pay to the  
381 commissioner on or before the first day of July, one thousand  
382 nine hundred ninety-one, and every first day of July thereafter  
383 an examination assessment fee of eight hundred dollars. Four  
384 hundred fifty dollars of this fee shall be paid to the Treasurer of  
385 the state to the credit the Commissioner's Examination Revolv-  
386 ing Fund and three hundred fifty dollars shall be paid to the  
387 Treasurer of the state. The commissioner may at his or her  
388 discretion, upon notice to the insurers subject to this subsection,  
389 increase this examination assessment fee or levy an additional  
390 examination assessment fee of two hundred fifty dollars. In no

391 event may the total examination assessment fee, including any  
392 additional examination assessment fee levied, exceed one  
393 thousand five hundred dollars per insurer in any calendar year.

394 (p) The moneys collected by the commissioner from an  
395 increase or additional examination assessment fee shall be paid  
396 to the Treasurer of the state to be credited to the commis-  
397 sioner's Examination Revolving Fund. Any funds expended or  
398 obligated by the commissioner from the Commissioner's  
399 Examination Revolving Fund may be expended or obligated  
400 solely for defrayment of the costs of examinations, analyses or  
401 reviews of the financial affairs and business practices of  
402 insurance companies, agents, brokers, excess lines brokers,  
403 solicitors or other individuals or corporations transacting or  
404 attempting to transact an insurance business in this state made  
405 by the commissioner pursuant to this section or for the purchase  
406 of equipment and supplies, travel, education and training for the  
407 commissioner's deputies, other employees and appointed  
408 examiners necessary for the commissioner to fulfill the  
409 statutory obligations created by this section.

410 (q) The commissioner may require other individuals who  
411 are not employees of the Department of Insurance who have  
412 been appointed by the commissioner to conduct or participate  
413 in the examination, analysis or review of insurers, agents,  
414 brokers, excess lines brokers, solicitors or other individuals or  
415 corporations transacting or attempting to transact an insurance  
416 business in this state to:

417 (1) Bill and receive payments directly from the insurance  
418 company being examined, analyzed or reviewed for their work,  
419 travel and living expenses as previously provided in this  
420 section; or

421 (2) If an individual agent, broker or solicitor is being  
422 examined, analyzed or reviewed, bill and receive payments  
423 directly from the Commissioner's Examination Revolving Fund

424 for their work, travel and living expenses as previously  
425 provided in this section. The commissioner may recover costs  
426 paid from the Commissioner's Examination Revolving Fund  
427 pursuant to this subdivision from the person upon whom the  
428 examination, analysis or review is conducted.

429 (r) The commissioner and his or her examiners shall be  
430 entitled to immunity to the following extent:

431 (1) No cause of action shall arise nor shall any liability be  
432 imposed against the commissioner or his or her examiners for  
433 any statements made or conduct performed in good faith while  
434 carrying out the provisions of this section;

435 (2) No cause of action shall arise, nor shall any liability be  
436 imposed, against any person for the act of communicating or  
437 delivering information or data to the commissioner or his or her  
438 examiners pursuant to an examination, analysis or review made  
439 under this section if the act of communication or delivery was  
440 performed in good faith and without fraudulent intent or the  
441 intent to deceive;

442 (3) The commissioner or any examiner shall be entitled to  
443 an award of attorney's fees and costs if he or she is the prevail-  
444 ing party in a civil cause of action for libel, slander or any other  
445 relevant tort arising out of activities in carrying out the provi-  
446 sions of this section and the party bringing the action was not  
447 substantially justified in doing so. For purposes of this section,  
448 a proceeding is "substantially justified" if it had a reasonable  
449 basis in law or fact at the time that it was initiated;

450 (4) This subsection does not abrogate or modify in any way  
451 any constitutional immunity or common law or statutory  
452 privilege or immunity heretofore enjoyed by any person  
453 identified in subdivision (1) of this subsection.

**ARTICLE 20. RATES AND RATING ORGANIZATIONS.**

**§33-20-12. Examinations.**

1       (a) The commissioner shall, at least once in five years,  
2 make or cause to be made an examination of each rating  
3 organization licensed under the provisions of section six of this  
4 article and he or she may, as often as he or she may deem it  
5 expedient, make or cause to be made an examination of each  
6 advisory organization referred to in section ten of this article  
7 and of each group, association or other organization referred to  
8 in section eleven of this article. The reasonable costs of any  
9 such examination shall be paid by the rating organization,  
10 advisory organization, or group, association or other organiza-  
11 tion examined upon presentation to it of a detailed account of  
12 such costs. The officers, managers, agents and employees of  
13 such rating organization, advisory organization, or group,  
14 association or other organization may be examined at any time  
15 under oath and shall exhibit all books, records, accounts,  
16 documents or agreements governing its method of operation.  
17 The commissioner shall furnish two copies of the examination  
18 report to the organization, group or association examined not  
19 less than thirty days prior to filing same in his or her office. If  
20 such organization, group or association so requests in writing,  
21 within such thirty-day period, the commissioner shall consider  
22 the objections, if any, to such report as proposed and shall not  
23 file such report until such modifications, if any, have been made  
24 therein as the commissioner deems proper. The report when so  
25 filed shall be admissible in any action or proceeding brought by  
26 the commissioner against the organization, group or association  
27 examined, or its officers or agents, and shall be prima facie  
28 evidence of the facts stated therein. The commissioner may  
29 withhold the report of any such examination for such time as he  
30 or she may deem proper.

31       (b) In lieu of any such examination the commissioner may  
32 accept the report of an examination made by the insurance

33 supervisory official of another state, pursuant to the laws of  
34 such state.

**ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.**

**§33-24-4. Exemptions; applicability of insurance laws.**

1 Every corporation defined in section two of this article is  
2 hereby declared to be a scientific, nonprofit institution and  
3 exempt from the payment of all property and other taxes. Every  
4 corporation, to the same extent the provisions are applicable to  
5 insurers transacting similar kinds of insurance and not inconsis-  
6 tent with the provisions of this article, shall be governed by and  
7 be subject to the provisions as herein below indicated, of the  
8 following articles of this chapter: Article two (Insurance  
9 Commissioner); article four (general provisions), except that  
10 section sixteen of said article may not be applicable thereto;  
11 section twenty, article five (borrowing by insurers); section  
12 thirty-four, article six (fee for form, rate and rule filing); article  
13 six-c (guaranteed loss ratios as applied to individual sickness  
14 and accident insurance policies); article seven (assets and  
15 liabilities); article eight-a (use of clearing corporations and  
16 federal reserve book-entry system); article eleven (unfair trade  
17 practices); article twelve ( insurance producers and solicitors),  
18 except that the agent's license fee shall be twenty-five dollars;  
19 section two-a, article fifteen (definitions); section two-b, article  
20 fifteen (guaranteed issue; limitation of coverage; election;  
21 denial of coverage; network plans); section two-d, article fifteen  
22 ( exceptions to guaranteed renewability); section two-e, article  
23 fifteen (discontinuation of particular type of coverage; uniform  
24 termination of all coverage; uniform modification of coverage);  
25 section two-f, article fifteen (certification of creditable cover-  
26 age); section two-g, article fifteen (applicability); section four-  
27 e, article fifteen (benefits for mothers and newborns); section

28 fourteen, article fifteen ( policies discriminating among health  
29 care providers); section sixteen, article fifteen ( policies not to  
30 exclude insured's children from coverage; required services;  
31 coordination with other insurance); section eighteen, article  
32 fifteen (equal treatment of state agency); section nineteen,  
33 article fifteen (coordination of benefits with medicaid); article  
34 fifteen-a (West Virginia Long-Term Care Insurance Act);  
35 article fifteen-c (diabetes insurance); section three, article  
36 sixteen (required policy provisions); section three-a, article  
37 sixteen (same - mental health); section three-d, article sixteen  
38 (medicare supplement insurance); section three-f, article sixteen  
39 (required policy provisions - treatment of temporomandibular  
40 joint disorder and craniomandibular disorder); section three-j,  
41 article sixteen (hospital benefits for mothers and newborns);  
42 section three-k, article sixteen (limitations on preexisting  
43 condition exclusions for health benefit plans); section three-l,  
44 article sixteen ( renewability and modification of health benefit  
45 plans); section three-m, article sixteen (creditable coverage);  
46 section three-n, article sixteen (eligibility for enrollment);  
47 section eleven, article sixteen ( group policies not to exclude  
48 insured's children from coverage; required services; coordina-  
49 tion with other insurance); section thirteen, article sixteen  
50 (equal treatment of state agency); section fourteen, article  
51 sixteen (coordination of benefits with medicaid); section  
52 sixteen, article sixteen ( insurance for diabetics); article sixteen-  
53 a (group health insurance conversion); article sixteen-c (   
54 employer group accident and sickness insurance policies);  
55 article sixteen-d (marketing and rate practices for small  
56 employer accident and sickness insurance policies); article  
57 twenty-six-a (West Virginia Life and Health Insurance Guar-  
58 anty Association Act), after the first day of October, one  
59 thousand nine hundred ninety-one; article twenty-seven  
60 (insurance holding company systems); article twenty-eight  
61 (individual accident and sickness insurance minimum stan-  
62 dards); article thirty-three (annual audited financial report);



63 article thirty-four (administrative supervision); article thirty-  
64 four-a (standards and commissioner's authority for companies  
65 deemed to be in hazardous financial condition); article thirty-  
66 five (criminal sanctions for failure to report impairment); article  
67 thirty-seven (managing general agents); and article forty-one (   
68 Insurance Fraud Prevention Act) and no other provision of this  
69 chapter may apply to these corporations unless specifically  
70 made applicable by the provisions of this article. If, however,  
71 the corporation is converted into a corporation organized for a  
72 pecuniary profit or if it transacts business without having  
73 obtained a license as required by section five of this article, it  
74 shall thereupon forfeit its right to these exemptions.

**ARTICLE 25. HEALTH CARE CORPORATIONS.**

**§33-25-10. Examination of corporation; report of examination;  
objections to report; access to books, records, etc.;  
removal of records, etc., from state.**

1 (a) The commissioner or his or her accredited examiners  
2 may at any reasonable time and shall, at least once every five  
3 years, visit each health care corporation and thoroughly  
4 examine its financial condition and methods of doing business  
5 and ascertain whether it has complied with all of the laws and  
6 rules of this state. All expenses of each such examination  
7 conducted shall be borne by such corporation. The commis-  
8 sioner shall make a full written report of each such examination  
9 of the corporation, certified to by the commissioner or the  
10 examiner in charge of such examinations. The commissioner  
11 shall furnish a copy of the report to the corporation examined  
12 not less than thirty days prior to filing the same in his or her  
13 office. If such corporation so requests in writing, within such  
14 thirty-day period, the commissioner shall consider the objec-  
15 tions of such corporation to the report as proposed and shall not  
16 so file the report until after such modifications, if any, have  
17 been made therein as the commissioner deems proper. The

18 report, when filed, shall be admissible in evidence in any action  
19 or proceeding brought by the commissioner against the  
20 corporation examined, or its officers or agents, and shall be  
21 prima facie evidence of the facts stated therein. The commis-  
22 sioner or his or her examiners may at any time testify and offer  
23 other proper evidence as to information secured during the  
24 course of an examination, whether or not a written report of the  
25 examination has at that time been either made, served or filed  
26 in the commissioner's office.

27 (b) For such purposes the commissioner, his or her deputies  
28 and employees shall have free access to all books, records,  
29 papers, documents and correspondence of any such corporation  
30 and such books, records, papers, documents and records shall  
31 be and remain in the State of West Virginia. The licenses of  
32 said corporation shall be automatically revoked if such books,  
33 records, papers, documents and records are taken outside the  
34 State of West Virginia without the prior written approval of the  
35 commissioner.

36 (c) The commissioner shall revoke the license of any such  
37 corporation which refuses to submit to such examination.

**ARTICLE 25D. PREPAID LIMITED HEALTH SERVICE ORGANIZATION  
ACT.**

**§33-25D-18. Examinations.**

1 (a) The commissioner may make an examination of the  
2 affairs of any prepaid limited health service organization and  
3 providers with whom the organization has contracts, agree-  
4 ments or other arrangements as often as he or she considers it  
5 necessary for the protection of the interests of the people of this  
6 state but not less frequently than once every five years.

7 (b) The commissioner may contract with the Department of  
8 Health and Human Resources, any entity which has been

9 accredited by a nationally recognized accrediting organization  
10 and has been approved by the commissioner to make examina-  
11 tions concerning the quality of health care services of any  
12 prepaid limited health service organization and providers with  
13 whom the organization has contracts, agreements or other  
14 arrangements, or any such entity contracted with by the  
15 Department of Health and Human Resources, as often as it  
16 considers necessary for the protection of the interests of the  
17 people of this state, but not less frequently than once every five  
18 years: *Provided*, That in making the examination, the Depart-  
19 ment of Health and Human Resources or the accredited entity  
20 shall utilize the services of persons or organizations with  
21 demonstrable expertise in assessing quality of health care.

22 (c) Every prepaid limited health service organization and  
23 affiliated provider shall submit its books and records to the  
24 examinations and in every way facilitate them. For the purpose  
25 of examinations, the commissioner and the Department of  
26 Health and Human Resources have all powers necessary to  
27 conduct the examinations, including, but not limited to, the  
28 power to issue subpoenas, the power to administer oaths to and  
29 examine the officers and agents of the prepaid limited health  
30 service organization and the principals of the providers  
31 concerning their business.

32 (d) The prepaid limited health service organization is  
33 subject to the provisions of section nine, article two of this  
34 chapter in regard to the expense and conduct of examinations.

35 (e) In lieu of the examination, the commissioner may accept  
36 the report of an examination made by another state.

37 (f) The expenses of an examination assessing quality of  
38 health care under subsection (b) of this section and section  
39 nineteen of this article shall be reimbursed pursuant to subdivi-  
sion (5), subsection (i), section nine, article two of this chapter.

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## CHAPTER 115

(Com. Sub. for H. B. 4513 — By Delegate H. White)

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[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-2-22, relating to the Insurance Commissioner's authority; transferring authority of the former Workers' Compensation Commission to the Insurance Commissioner with respect to collection of amounts owed by employers; permitting Insurance Commissioner to accept a bond from defaulting employers; requiring circuit courts to issue injunction against operation of business by a defaulting employer; and permitting the commissioner to waive penalties and interest on moneys due the old fund.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-2-22, to read as follows:

**ARTICLE 2. INSURANCE COMMISSIONER.**

**§33-2-22. Authority of Insurance Commissioner regarding employers in default to workers' compensation funds; injunctions against defaulting employers.**

- 1 (a) Upon termination of the Workers' Compensation
- 2 Commission, all of the powers and authority previously
- 3 conferred upon the Workers' Compensation Commission

4 pursuant to article two, chapter twenty-three of this code,  
5 relating to employers in default to the Workers' Compensation  
6 Fund, are hereby transferred to the Insurance Commissioner  
7 and shall be applied by the commissioner to those employers in  
8 default to the old fund or having liability to the uninsured  
9 employers' fund or who are in policy default or fail to maintain  
10 mandatory workers' compensation coverage, all as defined in  
11 article two-c, chapter twenty-three of this code.

12 (b) In any case in which an employer is in default to the old  
13 fund or has liability to the uninsured employers fund or who is  
14 in default on a policy or otherwise fails to maintain mandatory  
15 workers' compensation coverage, all as defined in article two-c,  
16 chapter twenty-three of this code, the commission may bring an  
17 action in the circuit court of Kanawha County to enjoin the  
18 employer from continuing to operate the employer's business:  
19 *Provided*, That the commissioner may, in his or her sole  
20 discretion, and as an alternative to this action pursuant to this  
21 subsection, require the employer to file a bond, in the form  
22 prescribed by the commissioner, with satisfactory surety in an  
23 amount not less than one hundred fifty percent of the total  
24 payments, interest and penalties due.

25 (c) In any action instituted pursuant to subsection (b) of this  
26 section, the circuit court shall issue an injunction prohibiting  
27 the employer from operating the employer's business, if the  
28 Insurance Commissioner proves by a preponderance of the  
29 evidence, that the employer is in default to the old fund or has  
30 liability to the uninsured fund or is in policy default or has  
31 otherwise failed to maintain mandatory workers' compensation  
32 coverage.

33 (d) Notwithstanding any provision of this code to the  
34 contrary, the commissioner shall have the authority to waive  
35 penalty and interest accrued on moneys due the old fund. The  
36 enactment of the provisions of this subsection shall be applied

37 retrospectively to the first day of January, two thousand six, and  
38 may not be construed to require the commissioner to adjust or  
39 otherwise modify any agreements reached with regard to the  
40 payment of penalty or interest since that date.

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## CHAPTER 116

(S. B. 630 — By Senators Minard, Deem, Foster, Helmick,  
Jenkins, Lanham, Prezioso and Sharpe)

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[Passed March 7, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-6-37, relating to the cancellation or nonrenewal of combination insurance policies.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §33-6-37, to read as follows:

### ARTICLE 6. THE INSURANCE POLICY.

#### **§33-6-37. Cancellation or nonrenewal of a combination insurance policy; offer of optional coverage; date of inception of optional coverage.**

1 Notwithstanding of any provision of this chapter to the  
2 contrary, an insurer may cancel or nonrenew a combination  
3 automobile and homeowners policy of insurance if either the  
4 automobile or homeowners insurance in such policy may be

5 cancelled or nonrenewed pursuant to the cancellation or  
6 nonrenewal provisions of this chapter pertaining to such  
7 insurance: *Provided*, That the insurer shall offer, on a form  
8 approved by the commissioner, to issue a policy of insurance,  
9 effective as of the date of cancellation of the combination  
10 policy, to the insured for the insurance that was not cancelled  
11 or nonrenewed and shall issue such policy if the offer is  
12 accepted by the insured. For the purposes of cancellation,  
13 nonrenewal and termination of policies provided for in articles  
14 six-a and seventeen-a of this chapter, the inception date of a  
15 reissued policy is the inception date of the combination policy.

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## CHAPTER 117

(Com. Sub. for S. B. 467 — By Senator Jenkins)

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §33-14-2 of the Code of West Virginia, 1931, as amended, relating to modifying the employee group requirements for group life insurance.

*Be it enacted by the Legislature of West Virginia:*

That §33-14-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### ARTICLE 14. GROUP LIFE INSURANCE.

#### §33-14-2. Employee groups.

1 The lives of a group of individuals may be insured under a  
2 policy issued to an employer, or to the trustees of a fund

3 established by an employer, which employer or trustees shall be  
4 deemed the policyholder, to insure employees of the employer  
5 for the benefit of persons other than the employer, subject to the  
6 following requirements:

7 (a) The employees eligible for insurance under the policy  
8 shall be all of the employees of the employer, or all of any class  
9 or classes thereof determined by conditions pertaining to their  
10 employment. The policy may provide that the term “employ-  
11 ees” shall include the employees of one or more subsidiary  
12 corporations and the employees, individual proprietors and  
13 partners of one or more affiliated corporations, proprietors or  
14 partnerships if the business of the employer and of such  
15 affiliated corporations, proprietors or partnerships is under  
16 common control through stock ownership, contract or other-  
17 wise. The policy may provide that the term “employees” shall  
18 include the individual proprietor or partners if the employer is  
19 an individual proprietor or a partnership. The policy may  
20 provide that the term “employees” shall include retired employ-  
21 ees. No director of a corporate employer shall be eligible for  
22 insurance under the policy unless such person is otherwise  
23 eligible as a bona fide employee of the corporation by perform-  
24 ing services other than the usual duties of a director. No  
25 individual proprietor or partner shall be eligible for insurance  
26 under the policy unless he is actively engaged in and devotes a  
27 substantial part of his time to the conduct of the business of the  
28 proprietor or partnership. A policy issued to trustees may  
29 provide that the term “employees” shall include the trustees or  
30 their employees, or both, if their duties are principally con-  
31 nected with such trusteeship. A policy issued to insure the  
32 employees of a public body may provide that the term “em-  
33 ployees” shall include elected or appointed officials.

34 (b) The premium for the policy shall be paid either from the  
35 employer’s funds or from funds contributed by the insured



36 employees, or both. Except as provided in subdivision (c) of  
37 this section, a policy on which no part of the premium is to be  
38 derived from funds contributed by the insured employees shall  
39 insure all eligible employees, except those who reject coverage  
40 in writing.

41 (c) An insurer may exclude or limit the coverage on any  
42 person as to whom evidence of individual insurability is not  
43 satisfactory to the insurer.

44 (d) The policy must cover at least two employees at date of  
45 issue.

46 (e) The amounts of insurance under the policy must be  
47 based upon some plan precluding individual selection either by  
48 the employees or by the employer or trustees.

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## CHAPTER 118

**(Com. Sub. for S. B. 468 — By Senator Jenkins)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to amend and reenact §33-16-2 of the Code of West Virginia, 1931, as amended, relating to group accident and sickness insurance requirements; decreasing the number of employees that must participate; and eliminating the participation requirement if the premium is paid by the employees or jointly by the employer and employees.

*Be it enacted by the Legislature of West Virginia:*

That §33-16-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

**§33-16-2. Eligible groups.**

1 Any insurer licensed to transact accident and sickness  
2 insurance in this state may issue group accident and sickness  
3 policies coming within any of the following classifications:

4 (1) A policy issued to an employer, who shall be considered  
5 the policyholder, insuring at least two employees of the  
6 employer, for the benefit of persons other than the employer,  
7 and conforming to the following requirements:

8 (A) If the premium is paid by the employer the group shall  
9 comprise all employees or all of any class or classes thereof  
10 determined by conditions pertaining to the employment; or

11 (B) If the premium is paid by the employer and the  
12 employees jointly, or by the employees, there shall be no  
13 employee participation requirement. The term "employee" as  
14 used herein is considered to include the officers, managers and  
15 employees of the employer, the partners, if the employer is a  
16 partnership, the officers, managers and employees of subsidiary  
17 or affiliated corporations of a corporate employer, and the  
18 individual proprietors, partners and employees of individuals  
19 and firms, the business of which is controlled by the insured  
20 employer through stock ownership, contract or otherwise. The  
21 term "employer" as used herein may include any municipal or  
22 governmental corporation, unit, agency or department and the  
23 proper officers of any unincorporated municipality or depart-  
24 ment, as well as private individuals, partnerships and corpora-  
25 tions.

26       (2) A policy issued to an association or to a trust or to the  
27 trustees of a fund established, created or maintained for the  
28 benefit of members of one or more associations. The associa-  
29 tion or associations shall have at the issuance of the policy a  
30 minimum of one hundred persons and have been organized and  
31 maintained in good faith for purposes other than that of  
32 obtaining insurance; shall have been in active existence for at  
33 least one year; and shall have a constitution and bylaws that  
34 provide that: The association or associations hold regular  
35 meetings not less than annually to further the purposes of the  
36 members; except for credit unions, the association or associa-  
37 tions collect dues or solicit contributions from members; and  
38 the members have voting privileges and representation on the  
39 governing board and committees. The policy is subject to the  
40 following requirements:

41       (A) The policy may insure members of the association or  
42 associations, employees thereof or employees of members or  
43 one or more of the preceding or all of any class or classes for  
44 the benefit of persons other than the employee's employer.

45       (B) The premium for the policy shall be paid from:

46       (i) Funds contributed by the association or associations;

47       (ii) Funds contributed by covered employer members;

48       (iii) Funds contributed by both covered employer members  
49 and the association or associations;

50       (iv) Funds contributed by the covered persons; or

51       (v) Funds contributed by both the covered persons and the  
52 association, associations or employer members.

53       (C) Except as provided in paragraph (D) of this subdivision,  
54 a policy on which no part of the premium is to be derived from

55 funds contributed by the covered persons specifically for their  
56 insurance must insure all eligible persons, except those who  
57 reject coverage in writing.

58 (D) An insurer may exclude or limit the coverage on any  
59 person as to whom evidence of individual insurability is not  
60 satisfactory to the insurer.

61 (E) A small employer, as defined in subdivision (r), section  
62 two, article sixteen-d of this chapter, insured under an eligible  
63 group policy provided in this subdivision shall also be subject  
64 to the marketing and rate practices provisions in article sixteen-  
65 d of this chapter.

66 (3) A policy issued to a bona fide association;

67 (4) A policy issued to a college, school or other institution  
68 of learning or to the head or principal thereof, insuring at least  
69 ten students, or students and employees, of the institution;

70 (5) A policy issued to or in the name of any volunteer fire  
71 department, insuring all of the members of the department or all  
72 of any class or classes thereof against any one or more of the  
73 hazards to which they are exposed by reason of the membership  
74 but in each case not less than ten members;

75 (6) A policy issued to any person or organization to which  
76 a policy of group life insurance may be issued or delivered in  
77 this state, to insure any class or classes of individuals that could  
78 be insured under the group life policy; and

79 (7) A policy issued to cover any other substantially similar  
80 group which in the discretion of the commissioner may be  
81 subject to the issuance of a group accident and sickness policy  
82 or contract.

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## CHAPTER 119

**(H. B. 4470 — By Delegates H. White, Beach, Houston,  
Marshall, Kominar, Ron Thompson, Iaquinta and G. White)**

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[Passed March 10, 2006; in effect ninety days from passage.]  
[Approved by the Governor on March 29, 2006.]

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AN ACT to amend and reenact §33-16-3d of the Code of West Virginia, 1931, as amended, relating to group accident and sickness insurance; and updating the definition of Medicare supplement policy.

*Be it enacted by the Legislature of West Virginia:*

That §33-16-3d of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

### **ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.**

#### **§33-16-3d. Medicare supplement insurance.**

1       (a) *Definitions.* —

2       (1) “Applicant” means, in the case of a group medicare  
3 supplement policy or subscriber contract, the proposed certifi-  
4 cate holder.

5       (2) “Certificate” means, for the purposes of this section,  
6 any certificate issued under a group Medicare supplement  
7 policy, which policy has been delivered or issued for delivery  
8 in this state.

9       (3) “Medicare supplement policy” means a group or  
10 individual policy of accident and sickness insurance or a

11 subscriber contract of hospital and medical service corporations  
12 or health maintenance organizations, other than a policy issued  
13 pursuant to a contract under Section 1876 of the federal Social  
14 Security Act (42 U.S.C. §1395, et seq.) or an issued policy  
15 under a demonstration project specified pursuant to amend-  
16 ments to the federal Social Security Act in 42 U.S.C.  
17 §1395ss(g)(1), which is advertised, marketed or designed  
18 primarily as a supplement to reimbursements under Medicare  
19 for the hospital, medical or surgical expenses of persons  
20 eligible for Medicare. Such term does not include:

21 (A) A policy or contract of one or more employers or labor  
22 organizations, or of the trustees of a fund established by one or  
23 more employers or labor organizations, or a combination  
24 thereof, for employees or former employees, or combination  
25 thereof, or for members or former members, or combination  
26 thereof, of the labor organizations;

27 (B) Medicare advantage plans established under Medicare  
28 Part C, outpatient prescription drug plans established under  
29 Medicare Part D, or any health care prepayment plan (HCPP)  
30 that provides benefits pursuant to an agreement under Section  
31 1833(a)(1)(A) of the Social Security Act.

32 (4) “Medicare” means the Health Insurance for the Aged  
33 Act, Title XVIII of the Social Security Amendments of 1965,  
34 as then constituted or later amended.

35 (b) *Standards for policy provisions.* —

36 (1) The commissioner shall issue reasonable rules to  
37 establish specific standards for policy provisions of Medicare  
38 supplement policies. Such standards shall be in addition to and  
39 in accordance with the applicable laws of this state and may  
40 cover, but shall not be limited to:

41 (A) Terms of renewability;

- 42 (B) Initial and subsequent conditions of eligibility;
- 43 (C) Nonduplication of coverage;
- 44 (D) Probationary period;
- 45 (E) Benefit limitations, exceptions and reductions;
- 46 (F) Elimination period;
- 47 (G) Requirements for replacement;
- 48 (H) Recurrent conditions; and
- 49 (I) Definitions of terms.

50 (2) The commissioner may issue reasonable rules that  
51 specify prohibited policy provisions not otherwise specifically  
52 authorized by statute which, in the opinion of the commis-  
53 sioner, are unjust, unfair or unfairly discriminatory to any  
54 person insured or proposed for coverage under a Medicare  
55 supplement policy.

56 (3) Notwithstanding any other provisions of the law, a  
57 Medicare supplement policy may not deny a claim for losses  
58 incurred more than six months from the effective date of  
59 coverage for a preexisting condition. The policy may not define  
60 a preexisting condition more restrictively than a condition for  
61 which medical advice was given or treatment was recom-  
62 mended by or received from a physician within six months  
63 before the effective date of coverage.

64 (c) *Minimum standards for benefits.* — The commissioner  
65 shall issue reasonable rules to establish minimum standards for  
66 benefits under Medicare supplement policies.

67 (d) *Loss ratio standards.* — Medicare supplement policies  
68 shall be expected to return to policyholders benefits which are

69 reasonable in relation to the premium charge. The commis-  
70 sioner shall issue reasonable rules to establish minimum  
71 standards for loss ratios and for Medicare supplement policies  
72 on the basis of incurred claims experience and earned premiums  
73 for the entire period for which rates are computed to provide  
74 coverage and in accordance with accepted actuarial principles  
75 and practices. For purposes of rules issued pursuant to this  
76 subsection, Medicare supplement policies issued as a result of  
77 solicitations of individuals through the mail or mass media  
78 advertising, including both print and broadcast advertising,  
79 shall be treated as individual policies.

80 (e) *Disclosure standards.* —

81 (1) In order to provide for full and fair disclosure in the sale  
82 of accident and sickness policies, to persons eligible for  
83 Medicare, the commissioner may require by rule that no policy  
84 of accident and sickness insurance may be issued for delivery  
85 in this state and no certificate may be delivered pursuant to such  
86 a policy unless an outline of coverage is delivered to the  
87 applicant at the time application is made.

88 (2) The commissioner shall prescribe the format and  
89 content of the outline of coverage required by subdivision (1)  
90 above. For purposes of this subdivision, “format” means style,  
91 arrangements and overall appearance, including such items as  
92 size, color and prominence of type and the arrangement of text  
93 and captions. Such outline of coverage shall include:

94 (A) A description of the principal benefits and coverage  
95 provided in the policy;

96 (B) A statement of the exceptions, reductions and limita-  
97 tions contained in the policy;

98 (C) A statement of the renewal provisions including any  
99 reservation by the insurer of the right to change premiums and



100 disclosure of the existence of any automatic renewal premium  
101 increases based on the policyholder's age;

102 (D) A statement that the outline of coverage is a summary  
103 of the policy issued or applied for and that the policy should be  
104 consulted to determine governing contractual provisions.

105 (3) The commissioner may prescribe by rule a standard  
106 form and the contents of an informational brochure for persons  
107 eligible for Medicare, which is intended to improve the buyer's  
108 ability to select the most appropriate coverage and improve the  
109 buyer's understanding of Medicare. Except in the case of direct  
110 response insurance policies, the commissioner may require by  
111 rule that the information brochure be provided to any prospec-  
112 tive insureds eligible for Medicare concurrently with delivery  
113 of the outline of coverage. With respect to direct response  
114 insurance policies, the commissioner may require by rule that  
115 the prescribed brochure be provided upon request to any  
116 prospective insureds eligible for Medicare, but in no event later  
117 than the time of policy delivery.

118 (4) The commissioner may further promulgate reasonable  
119 rules to govern the full and fair disclosure of the information in  
120 connection with the replacement of accident and sickness  
121 policies, subscriber contracts or certificates by persons eligible  
122 for Medicare.

123 (f) *Notice of free examination.* — Medicare supplement  
124 policies or certificates, other than those issued pursuant to  
125 direct response solicitation, shall have a notice prominently  
126 printed on the first page of the policy or attached thereto stating  
127 in substance that the applicant shall have the right to return the  
128 policy or certificate within thirty days from its delivery and  
129 have the premium refunded if, after examination of the policy  
130 or certificate, the applicant is not satisfied for any reason. Any  
131 refund made pursuant to this section shall be paid directly to the

132 applicant by the issuer in a timely manner. Medicare supple-  
133 ment policies or certificates issued pursuant to a direct response  
134 solicitation to persons eligible for Medicare shall have a notice  
135 prominently printed on the first page or attached thereto stating  
136 in substance that the applicant shall have the right to return the  
137 policy or certificate within thirty days of its delivery and to  
138 have the premium refunded if, after examination, the applicant  
139 is not satisfied for any reason. Any refund made pursuant to this  
140 section shall be paid directly to the applicant by the issuer in a  
141 timely manner.

142 (g) *Administrative procedures.* — Rules promulgated  
143 pursuant to this section shall be subject to the provisions of  
144 chapter twenty-nine-a (the West Virginia Administrative  
145 Procedures Act) of this code.

146 (h) *Severability.* — If any provision of this section or the  
147 application thereof to any person or circumstance is for any  
148 reason held to be invalid, the remainder of the section and the  
149 application of such provision to other persons or circumstances  
150 shall not be affected thereby.

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## CHAPTER 120

**(H. B. 4847 — By Delegates Michael, Frederick, Proudfoot,  
H. White, Browning, Susman, Palumbo,  
Hall, Border, Ashley and G. White)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new article, designated §33-16F-1, §33-16F-2,

§33-16F-3, §33-16F-4, §33-16F-5, §33-16F-6, §33-16F-7 and §33-16F-8, all relating to group limited health benefits insurance plans; declaring legislative intent; requiring approval of plans by Insurance Commissioner; providing eligibility requirements for temporary, part time and seasonal employees under such plans; setting forth statutory or regulatory provisions that specifically do or do not apply to such plans; authorizing Insurance Commissioner to forbear from enforcing certain statutory and regulatory provisions; establishing criteria for filing and approval of premium rates; authorizing Insurance Commissioner to promulgate emergency rules; mandating disclaimer on policies; exempting plans from premium taxes; providing for severability; and providing rule of construction.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-16F-1, §33-16F-2, §33-16F-3, §33-16F-4, §33-16F-5, §33-16F-6, §33-16F-7 and §33-16F-8, all to read as follows:

**ARTICLE 16F. GROUP LIMITED HEALTH BENEFITS PLANS.**

§33-16F-1. Declaration of legislative intent.

§33-16F-2. Eligibility for coverage.

§33-16F-3. Applicability of other provisions.

§33-16F-4. Filing and approval of rates.

§33-16F-5. Emergency rules authorized; factors to be considered in determining required benefits.

§33-16F-6. Disclaimer.

§33-16F-7. Exemption from premium taxes.

§33-16F-8. Severability; controlling provisions.

**§33-16F-1. Declaration of legislative intent.**

1       The Legislature recognizes that a significant number of  
2 West Virginia workers do not have health insurance coverage  
3 and that the lack of coverage is an issue of affordability. One of  
4 the ways affordable premiums can be obtained is by some

5 combination of limiting benefits and increasing copays or  
6 deductibles. In order to provide greater access to such afford-  
7 able plans to employees, the Legislature has determined that  
8 authorization of the sale of group policies with limited benefits  
9 that would include physician, inpatient and outpatient care,  
10 including preventive and primary care, will serve to bring  
11 insurance coverage to many of those working West Virginians  
12 and their families without any insurance coverage. It is,  
13 therefore, the intent of the Legislature to introduce flexibility in  
14 the design of group health insurance plans to allow insurers to  
15 offer basic benefits at affordable prices. This article may be  
16 known as the “Affordable Group Health Insurance Act.”

**§33-16F-2. Eligibility for coverage.**

1 (a) As used in this article, “group plan” means any plan  
2 approved by the commissioner as a “group limited health  
3 benefits plan” in accordance with this article. Each such plan  
4 constitutes a health benefit plan “of a particular type” for the  
5 purposes of subsection (a), section three-l, article sixteen and  
6 subsection (d), section seven, article sixteen-d of this chapter.

7 (b) Notwithstanding any other provision of this code,  
8 including provisions mandating the inclusion of certain benefits  
9 in group health insurance plans, upon filing with and approval  
10 by the commissioner as a “group limited health benefits plan,”  
11 any insurer, including a health maintenance organization or  
12 health service corporation, may offer the plan and rates associ-  
13 ated with the plan to employers, subject to the conditions of this  
14 article.

15 (c) The commissioner shall only approve a proposed “group  
16 limited health benefits plan” that is limited to coverage of one  
17 or more of the following classes of employees: Any class of  
18 employees that comprises part-time, temporary or seasonal  
19 employees that: (i) Are ineligible for coverage under any of the

20 employer's group health benefits plans; or (ii) are employed by  
21 an employer that does not offer a group health benefits plan to  
22 any of its employees.

**§33-16F-3. Applicability of other provisions.**

1 (a) The following provisions of article sixteen of this  
2 chapter apply to group limited health benefits plans: Sections  
3 one-a, three, three-j, three-k, three-l, three-m, three-n, three-p,  
4 four, five, six, seven, nine, ten, eleven, thirteen, fourteen and  
5 fifteen; all other provisions of article sixteen do not apply to  
6 plans approved pursuant to this article unless and to the extent  
7 such provisions are specifically incorporated in rules promul-  
8 gated by the commissioner.

9 (b) With respect to any "group limited health benefits plan"  
10 offered to any "small employer," as that term is defined in  
11 section two, article sixteen-d of this chapter, the following  
12 provisions of article sixteen-d apply: Sections two, four, seven,  
13 eight, twelve and thirteen: *Provided*, That only the clause  
14 preceding the proviso in section thirteen, article sixteen-d of  
15 this chapter applies to group plans approved pursuant to this  
16 article. Notwithstanding any other provision of this code, all  
17 other provisions of article sixteen-d of this chapter do not apply  
18 to group plans approved pursuant to this article unless and to  
19 the extent such provisions are specifically incorporated in rules  
20 promulgated by the commissioner.

21 (c) Notwithstanding any other provision of this code or of  
22 the code of state rules, the provisions of article sixteen-e of this  
23 chapter and of legislative rules regulating group accident and  
24 sickness policies, including the rule set forth in series 39, title  
25 114 of the West Virginia Code of State Rules, do not apply to  
26 group plans approved pursuant to this article unless and to the  
27 extent specifically incorporated in rules promulgated by the  
28 commissioner.

29 (d) The commissioner may forbear from applying any other  
30 statutory or regulatory requirements to insurers offering a group  
31 plan approved pursuant to this article, including any require-  
32 ments in article twenty-four and twenty-five-a, if the commis-  
33 sioner determines that such forbearance furthers the legislative  
34 intent set forth in section one of this article.

35 (e) Nothing in this article may be construed to relieve an  
36 insurer or employer from complying with all applicable federal  
37 laws, including federal laws mandating the inclusion of benefits  
38 in an insurance plan.

**§33-16F-4. Filing and approval of rates.**

1 (a) Premium rate charges for any group plans shall:

2 (1) Be reasonable in relation to the benefits available under  
3 the policy; and

4 (2) Notwithstanding the provisions of section one, article  
5 sixteen-b of this chapter, be filed with the commissioner for a  
6 waiting period of thirty days before the charges become  
7 effective. At the expiration of thirty days, the premium rate  
8 charges filed are deemed approved unless prior thereto the  
9 charges have been affirmatively approved or disapproved by the  
10 commissioner.

11 (b) The commissioner shall disapprove premium rates that  
12 are not in compliance with the requirements of any rule  
13 promulgated by the commissioner. The commissioner shall  
14 send written notice of the disapproval to the insurer. The  
15 commissioner may approve the premium rates before the thirty-  
16 day period expires by giving written notice of approval.

17 (c) This section does not apply to group plans issued  
18 pursuant to this article upon which premiums are negotiated  
19 with the group policyholder and are experience rated.

**§33-16F-5. Emergency rules authorized; factors to be considered in determining required benefits.**

1 (a) The commissioner shall promulgate emergency rules  
2 pursuant to the provisions of section fifteen, article three,  
3 chapter twenty-nine-a of this code on or before the first day of  
4 September, two thousand six, to prescribe requirements  
5 regarding ratemaking, which may include rules establishing loss  
6 ratio standards for group plans; to place further limitations on  
7 the eligibility of classes of employees or employees within a  
8 group; to determine benefits that must be included in such  
9 group plans, except that the commissioner may not exclude  
10 from coverage any benefits mandated by federal law; and to  
11 provide for any other matters deemed necessary to further the  
12 intent of this article.

13 (b) In determining what medical treatments, procedures,  
14 and related health services benefits must be included in such  
15 plans, the commissioner shall consider their effectiveness in  
16 improving the health status of individuals, their impact on  
17 maintaining and improving health and on reducing the unneces-  
18 sary consumption of health care services, and their impact on  
19 the affordability of health care coverage.

**§33-16F-6. Disclaimer.**

1 Each group plan issued pursuant to this article shall include  
2 the following disclaimer printed in boldface type and located in  
3 a prominent portion of each policy, subscriber contract and  
4 certificate of coverage: **“THIS LIMITED GROUP HEALTH  
5 BENEFITS PLAN DOES NOT PROVIDE COMPREHEN-  
6 SIVE MEDICAL COVERAGE. IT IS A BASIC OR LIM-  
7 ITED BENEFITS POLICY AND CONTAINS SPECIFIC  
8 DOLLAR LIMITS THAT WILL BE PAID FOR MEDI-  
9 CAL SERVICES WHICH MAY NOT BE EXCEEDED. IF  
10 THE COST OF SERVICES EXCEEDS THOSE LIMITS,  
11 THE BENEFICIARY AND NOT THE INSURER IS**

12 **RESPONSIBLE FOR PAYMENT OF THE EXCESS**  
13 **AMOUNTS.”**

**§33-16F-7. Exemption from premium taxes.**

1 Products authorized under this article are exempt from the  
2 premium taxes and surcharges assessed under article three of  
3 this chapter.

**§33-16F-8. Severability; controlling provisions.**

1 (a) If any provision of this act or the application thereof to  
2 any person or circumstance is for any reason held to be invalid,  
3 the remainder of the act and application of such provision to  
4 other persons or circumstances shall not be affected thereby.

5 (b) To the extent that provisions of this article differ from  
6 those contained elsewhere in this chapter, the provisions of this  
7 article control.

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## CHAPTER 121

**(S. B. 438 — By Senators Minard and Foster)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 31, 2006.]

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AN ACT to amend and reenact §33-20-2 and §33-20-3 of the Code of West Virginia, 1931 as amended, all relating to title insurance; providing for review of title insurance rates by the Insurance Commissioner; setting forth criteria for rate review; allowing grouping into different rate classifications; requiring separate rate filings for commercial and non-commercial risks; and excluding certain expenses from inclusion in title insurance rates.



*Be it enacted by the Legislature of West Virginia:*

That §33-20-2 and §33-20-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 20. RATES AND RATING ORGANIZATIONS.**

§33-20-2. Scope of article.

§33-20-3. Ratemaking.

**§33-20-2. Scope of article.**

1           (a) This article applies to fire, marine, casualty and surety  
2 insurance on risks or operations in this state.

3           (b) This article does not apply:

4           (1) To reinsurance, other than joint reinsurance to the extent  
5 stated in section eleven of this article;

6           (2) To life or accident and sickness insurance;

7           (3) To insurance of vessels or craft, their cargoes, marine  
8 builders' risks, marine protection and indemnity or other risks  
9 commonly insured under marine, as distinguished from inland  
10 marine, insurance policies;

11          (4) To insurance against loss of or damage to aircraft,  
12 including their accessories and equipment, or against liability,  
13 other than workers' compensation and employer's liability,  
14 arising out of the ownership, maintenance or use of aircraft;

15          (5) To malpractice insurance insofar as the provisions of  
16 this article directly conflict and thereby are supplanted by  
17 article twenty-b of this chapter.

18          (c) If any kind of insurance, subdivision or combination  
19 thereof, or type of coverage, is subject to both the provisions of  
20 this article expressly applicable to casualty and surety insurance

21 and to those expressly applicable to fire and marine insurance,  
22 the commissioner may apply to filings made for such kind of  
23 insurance the provisions of this article which are in his or her  
24 judgment most suitable.

**§33-20-3. Ratemaking.**

1 All rates shall be made in accordance with the following  
2 provisions:

3 (a) Due consideration shall be given to past and prospective  
4 loss experience within and outside this state, to catastrophe  
5 hazards, if any, to a reasonable margin for underwriting profit  
6 and contingencies, to dividends, savings or unabsorbed  
7 premium deposits allowed or returned by insurers to their  
8 policyholders, members or subscribers, to past and prospective  
9 expenses both countrywide and those specially applicable to  
10 this state and to all other relevant factors within and outside this  
11 state.

12 (b) Rates may not be excessive, inadequate or unfairly  
13 discriminatory.

14 (c) Rates for casualty and surety insurance to which this  
15 article applies shall also be subject to the following provisions:

16 (1) The systems of expense provisions included in the rates  
17 for use by any insurer or group of insurers may differ from  
18 those of other insurers or groups of insurers to reflect the  
19 requirements of the operating methods of any such insurer or  
20 group with respect to any kind of insurance or with respect to  
21 any subdivision or combination thereof for which subdivision  
22 or combination separate expense provisions are applicable.

23 (2) Risks shall be grouped by classifications and by  
24 territorial areas for the establishment of rates and minimum

25 premiums. Classification of rates shall be modified to produce  
26 rates for individual risks in a territorial area in accordance with  
27 rating plans which establish standards for measuring variations  
28 in hazards or expense provisions, or both. Such standards may  
29 measure any differences among risks that can be demonstrated  
30 to have a probable effect upon losses or expenses: *Provided,*  
31 That such standards shall include the establishment of at least  
32 seven territorial rate areas within the state: *Provided, however,*  
33 That such territorial rate established by any insurer or group of  
34 insurers may differ from those of other insurers or group of  
35 insurers.

36 (3) Due consideration shall be given to such factors as  
37 expense, management, individual experience, underwriting  
38 judgment, degree or nature of hazard or any other reasonable  
39 considerations, provided such factors apply to all risks under  
40 the same or substantially the same circumstances or conditions.

41 (d) Rates for fire and marine insurance to which this article  
42 applies shall also be subject to the following provisions:

43 (1) Manual, minimum, class rates, rating schedules or rating  
44 plans shall be made and adopted, except in the case of specific  
45 inland marine rates on risks specially rated.

46 (2) Due consideration shall be given to the conflagration  
47 hazard and in the case of fire insurance rates, consideration  
48 shall be given to the experience of the fire insurance business  
49 during a period of not less than the most recent five-year period  
50 for which such experience is available.

51 (e) Rates for title insurance to which this article applies  
52 shall also be subject to the following provisions:

53 (1) Title insurance rates shall be reasonable and adequate  
54 for the class of risks to which they apply. Rates may not be  
55 unfairly discriminatory between risks involving essentially the

56 same hazards and expense elements. The rates may be fixed in  
57 an amount sufficient to furnish a reasonable margin for profit  
58 after provisions to account for: (i) Probable losses as indicated  
59 by experience within and without this state; (ii) exposure to loss  
60 under policies; (iii) allocations to reserves; (iv) costs participat-  
61 ing insurance; (v) operating costs; and (vi) other items of  
62 expense fairly attributable to the operation of a title insurance  
63 business.

64 (2) (A) Policies may be grouped into classes for the  
65 establishment of rates. A title insurance policy that is unusually  
66 hazardous to the title insurance company because of an alleged  
67 defect or irregularity in the title insured or because of uncer-  
68 tainty regarding the proper interpretation or application of the  
69 law involved may be classified separately according to the facts  
70 of each case.

71 (B) Title insurance companies shall file separate rate  
72 schedules for commercial and non-commercial risks. The  
73 Insurance Commissioner shall promulgate rules regarding the  
74 requirements of this subsection which shall give due consider-  
75 ation to the nature of commercial transactions and the need for  
76 greater protections for consumers in non-commercial transac-  
77 tions.

78 (3) Title insurance rates may not include charges for  
79 abstracting, record searching, certificates regarding the record  
80 title, escrow services, closing services and other related services  
81 that may be offered or furnished or the cost and expenses of  
82 examinations of titles.

83 (f) Except to the extent necessary to meet the provisions of  
84 subdivisions (b) and (c) of this section, uniformity among  
85 insurers in any matters within the scope of this section is neither  
86 required nor prohibited.

87 (g) Rates made in accordance with this section may be used  
88 subject to the provisions of this article.

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## CHAPTER 122

**(S. B. 619 — By Senators Minard and Jenkins)**

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[Passed March 7, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2006.]

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AN ACT to amend and reenact §33-20F-5 of the Code of West Virginia, 1931, as amended, relating to the governance and organization of the West Virginia Physicians' Mutual Insurance Company; and removing a restriction limiting service on the board of directors of the company to two consecutive terms.

*Be it enacted by the Legislature of West Virginia:*

That §33-20F-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.**

**§33-20F-5. Governance and organization.**

1       (a) (1) The Board of Risk and Insurance Management shall  
2 implement the initial formation and organization of the  
3 company as provided by this article.

4       (2) From the first day of July, two thousand three, until the  
5 thirtieth day of June, two thousand four, the company shall be  
6 governed by a provisional board of directors consisting of the  
7 members of the Board of Risk and Insurance Management, the  
8 Dean of the West Virginia University School of Medicine or a  
9 physician representative designated by him or her and five  
10 physician directors elected by the policyholders whose policies

11 are to be transferred to the company pursuant to section nine of  
12 this article.

13 (3) Only physicians who are licensed to practice medicine  
14 in this state pursuant to article three or fourteen, chapter thirty  
15 of this code and who have purchased medical professional  
16 liability coverage from the Board of Risk and Insurance  
17 Management are eligible to serve as physician directors on the  
18 provisional board of directors. One of the physician directors  
19 shall be selected from a list of three physicians nominated by  
20 the West Virginia Medical Association. The Board of Risk and  
21 Insurance Management shall develop procedures for the  
22 nomination of the remaining physician directors and for the  
23 conduct of the election, to be held no later than the first day of  
24 June, two thousand three, of all of the physician directors,  
25 including, but not limited to, giving notice of the election to the  
26 policyholders. These procedures shall be exempt from the  
27 provisions of article three, chapter twenty-nine-a of this code.

28 (b) From the first day of July, two thousand four, the  
29 company shall be governed by a board of directors consisting  
30 of eleven directors, as follows:

31 (1) Five directors who are physicians licensed to practice  
32 medicine in this state by the Board of Medicine or the Board of  
33 Osteopathy, including at least one general practitioner and one  
34 specialist: *Provided*, That only physicians who have purchased  
35 medical professional liability coverage from the Board of Risk  
36 and Insurance Management are eligible to serve as physician  
37 representatives on the company's first board of directors;

38 (2) Three directors who have substantial experience as an  
39 officer or employee of a company in the insurance industry;

40 (3) Two directors with general knowledge and experience  
41 in business management who are officers and employees of the  
42 company and are responsible for the daily management of the  
43 company; and

44           (4) One director who is a dean of a West Virginia school of  
45 medicine or osteopathy or his or her designated physician  
46 representative. This director's position shall rotate annually  
47 among the Dean of the West Virginia University School of  
48 Medicine, the Dean of the Marshall University Joan C. Edwards  
49 School of Medicine and the Dean of the West Virginia School  
50 of Osteopathic Medicine. This director shall serve until such  
51 time as the moneys loaned to the company from the West  
52 Virginia Tobacco Settlement Medical Trust Fund have been  
53 replenished as provided in subsection (e), section four of this  
54 article. After the moneys have been replenished to the West  
55 Virginia Tobacco Settlement Medical Trust Fund, this director  
56 shall be a physician licensed to practice medicine in this state  
57 by the Board of Medicine or the Board of Osteopathy.

58           (c) In addition to the eleven directors required by subsec-  
59 tion (b) of this section, the bylaws of the company may provide  
60 for the addition of at least two directors who represent an entity  
61 or institution which lends or otherwise provides funds to the  
62 company.

63           (d) The directors and officers of the company are to be  
64 chosen in accordance with the articles of incorporation and  
65 bylaws of the company. The initial board of directors selected  
66 in accordance with the provisions of subdivision (3), subsection  
67 (a) of this section shall serve for the following terms: (1) Three  
68 for four-year terms; (2) three for three-year terms; (3) three for  
69 two-year terms; and (4) two for one-year terms. Thereafter, the  
70 directors shall serve staggered terms of four years. If an  
71 additional director is added to the board as provided in subsec-  
72 tion (c) of this section, his or her initial term shall be for four  
73 years.

74           (e) The incorporators are to prepare and file articles of  
75 incorporation and bylaws in accordance with the provisions of  
76 this article and the provisions of this chapter and chapter thirty-  
77 one of this code.

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## CHAPTER 123

**(Com. Sub. for S. B. 755 — By Senators McCabe, Oliverio and Minard)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to amend and reenact §33-20F-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §55-7B-2 of said code; and to amend said code by adding thereto a new section, designated §55-7B-12, all relating to medical professional liability insurance; authorizing the West Virginia Physicians' Mutual Insurance Company to decline or refuse to renew insurance policies transferred to the company from the Board of Risk and Insurance Management upon the expiration of the terms of the policies so transferred; describing the criteria according to which the company may classify, rate and price policies of insurance; describing the criteria according to which the company may elect to underwrite or decline to underwrite insurance coverage; and establishing basic requirements and minimum standards for physician self-funded insurance arrangements to qualify as medical professional liability insurance for purposes of article seven-b, chapter fifty-five of said code.

*Be it enacted by the Legislature of West Virginia:*

That §33-20F-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §55-7B-2 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §55-7B-12, all to read as follows:

### **Chapter**

**33. Insurance.**

**55. Actions, Suits and Arbitration; Judicial Sale.**



**CHAPTER 33. INSURANCE.****ARTICLE 20F. PHYSICIANS' MUTUAL INSURANCE COMPANY.****§33-20F-9. Kinds of coverage authorized; transfer of policies from the State Board of Risk and Insurance Management; risk management practices authorized.**

1 (a) Upon approval by the commissioner for a license to  
2 transact insurance in this state, the company may issue  
3 nonassessable policies of malpractice insurance, as defined in  
4 subdivision (9), subsection (e), section ten, article one of this  
5 chapter, insuring a physician. Additionally, the company may  
6 issue other types of casualty or liability insurance as may be  
7 approved by the commissioner.

8 (b) On the transfer date:

9 (1) The company shall accept from the Board of Risk and  
10 Insurance Management the transfer of any and all medical  
11 liability insurance obligations and risks of existing or in-force  
12 contracts of insurance covering physicians, physician corpora-  
13 tions and physician-operated clinics issued by the board  
14 pursuant to article twelve-b, chapter twenty-nine of this code:  
15 *Provided*, That the company may decline or refuse to renew any  
16 and all such contracts of insurance transferred to the company  
17 from the Board of Risk and Insurance Management upon the  
18 expiration of the respective terms of each contract of insurance  
19 so transferred and nothing in this section is intended to or shall  
20 be construed to otherwise obligate the company to accept,  
21 underwrite or renew any contract of insurance whatsoever. The  
22 transfer shall not include medical liability insurance obligations  
23 and risks of existing or in-force contracts of insurance covering  
24 hospitals and nonphysician providers;

25       (2) The company shall assume all responsibility for and  
26 defend, indemnify and hold harmless the Board of Risk and  
27 Insurance Management and the state with respect to any and all  
28 liabilities and duties arising from the assets and responsibilities  
29 transferred to the company pursuant to article twelve-b, chapter  
30 twenty-nine of this code;

31       (3) The Board of Risk and Insurance Management shall  
32 disburse and pay to the company any funds attributable to  
33 premiums paid for the insurance obligations transferred to the  
34 company pursuant to subdivision (1) of this subsection, with  
35 earnings thereon, less paid losses and expenses, and deposited  
36 in the medical liability fund created by section ten, article  
37 twelve-b, chapter twenty-nine of this code as reflected on the  
38 ledgers of the Board of Risk and Insurance Management;

39       (4) The Board of Risk and Insurance Management shall  
40 disburse and pay to the company any funds in the Board of Risk  
41 and Insurance Management Physicians' Mutual Insurance  
42 Company account created by section seven of this article. All  
43 funds in this account shall be transferred pursuant to terms of a  
44 surplus note or other loan arrangement satisfactory to the Board  
45 of Risk and Insurance Management and the Insurance Commis-  
46 sioner.

47       (c) The Board of Risk and Insurance Management shall  
48 cause an independent actuarial study to be performed to  
49 determine the amount of all paid losses, expenses and assets  
50 associated with the policies the board has in force pursuant to  
51 article twelve-b, chapter twenty-nine of this code. The actuarial  
52 study shall determine the paid losses, expenses and assets  
53 associated with the policies to be transferred to the company  
54 pursuant to subsection (b) of this section and the paid losses,  
55 expenses and assets associated with those policies retained by  
56 the board. The determination shall not include liabilities created  
57 by issuance of new tail insurance policies for nonphysician

58 providers authorized by subsection (n), section six, article  
59 twelve-b, chapter twenty-nine of this code.

60 (d) The Board of Risk and Insurance Management may  
61 enter into such agreements, including loan agreements, with the  
62 company that are necessary to accomplish the transfers  
63 addressed in this section.

64 (e) The company shall make policies of insurance available  
65 to physicians in this state, regardless of practice type or  
66 specialty. Policies issued by the company to each class of  
67 physicians are to be essentially uniform in terms and conditions  
68 of coverage.

69 (f) Notwithstanding the provisions of subsection (b), (c) or  
70 (e) of this section, the company may:

71 (1) Establish reasonable classifications of physicians,  
72 insured activities and exposures based on a good faith determi-  
73 nation of relative exposures and hazards among classifications;

74 (2) Vary the limits, coverages, exclusions, conditions and  
75 loss-sharing provisions among classifications;

76 (3) Establish, for an individual physician within a classifi-  
77 cation, reasonable variations in the terms of coverage, including  
78 rates, deductibles and loss-sharing provisions, based on  
79 underwriting criteria established by the company, from time to  
80 time, which underwriting criteria may take into account factors  
81 considered by other medical malpractice insurance companies,  
82 from time to time, in underwriting similar risks and which  
83 factors may include, but are not limited to, the insured's prior  
84 loss experience; current professional training and capability;  
85 disciplinary action taken against the physician by the Board of  
86 Medicine or Board of Osteopathy; felonies or other criminal  
87 offenses committed by the physician; evidence of alcohol or  
88 chemical dependency or abuse; evidence of sexual misconduct;

89 and other factors relevant to the liability risk profile of the  
90 physician.

91 (4) Refuse to provide insurance coverage for individual  
92 physicians who do not meet underwriting criteria established by  
93 the company, from time to time, which underwriting criteria  
94 may take into account factors considered by other medical  
95 malpractice insurance companies, from time to time, in  
96 underwriting or declining to underwrite similar risks and which  
97 factors may include, but are not limited to, prior loss experi-  
98 ence, current professional training and capability, disciplinary  
99 action taken against the physician by the Board of Medicine or  
100 Board of Osteopathy; felonies or other criminal offenses  
101 committed by the physician; evidence of alcohol or chemical  
102 dependency or abuse; evidence of sexual misconduct; and other  
103 factors relevant to the liability risk profile of the physician and  
104 which do or may indicate that the physician represents an  
105 unacceptable risk of loss if coverage is provided.

106 (g) The company shall establish reasonable risk manage-  
107 ment and continuing education requirements which policyhold-  
108 ers must meet in order to be and remain eligible for coverage.

## **CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.**

### **ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.**

§55-7B-2. Definitions.

§55-7B-12. Self-funding program; requirements; minimum standards.

#### **§55-7B-2. Definitions.**

1 (a) "Board" means the state Board of Risk and Insurance  
2 Management.

3 (b) "Collateral source" means a source of benefits or  
4 advantages for economic loss that the claimant has received  
5 from:

6 (1) Any federal or state act, public program or insurance  
7 which provides payments for medical expenses, disability  
8 benefits, including workers' compensation benefits, or other  
9 similar benefits. Benefits payable under the Social Security Act  
10 are not considered payments from collateral sources except for  
11 Social Security disability benefits directly attributable to the  
12 medical injury in question;

13 (2) Any contract or agreement of any group, organization,  
14 partnership or corporation to provide, pay for or reimburse the  
15 cost of medical, hospital, dental, nursing, rehabilitation, therapy  
16 or other health care services or provide similar benefits;

17 (3) Any group accident, sickness or income disability  
18 insurance, any casualty or property insurance (including  
19 automobile and homeowners' insurance) which provides  
20 medical benefits, income replacement or disability coverage, or  
21 any other similar insurance benefits, except life insurance, to  
22 the extent that someone other than the insured, including the  
23 insured's employer, has paid all or part of the premium or made  
24 an economic contribution on behalf of the plaintiff; or

25 (4) Any contractual or voluntary wage continuation plan  
26 provided by an employer or otherwise or any other system  
27 intended to provide wages during a period of disability.

28 (c) "Consumer price index" means the most recent con-  
29 sumer price index for all consumers published by the United  
30 States Department of Labor.

31 (d) "Emergency condition" means any acute traumatic  
32 injury or acute medical condition which, according to standard-  
33 ized criteria for triage, involves a significant risk of death or the  
34 precipitation of significant complications or disabilities,  
35 impairment of bodily functions, or, with respect to a pregnant  
36 woman, a significant risk to the health of the unborn child.

37 (e) "Health care" means any act or treatment performed or  
38 furnished, or which should have been performed or furnished,  
39 by any health care provider for, to or on behalf of a patient  
40 during the patient's medical care, treatment or confinement.

41 (f) "Health care facility" means any clinic, hospital, nursing  
42 home or assisted living facility, including personal care home,  
43 residential care community and residential board and care  
44 home, or behavioral health care facility or comprehensive  
45 community mental health/mental retardation center, in and  
46 licensed by the State of West Virginia and any state-operated  
47 institution or clinic providing health care.

48 (g) "Health care provider" means a person, partnership,  
49 corporation, professional limited liability company, health care  
50 facility or institution licensed by, or certified in, this state or  
51 another state, to provide health care or professional health care  
52 services, including, but not limited to, a physician, osteopathic  
53 physician, hospital, dentist, registered or licensed practical  
54 nurse, optometrist, podiatrist, chiropractor, physical therapist,  
55 psychologist, emergency medical services authority or agency,  
56 or an officer, employee or agent thereof acting in the course and  
57 scope of such officer's, employee's or agent's employment.

58 (h) "Medical injury" means injury or death to a patient  
59 arising or resulting from the rendering of or failure to render  
60 health care.

61 (i) "Medical professional liability" means any liability for  
62 damages resulting from the death or injury of a person for any  
63 tort or breach of contract based on health care services ren-  
64 dered, or which should have been rendered, by a health care  
65 provider or health care facility to a patient.

66 (j) "Medical professional liability insurance" means a  
67 contract of insurance or any actuarially sound self-funding  
68 program that pays for the legal liability of a health care facility

69 or health care provider arising from a claim of medical profes-  
70 sional liability. In order to qualify as medical professional  
71 liability insurance for purposes of this article, a self-funding  
72 program for an individual physician must meet the require-  
73 ments and minimum standards set forth in section twelve of this  
74 article.

75 (k) "Noneconomic loss" means losses, including, but not  
76 limited to, pain, suffering, mental anguish and grief.

77 (l) "Patient" means a natural person who receives or should  
78 have received health care from a licensed health care provider  
79 under a contract, expressed or implied.

80 (m) "Plaintiff" means a patient or representative of a patient  
81 who brings an action for medical professional liability under  
82 this article.

83 (n) "Representative" means the spouse, parent, guardian,  
84 trustee, attorney or other legal agent of another.

**§55-7B-12. Self-funding program; requirements; minimum standards.**

1 (a) An irrevocable trust may be established by or for the  
2 benefit of the physician and funded by conveyance to the  
3 trustee of the sum of not less than one million dollars, in cash  
4 or cash equivalents, subject to disbursement and replenishment  
5 from time to time, as described in this section, and exclusive of  
6 funds needed for maintenance, administration, legal defense  
7 and all other costs.

8 (b) A physician who has established a trust pursuant to this  
9 section may subsequently terminate the trust and elect to  
10 acquire coverage from a commercial medical professional  
11 liability insurance carrier. The assets of the trust may not be  
12 distributed to the physician settlor until the costs associated

13 with the administration of the trust have been satisfied and the  
14 trustee receives certification that the physician has acquired  
15 medical professional liability insurance tail coverage or prior  
16 acts coverage, whichever is applicable. The tail coverage or  
17 prior acts coverage must cover the time period from the  
18 establishment of the trust to the effective date of the newly  
19 acquired medical professional liability insurance coverage or  
20 twelve years, whichever is shorter.

21 (c) For a period of not less than the applicable statute of  
22 limitations for medical professional liability, a physician who  
23 has established an actuarially sound physician self-funding  
24 insurance program under this section and has such a program in  
25 effect at the time of retirement shall, following his or her  
26 retirement, either maintain the trust in effect at funding levels  
27 required by this section, or purchase and maintain in force and  
28 effect tail insurance as required by article twenty-d, chapter  
29 thirty-three of this code.

30 (d) The trustee for the trust must be an independent  
31 professional, bank or other qualified institutional fiduciary. The  
32 trustee has all necessary and appropriate powers to fulfill the  
33 purposes of the trust, including, but not limited to, the powers  
34 to:

35 (1) Disburse funds for the maintenance and administration  
36 of the trust, and for defense costs, judgments, arbitration  
37 indemnity awards and settlements;

38 (2) Hire an actuary who is a member of the Casualty  
39 Actuarial Society and experienced in medical professional  
40 liability protection programs to provide a periodic opinion, but  
41 not less frequently than annually, as to the actuarial soundness  
42 of the fund, a copy of which opinion shall be provided upon  
43 request to any facility where the physician maintains clinical  
44 privileges;



45       (3) Hire a qualified, third-party claims manager experi-  
46       enced in handling medical professional liability claims, with the  
47       power and authority to set reserves and administer and oversee  
48       the defense of all claims; and

49       (4) Require that the physician replenish the trust so as to  
50       maintain at all times a funding level of no less than one million  
51       dollars or such greater amount as set forth in the most current  
52       actuarial opinion as described in subdivision (2) of this  
53       subsection, exclusive of funds needed for maintenance,  
54       administration, defense or other costs.

55       (e) The trustee, acting directly or through its hired profes-  
56       sionals, as appropriate, shall periodically, but not less fre-  
57       quently than annually, evaluate and set required trust funding  
58       levels for the trust; make assessments against the physician for  
59       payments into the trust in order to replenish and maintain the  
60       trust at levels required by this subsection and required to render  
61       the trust actuarially sound from time to time; and otherwise take  
62       such actions as may appear necessary, desirable or appropriate  
63       to fulfill the purposes and integrity of the trust. Should the  
64       physician fail to timely meet any of the requests or require-  
65       ments of the trustee with regard to funding of the trust or  
66       otherwise, or should the trust at any time fail to meet all the  
67       requirements of this subsection, thereupon the trust arrange-  
68       ment will conclusively no longer qualify under this article as an  
69       actuarially sound self- funding program: *Provided*, That all  
70       assets of the trust at the time of any such disqualifying event or  
71       circumstance will remain trust assets and may not be distributed  
72       to the physician settlor of the trust until the latter of the date on  
73       which any and all medical professional liability claims asserted  
74       or pending against the physician at the time of such disqualify-  
75       ing event or circumstance or within the applicable statute of  
76       limitations for medical malpractice liability thereafter have  
77       been finally adjudicated or otherwise resolved and fully  
78       satisfied to the extent of trust assets available for such purpose.

79 (f) In the event that more than one claim arises within the  
80 period since the last annual evaluation, a new evaluation will be  
81 performed within sixty days or at the time of the next annual  
82 audit, whichever is shorter, in order to evaluate the trust and  
83 replenish funds to ensure that its assets total not less than one  
84 million dollars, or such other amount that is actuarially  
85 determined necessary to satisfy the aggregate outstanding  
86 claims, whichever is greater, exclusive of funds needed for  
87 maintenance, administration, legal defense or other costs.

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## CHAPTER 124

**(Com. Sub. for S. B. 754 — By Senator Minard)**

[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §33-22-7 and §33-22-8 of the Code of West Virginia, 1931, as amended, all relating to farmers' mutual fire insurance companies; clarifying that certain requirements for the filing of fire and marine policies apply to farm mutual insurance companies; clarifying types of policies that all such companies may issue; describing types of policies of liability insurance for which an extension of a license must be obtained; permitting commissioner to limit duration of such license extensions; and establishing criteria by which farm mutual insurance companies must demonstrate that they serve underserved areas.

*Be it enacted by the Legislature of West Virginia:*

That §33-22-7 and §33-22-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 22. FARMERS' MUTUAL FIRE INSURANCE COMPANIES.**

§33-22-7. Filing and approval of policy; setting out terms and conditions; limiting liability; standard forms or provisions.

§33-22-8. Kinds of coverage authorized.

**§33-22-7. Filing and approval of policy; setting out terms and conditions; limiting liability; standard forms or provisions.**

1 (a) No policy form shall be issued or used by any such  
2 company unless such form has been filed with and approved by  
3 the commissioner. The filing, approval and disapproval of such  
4 forms shall be governed by the provisions of sections eight and  
5 nine, article six of this chapter and section eight, article  
6 seventeen of this chapter in the same manner as form filings of  
7 other insurers.

8 (b) All terms and conditions of such policies shall be set  
9 forth in full in the policy or endorsements attached thereto  
10 including the contingent liability, if any, of the policyholder and  
11 no provision purporting to make any portion of the charter,  
12 bylaws or other documents a part of the policy shall be valid  
13 unless such portion is set forth in full in the policy.

14 (c) Policies may limit the liability of the company to a fixed  
15 percent of the value of the property insured.

16 (d) Whenever the commissioner believes the public interest  
17 requires a standard form for a particular kind of coverage, the  
18 commissioner may prescribe a standard form of policy for such  
19 companies, or a standard specific provision to be inserted in  
20 such policies, and all policies thereafter issued by such compa-  
21 nies shall conform to such standard forms or provisions.

**§33-22-8. Kinds of coverage authorized.**

1 (a) Any company subject to the provisions of this article  
2 may issue the following types of policies of insurance:

3 (1) Fire insurance, which is insurance on real or personal  
4 property of every kind and interest therein, against loss or  
5 damage from any or all hazard or cause and against loss  
6 consequential upon such loss or damage, other than  
7 noncontractual liability for the loss or damage;

8 (2) Loss or damage by insects or disease to farm crops or  
9 products and loss of rental value of land used in producing  
10 those crops or products;

11 (3) Loss or damage to domestic farm animals by dogs or  
12 wild animals;

13 (4) Loss or damage to property by burglary, theft, larceny,  
14 robbery, vandalism, malicious mischief or wrongful conversion,  
15 or any attempt at any of the foregoing;

16 (5) Personal property floater insurance, which is insurance  
17 upon personal effects against loss or damage from any cause;  
18 and

19 (6) Glass insurance, which is insurance against loss or  
20 damage to glass, including its ornamentation and fittings.

21 (b) In addition to the policies of insurance permitted by  
22 subsection (a) of this section, a company may apply to the  
23 commissioner for an extension of its license and upon comply-  
24 ing with reasonable standards established by the commissioner  
25 to assure the solvency of the company and the protection of its  
26 policyholders, may, in the discretion of the commissioner, be  
27 granted an extension of its license upon such conditions and for  
28 such period as the commissioner may prescribe to permit the  
29 company to issue policies of insurance on risks insuring against  
30 one or more of the following:

31 Legal liability for the death, injury or disability of any  
32 human being, or for damage to property, excluding liability

33 resulting from the ownership, maintenance or use of vehicles or  
34 aircraft; and provisions for medical, hospital, surgical and  
35 disability benefits to injured persons and funeral and death  
36 benefits to dependents, beneficiaries or personal representatives  
37 of persons killed, irrespective of legal liability of the insured,  
38 when issued as an incidental coverage with or supplemental to  
39 the liability coverage. For the purposes of this subsection, the  
40 term "vehicle" does not include a "farm tractor", "implement of  
41 husbandry", as defined in section one, article one, chapter  
42 seventeen-a of this code; a "wheelchair", as defined in section  
43 sixty-five, article one, chapter seventeen-c of this code and any  
44 similar vehicle used by persons with disabilities; a "golf cart"  
45 while used for golfing; or other motorized vehicle used to  
46 service the premises.

47 (c) The commissioner may, for good cause shown or on  
48 application of the company, limit the license of a company to  
49 make insurance to any one or more of the perils or coverages  
50 set forth in subsection (a) or (b) of this section.

51 (d) A farm mutual insurance company insuring property  
52 located outside this state must meet the capital and surplus  
53 requirements of section five-b, article three of this chapter.

54 (e) On and after the first day of January, two thousand  
55 seven, any company subject to the provisions of this article  
56 must have a majority of its book of business, as determined by  
57 either gross direct premiums or policy count, in underserved  
58 areas of the insurance market in the State of West Virginia. For  
59 purposes of this article, "underserved areas of the insurance  
60 market in the State of West Virginia" means any of the  
61 following or any combination thereof: Persons or property  
62 insured that have a public fire protection classification of five  
63 or higher, or the equivalent thereof, according to a rating  
64 organization licensed pursuant to section six, article twenty of  
65 this chapter; residential structures or dwellings insured on an

66 actual cash-value basis; residential structures or dwellings over  
67 forty years of age; vacant or seasonally occupied residential  
68 structures or dwellings; property or persons who have had  
69 insurance canceled or declined by any insurance company  
70 licensed to do business in this state; and farm property or  
71 structures. Upon determination, after notice and hearing, that  
72 any farm mutual fire insurance company has failed to comply  
73 with this subsection, the commissioner may require the  
74 company to pay all taxes, additional taxes, surcharges and fees  
75 pursuant to article three of this chapter, require conversion  
76 under section nineteen of this article, or revoke its license under  
77 section four of this article, or any combination thereof.

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## CHAPTER 125

(S. B. 454 — By Senator Minard)

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[Passed February 24, 2006; in effect ninety days from passage.]  
[Approved by the Governor on March 6, 2006.]

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AN ACT to amend and reenact §33-25A-3 of the Code of West Virginia, 1931, as amended, relating to removing the Commissioner of Insurance as the attorney in fact for health maintenance organizations for service of process purposes.

*Be it enacted by the Legislature of West Virginia:*

That §33-25A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.**

**§33-25A-3. Application for certificate of authority.**

1       (1) Notwithstanding any law of this state to the contrary,  
2 any person may apply to the commissioner for and obtain a  
3 certificate of authority to establish or operate a health mainte-  
4 nance organization in compliance with this article. No person  
5 shall sell health maintenance organization enrollee contracts,  
6 nor shall any health maintenance organization commence  
7 services, prior to receipt of a certificate of authority as a health  
8 maintenance organization. Any person may, however, establish  
9 the feasibility of a health maintenance organization prior to  
10 receipt of a certificate of authority through funding drives and  
11 by receiving loans and grants.

12       (2) Every health maintenance organization in operation as  
13 of the effective date of this article shall submit an application  
14 for a certificate of authority under this section within thirty days  
15 of the effective date of this article. Each applicant may continue  
16 to operate until the commissioner acts upon the application. In  
17 the event that an application is denied pursuant to section four  
18 of this article, the applicant shall be treated as a health mainte-  
19 nance organization whose certificate of authority has been  
20 revoked: *Provided*, That all health maintenance organizations  
21 in operation for at least five years are exempt from filing  
22 applications for a new certificate of authority.

23       (3) The commissioner may require any organization  
24 providing or arranging for health care services on a prepaid per  
25 capita or prepaid aggregate fixed sum basis to apply for a  
26 certificate of authority as a health maintenance organization.  
27 The commissioner shall promulgate rules to facilitate the  
28 enforcement of this subsection: *Provided*, That any provider  
29 who is assuming risk by virtue of a contract or other arrange-  
30 ment with a health maintenance organization or entity which  
31 has a certificate may not be required to file for a certificate:  
32 *Provided, however*, That the commissioner may require the  
33 exempted entities to file complete financial data for a determi-  
34 nation as to their solvency. Any organization directed to apply

35 for a certificate of authority is subject to the provisions of  
36 subsection (2) of this section.

37 (4) Each application for a certificate of authority shall be  
38 verified by an officer or authorized representative of the  
39 applicant, shall be in a form prescribed by the commissioner  
40 and shall set forth or be accompanied by any and all informa-  
41 tion required by the commissioner, including:

42 (a) The basic organizational document;

43 (b) The bylaws or rules;

44 (c) A list of names, addresses and official positions of each  
45 member of the governing body, which shall contain a full  
46 disclosure in the application of any financial interest by the  
47 officer or member of the governing body or any provider or any  
48 organization or corporation owned or controlled by that person  
49 and the health maintenance organization and the extent and  
50 nature of any contract or financial arrangements between that  
51 person and the health maintenance organization;

52 (d) A description of the health maintenance organization;

53 (e) A copy of each evidence of coverage form and of each  
54 enrollee contract form;

55 (f) Financial statements which include the assets, liabilities  
56 and sources of financial support of the applicant and any  
57 corporation or organization owned or controlled by the appli-  
58 cant;

59 (g)(i) A description of the proposed method of marketing  
60 the plan;

61 (ii) A schedule of proposed charges; and

62 (iii) A financial plan which includes a three-year projection  
63 of the expenses and income and other sources of future capital;



64 (h) A statement reasonably describing the service area or  
65 areas to be served and the type or types of enrollees to be  
66 served;

67 (i) A description of the complaint procedures to be utilized  
68 as required under section twelve of this article;

69 (j) A description of the mechanism by which enrollees will  
70 be afforded an opportunity to participate in matters of policy  
71 and operation under section six of this article;

72 (k) A complete biographical statement on forms prescribed  
73 by the commissioner and an independent investigation report on  
74 all of the individuals referred to in subdivision (c) of this  
75 subsection and all officers, directors and persons holding five  
76 percent or more of the common stock of the organization;

77 (l) A comprehensive feasibility study, performed by a  
78 qualified independent actuary in conjunction with a certified  
79 public accountant which shall contain a certification by the  
80 qualified actuary and an opinion by the certified public  
81 accountant as to the feasibility of the proposed organization.  
82 The study shall be for the greater of three years or until the  
83 health maintenance organization has been projected to be  
84 profitable for twelve consecutive months. The study must show  
85 that the health maintenance organization would not, at the end  
86 of any month of the projection period, have less than the  
87 minimum capital and surplus as required by paragraph (ii),  
88 subdivision (c), subsection (2), section four of this article. The  
89 qualified independent actuary shall certify that: The rates are  
90 neither inadequate nor excessive nor unfairly discriminatory;  
91 the rates are appropriate for the classes of risks for which they  
92 have been computed; the rating methodology is appropriate:  
93 *Provided*, That the certification shall include an adequate  
94 description of the rating methodology showing that the method-  
95 ology follows consistent and equitable actuarial principles; the

96 health maintenance organization is actuarially sound: *Provided,*  
97 *however,* That the certification shall consider the rates, benefits  
98 and expenses of, and any other funds available for the payment  
99 of obligations of, the organization; the rates being charged or to  
100 be charged are actuarially adequate to the end of the period for  
101 which rates have been guaranteed; and incurred but not reported  
102 claims and claims reported but not fully paid have been  
103 adequately provided for;

104 (m) A description of the health maintenance organization's  
105 quality assurance program; and

106 (n) Such other information as the commissioner may  
107 require to be provided.

108 (5) A health maintenance organization shall, unless  
109 otherwise provided for by rules promulgated by the commis-  
110 sioner, file notice prior to any modification of the operations or  
111 documents filed pursuant to this section or as the commissioner  
112 may require by rule. If the commissioner does not disapprove  
113 of the filing within ninety days of filing, it shall be considered  
114 approved and may be implemented by the health maintenance  
115 organization.

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## CHAPTER 126

**(S. B. 462 — By Senators Tomblin, Mr. President, Jenkins and Minard)**

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[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 22, 2006.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by  
adding thereto a new section, designated §29-1B-8, relating to

filing interstate compacts in the office of the Secretary of State; establishing requirements for compact and associated documents to be filed by entities administering the compact; requiring further filings when compact contents, status or membership changes; establishing administrative requirements for the Secretary of State; allowing public inspection of compacts; and establishing requirements for compacts entered into prior to effective date of this section.

*Be it enacted by the Legislature of West Virginia:*

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §29-1B-8, to read as follows:

**ARTICLE 1B. COMMISSION ON INTERSTATE COOPERATION.**

**§29-1B-8. Filing interstate compacts.**

1       (a) Within ninety days of entering into an interstate  
2 compact, a commission, agency or person administering the  
3 compact between or among states or the federal government,  
4 having the force of law and to which this state is a party, shall  
5 file with the office of the Secretary of State:

6       (1) A copy of the compact accompanied by a signed letter  
7 of a representative of the commission, agency or person  
8 administering the compact stating that the copy is a true and  
9 accurate copy of the adopted compact;

10       (2) A listing of all other jurisdictions party to the compact  
11 and the date on which each jurisdiction entered into participa-  
12 tion; and

13       (3) Citations to any act or resolution of the Congress of the  
14 United States consenting to the compact.

15 (b) The commission, agency or person administering the  
16 compact shall submit, within a reasonable time from when the  
17 information becomes available:

18 (1) The status of each compact with respect to withdrawals  
19 or additions of participating jurisdictions; and

20 (2) Any amendment, supplementary agreement or adminis-  
21 trative rule having the force of law and implementing or  
22 modifying the compact.

23 (c) The office of the Secretary of State shall index these  
24 documents and make them available for inspection upon request  
25 of any person during normal business hours.

26 (d) The provisions of this section are in addition to other  
27 requirements of law for filing, publication or distribution.

28 (e) Certified copies of interstate compacts entered into by  
29 this state prior to the effective date of this section and the  
30 information required to be filed under subsection (a) of this  
31 section shall be filed with the office of the Secretary of State by  
32 the commission, agency or person administering the compacts  
33 within ninety days of the effective date of this section.

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## CHAPTER 127

**(S. B. 551 — By Senators Prezioso, Kessler and Hunter)**

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[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on March 23, 2006.]

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AN ACT to amend and reenact §27-1-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §27-5-2,

§27-5-3 and §27-5-4 of said code, all relating to institution of proceedings for involuntary custody for examination; addressing procedures regarding custody, probable cause and other hearings; examination of individuals; admission under involuntary hospitalization for examination; release; institution of final commitment proceedings; other hearing requirements; and defining terms.

*Be it enacted by the Legislature of West Virginia:*

That §27-1-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §27-5-2, §27-5-3 and §27-5-4 of said code be amended and reenacted, all to read as follows:

**Article**

**1. Words and Phrases Defined.**

**5. Involuntary Hospitalization.**

**ARTICLE 1. WORDS AND PHRASES DEFINED.**

**§27-1-12. Likely to cause serious harm.**

1 (a) "Likely to cause serious harm" means an individual is  
2 exhibiting behaviors consistent with a medically recognized  
3 mental disorder or addiction, excluding, however, disorders that  
4 are manifested only through antisocial or illegal behavior and  
5 as a result of the mental disorder or addiction:

6 (1) The individual has inflicted or attempted to inflict  
7 bodily harm on another;

8 (2) The individual, by threat or action, has placed others in  
9 reasonable fear of physical harm to themselves;

10 (3) The individual, by action or inaction, presents a danger  
11 to himself, herself or others in his or her care;

12 (4) The individual has threatened or attempted suicide or  
13 serious bodily harm to himself or herself; or

14 (5) The individual is behaving in a manner as to indicate  
15 that he or she is unable, without supervision and the assistance  
16 of others, to satisfy his or her need for nourishment, medical  
17 care, shelter or self-protection and safety so that there is a  
18 substantial likelihood that death, serious bodily injury, serious  
19 physical debilitation, serious mental debilitation or  
20 life-threatening disease will ensue unless adequate treatment is  
21 afforded.

22 (b) In making the “likely to cause serious harm” determina-  
23 tion, judicial, medical, psychological and other evaluators and  
24 decisionmakers should utilize all available information,  
25 including psychosocial, medical, hospitalization and psychiatric  
26 information and including the circumstances of any previous  
27 commitments or convalescent or conditional releases that are  
28 relevant to a current situation, in addition to the individual’s  
29 current overt behavior. The rules of evidence shall be followed  
30 in making the “likely to cause serious harm” determination  
31 except that hearsay evidence not admissible thereunder may be  
32 admitted, except where precluded by statute, if it is of a type  
33 commonly relied upon by reasonably prudent persons in the  
34 conduct of their affairs.

#### **ARTICLE 5. INVOLUNTARY HOSPITALIZATION.**

§27-5-2. Institution of proceedings for involuntary custody for examination;  
custody; probable cause hearing; examination of individual.

§27-5-3. Admission under involuntary hospitalization for examination; hearing;  
release.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

#### **§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.**

1 (a) Any adult person may make an application for involun-  
2 tary hospitalization for examination of an individual when the  
3 person making the application has reason to believe that the

4 individual to be examined is addicted, as defined in section  
5 eleven, article one of this chapter, or is mentally ill and,  
6 because of his or her addiction or mental illness, the individual  
7 is likely to cause serious harm to himself, herself or to others if  
8 allowed to remain at liberty while awaiting an examination and  
9 certification by a physician or psychologist.

10 Notwithstanding any language in this subsection to the  
11 contrary, if the individual to be examined under the provisions  
12 of this section is incarcerated in a jail, prison or other correc-  
13 tional facility, then only the chief administrative officer of the  
14 facility holding the individual may file the application and the  
15 application must include the additional statement that the  
16 correctional facility itself cannot reasonably provide treatment  
17 and other services for the individual's mental illness or  
18 addiction.

19 (b) The person making the application shall make the  
20 application under oath.

21 (c) Application for involuntary custody for examination  
22 may be made to the circuit court or a mental hygiene commis-  
23 sioner of the county in which the individual resides or of the  
24 county in which he or she may be found. When no circuit court  
25 judge or mental hygiene commissioner is available for immedi-  
26 ate presentation of the application, the application may be made  
27 to a magistrate designated by the chief judge of the judicial  
28 circuit to accept applications and hold probable cause hearings.  
29 A designated magistrate before whom an application or matter  
30 is pending may, upon the availability of a mental hygiene  
31 commissioner or circuit court judge for immediate presentation  
32 of an application or pending matter, transfer the pending matter  
33 or application to the mental hygiene commissioner or circuit  
34 court judge for further proceedings unless otherwise ordered by  
35 the chief judge of the judicial circuit.

36 (d) The person making the application shall give informa-  
37 tion and state facts in the application as may be required by the  
38 form provided for this purpose by the Supreme Court of  
39 Appeals.

40 (e) The circuit court, mental hygiene commissioner or  
41 designated magistrate may enter an order for the individual  
42 named in the application to be detained and taken into custody  
43 for the purpose of holding a probable cause hearing as provided  
44 in subsection (g) of this section for the purpose of an examina-  
45 tion of the individual by a physician, psychologist, a licensed  
46 independent clinical social worker practicing in compliance  
47 with article thirty, chapter thirty of this code or advanced nurse  
48 practitioner with psychiatric certification practicing in compli-  
49 ance with article seven of said chapter: *Provided*, That a  
50 licensed independent clinical social worker or an advanced  
51 nurse practitioner with psychiatric certification may only  
52 perform the examination if he or she has previously been  
53 authorized by an order of the circuit court to do so, the order  
54 having found that the licensed independent clinical social  
55 worker or advanced nurse practitioner with psychiatric certifi-  
56 cation has particularized expertise in the areas of mental health  
57 and mental hygiene or addiction sufficient to make the determi-  
58 nations as are required by the provisions of this section. The  
59 examination is to be provided or arranged by a community  
60 mental health center designated by the Secretary of the Depart-  
61 ment of Health and Human Resources to serve the county in  
62 which the action takes place. The order is to specify that the  
63 hearing be held forthwith and is to provide for the appointment  
64 of counsel for the individual: *Provided, however*, That the order  
65 may allow the hearing to be held up to twenty-four hours after  
66 the person to be examined is taken into custody rather than  
67 forthwith if the circuit court of the county in which the person  
68 is found has previously entered a standing order which estab-  
69 lishes within that jurisdiction a program for placement of  
70 persons awaiting a hearing which assures the safety and humane



71 treatment of persons: *Provided further*, That the time require-  
72 ments set forth in this subsection only apply to persons who are  
73 not in need of medical care for a physical condition or disease  
74 for which the need for treatment precludes the ability to comply  
75 with the time requirements. During periods of holding and  
76 detention authorized by this subsection, upon consent of the  
77 individual or in the event of a medical or psychiatric emer-  
78 gency, the individual may receive treatment. The medical  
79 provider shall exercise due diligence in determining the  
80 individual's existing medical needs and provide treatment the  
81 individual requires, including previously prescribed medica-  
82 tions. As used in this section, "psychiatric emergency" means  
83 an incident during which an individual loses control and  
84 behaves in a manner that poses substantial likelihood of  
85 physical harm to himself, herself or others. Where a physician,  
86 psychologist, licensed independent clinical social worker or  
87 advanced nurse practitioner with psychiatric certification has  
88 within the preceding seventy-two hours performed the examina-  
89 tion required by the provisions of this subdivision, the commu-  
90 nity mental health center may waive the duty to perform or  
91 arrange another examination upon approving the previously  
92 performed examination. Notwithstanding the provisions of this  
93 subsection, subsection (r), section four of this article applies  
94 regarding payment by the county commission for examinations  
95 at hearings. If the examination reveals that the individual is not  
96 mentally ill or addicted, or is determined to be mentally ill or  
97 addicted but not likely to cause harm to himself, herself or  
98 others, the individual shall be immediately released without the  
99 need for a probable cause hearing and absent a finding of  
100 professional negligence the examiner is not civilly liable for the  
101 rendering of the opinion absent a finding of professional  
102 negligence. The examiner shall immediately provide the mental  
103 hygiene commissioner, circuit court or designated magistrate  
104 before whom the matter is pending the results of the examina-  
105 tion on the form provided for this purpose by the Supreme

106 Court of Appeals for entry of an order reflecting the lack of  
107 probable cause.

108 (f) A probable cause hearing is to be held before a magis-  
109 trate designated by the chief judge of the judicial circuit, the  
110 mental hygiene commissioner or circuit judge of the county of  
111 which the individual is a resident or where he or she was found.  
112 If requested by the individual or his or her counsel, the hearing  
113 may be postponed for a period not to exceed forty-eight hours.

114 The individual must be present at the hearing and has the  
115 right to present evidence, confront all witnesses and other  
116 evidence against him or her and to examine testimony offered,  
117 including testimony by representatives of the community  
118 mental health center serving the area. Expert testimony at the  
119 hearing may be taken telephonically or via videoconferencing.  
120 The individual has the right to remain silent and to be pro-  
121 ceeded against in accordance with the rules of evidence of the  
122 Supreme Court of Appeals, except as provided in section  
123 twelve, article one of this chapter. At the conclusion of the  
124 hearing, the magistrate, mental hygiene commissioner or circuit  
125 court judge shall find and enter an order stating whether or not  
126 there is probable cause to believe that the individual, as a result  
127 of mental illness or addiction, is likely to cause serious harm to  
128 himself or herself or to others.

129 (g) Probable cause hearings may occur in the county where  
130 a person is hospitalized. The judicial hearing officer may: Use  
131 videoconferencing and telephonic technology; permit persons  
132 hospitalized for addiction to be involuntarily hospitalized only  
133 until detoxification is accomplished; and specify other alterna-  
134 tive or modified procedures that are consistent with the  
135 purposes and provisions of this article. The alternative or  
136 modified procedures shall fully and effectively guarantee to the  
137 person who is the subject of the involuntary commitment  
138 proceeding and other interested parties due process of the law

139 and access to the least restrictive available treatment needed to  
140 prevent serious harm to self or others.

141 (h) The magistrate, mental hygiene commissioner or circuit  
142 court judge at a probable cause hearing or at a final commit-  
143 ment hearing held pursuant to the provisions of section four of  
144 this article finds that the individual, as a result of mental illness  
145 or addiction, is likely to cause serious harm to himself, herself  
146 or others and because of mental illness or addiction requires  
147 treatment, the magistrate, mental hygiene commissioner or  
148 circuit court judge may consider evidence on the question of  
149 whether the individual's circumstances make him or her  
150 amenable to outpatient treatment in a nonresidential or  
151 nonhospital setting pursuant to a voluntary treatment agree-  
152 ment. The agreement is to be in writing and approved by the  
153 individual, his or her counsel and the magistrate, mental  
154 hygiene commissioner or circuit court judge. If the magistrate,  
155 mental hygiene commissioner or circuit court judge determines  
156 that appropriate outpatient treatment is available in a nonresi-  
157 dential or nonhospital setting, the individual may be released to  
158 outpatient treatment upon the terms and conditions of the  
159 voluntary treatment agreement. The failure of an individual  
160 released to outpatient treatment pursuant to a voluntary  
161 treatment agreement to comply with the terms of the voluntary  
162 treatment agreement constitutes evidence that outpatient  
163 treatment is insufficient and, after a hearing before a magistrate,  
164 mental hygiene commissioner or circuit judge on the issue of  
165 whether or not the individual failed or refused to comply with  
166 the terms and conditions of the voluntary treatment agreement  
167 and whether the individual as a result of mental illness or  
168 addiction remains likely to cause serious harm to himself,  
169 herself or others, the entry of an order requiring admission  
170 under involuntary hospitalization pursuant to the provisions of  
171 section three of this article may be entered. In the event a  
172 person released pursuant to a voluntary treatment agreement is  
173 unable to pay for the outpatient treatment and has no applicable

174 insurance coverage, including, but not limited to, private  
175 insurance or Medicaid, the Secretary of the Department of  
176 Health and Human Resources may transfer funds for the  
177 purpose of reimbursing community providers for services  
178 provided on an outpatient basis for individuals for whom  
179 payment for treatment is the responsibility of the department:  
180 *Provided*, That the department may not authorize payment of  
181 outpatient services for an individual subject to a voluntary  
182 treatment agreement in an amount in excess of the cost of  
183 involuntary hospitalization of the individual. The secretary shall  
184 establish and maintain fee schedules for outpatient treatment  
185 provided in lieu of involuntary hospitalization. Nothing in the  
186 provisions of this article regarding release pursuant to a  
187 voluntary treatment agreement or convalescent status may be  
188 construed as creating a right to receive outpatient mental health  
189 services or treatment or as obligating any person or agency to  
190 provide outpatient services or treatment. Time limitations set  
191 forth in this article relating to periods of involuntary commit-  
192 ment to a mental health facility for hospitalization do not apply  
193 to release pursuant to the terms of a voluntary treatment  
194 agreement: *Provided, however*, That release pursuant to a  
195 voluntary treatment agreement may not be for a period of more  
196 than six months if the individual has not been found to be  
197 involuntarily committed during the previous two years and for  
198 a period of no more than two years if the individual has been  
199 involuntarily committed during the preceding two years. If in  
200 any proceeding held pursuant to this article the individual  
201 objects to the issuance or conditions and terms of an order  
202 adopting a voluntary treatment agreement, then the circuit  
203 judge, magistrate or mental hygiene commissioner may not  
204 enter an order directing treatment pursuant to a voluntary  
205 treatment agreement. If involuntary commitment with release  
206 pursuant to a voluntary treatment agreement is ordered, the  
207 individual subject to the order may, upon request during the  
208 period the order is in effect, have a hearing before a mental  
209 hygiene commissioner or circuit judge where the individual

210 may seek to have the order canceled or modified. Nothing in  
211 this section affects the appellate and habeas corpus rights of any  
212 individual subject to any commitment order.

213 (i) If the certifying physician or psychologist determines  
214 that a person requires involuntary hospitalization for an  
215 addiction to a substance which, due to the degree of addiction,  
216 creates a reasonable likelihood that withdrawal or detoxification  
217 from the substance of addiction will cause significant medical  
218 complications, the person certifying the individual shall  
219 recommend that the individual be closely monitored for  
220 possible medical complications. If the magistrate, mental  
221 hygiene commissioner or circuit court judge presiding orders  
222 involuntary hospitalization, he or she shall include a recommen-  
223 dation that the individual be closely monitored in the order of  
224 commitment.

225 (j) The Supreme Court of Appeals and the Secretary of the  
226 Department of Health and Human Resources shall specifically  
227 develop and propose a statewide system for evaluation and  
228 adjudication of mental hygiene petitions which shall include  
229 payment schedules and recommendations regarding funding  
230 sources. Additionally, the Secretary of the Department of  
231 Health and Human Resources shall also immediately seek  
232 reciprocal agreements with officials in contiguous states to  
233 develop interstate/intergovernmental agreements to provide  
234 efficient and efficacious services to out-of-state residents found  
235 in West Virginia and who are in need of mental hygiene  
236 services.

**§27-5-3. Admission under involuntary hospitalization for exami-  
nation; hearing; release.**

1 (a) *Admission to a mental health facility for examination.*  
2 — Any individual may be admitted to a mental health facility  
3 for examination and treatment upon entry of an order finding  
4 probable cause as provided in section two of this article and

5 upon certification by a physician, psychologist, licensed  
6 independent clinical social worker practicing in compliance  
7 with the provisions of article thirty, chapter thirty of this code  
8 or an advanced nurse practitioner with psychiatric certification  
9 practicing in compliance with article seven of said chapter that  
10 he or she has examined the individual and is of the opinion that  
11 the individual is mentally ill or addicted and, because of such  
12 mental illness or addiction, is likely to cause serious harm to  
13 himself, herself or to others if not immediately restrained:  
14 *Provided*, That the opinions offered by an independent clinical  
15 social worker or an advanced nurse practitioner with psychiatric  
16 certification must be within their particular areas of expertise,  
17 as recognized by the order of the authorizing court.

18 (b) *Three-day time limitation on examination.* — If the  
19 examination does not take place within three days from the date  
20 the individual is taken into custody, the individual shall be  
21 released. If the examination reveals that the individual is not  
22 mentally ill or addicted, the individual shall be released.

23 (c) *Three-day time limitation on certification.* — The  
24 certification required in subsection (a) of this section shall be  
25 valid for three days. Any individual with respect to whom the  
26 certification has been issued may not be admitted on the basis  
27 of the certification at any time after the expiration of three days  
28 from the date of the examination.

29 (d) *Findings and conclusions required for certification.* —  
30 A certification under this section must include findings and  
31 conclusions of the mental examination, the date, time and place  
32 of the examination and the facts upon which the conclusion that  
33 involuntary commitment is necessary is based.

34 (e) *Notice requirements.* — When an individual is admitted  
35 to a mental health facility pursuant to the provisions of this  
36 section, the chief medical officer of the facility shall immedi-  
37 ately give notice of the individual's admission to the individ-

38 ual's spouse, if any, and one of the individual's parents or  
39 guardians or if there is no spouse and are no parents or guard-  
40 ians, to one of the individual's adult next of kin if the next of  
41 kin is not the applicant. Notice shall also be given to the  
42 community mental health facility, if any, having jurisdiction in  
43 the county of the individual's residence. The notices other than  
44 to the community mental health facility shall be in writing and  
45 shall be transmitted to the person or persons at his, her or their  
46 last known address by certified mail, return receipt requested.

47 (f) *Five-day time limitation for examination and certifica-*  
48 *tion at mental health facility.* — After the individual's admis-  
49 sion to a mental health facility, he or she may not be detained  
50 more than five days, excluding Sundays and holidays, unless,  
51 within the period, the individual is examined by a staff physi-  
52 cian and the physician certifies that in his or her opinion the  
53 patient is mentally ill or addicted and is likely to injure himself,  
54 herself or others if allowed to be at liberty.

55 (g) *Fifteen-day time limitation for institution of final*  
56 *commitment proceedings.* — If, in the opinion of the examining  
57 physician, the patient is mentally ill or addicted and because of  
58 the mental illness or addiction is likely to injure himself, herself  
59 or others if allowed to be at liberty, the chief medical officer  
60 shall, within fifteen days from the date of admission, institute  
61 final commitment proceedings as provided in section four of  
62 this article. If the proceedings are not instituted within such  
63 fifteen-day period, the patient shall be immediately released.  
64 After the request for hearing is filed, the hearing may not be  
65 canceled on the basis that the individual has become a voluntary  
66 patient unless the mental hygiene commissioner concurs in the  
67 motion for cancellation of the hearing.

68 (h) *Thirty-day time limitation for conclusion of all proceed-*  
69 *ings.* — If all proceedings as provided in articles three and four  
70 of this chapter are not completed within thirty days from the

71 date of institution of the proceedings, the patient shall be  
72 immediately released.

**§27-5-4. Institution of final commitment proceedings; hearing requirements; release.**

1 (a) *Involuntary commitment.* — Except as provided in  
2 section three of this article, no individual may be involuntarily  
3 committed to a mental health facility except by order entered of  
4 record at any time by the circuit court of the county in which  
5 the person resides or was found, or if the individual is hospital-  
6 ized in a mental health facility located in a county other than  
7 where he or she resides or was found, in the county of the  
8 mental health facility and then only after a full hearing on  
9 issues relating to the necessity of committing an individual to  
10 a mental health facility: *Provided, That, if the individual objects*  
11 *to the hearing being held in the county where the mental health*  
12 *facility is located, the hearing shall be conducted in the county*  
13 *of the individual's residence.*

14 (b) *How final commitment proceedings are commenced.* —  
15 Final commitment proceedings for an individual may be  
16 commenced by the filing of a written application under oath and  
17 the certificate or affidavit is hereinafter provided with the clerk  
18 of the circuit court or mental hygiene commissioner of the  
19 county of which the individual is a resident, or where he or she  
20 may be found, or the county of the mental health facility, if he  
21 or she is hospitalized in a mental health facility located in a  
22 county other than where he or she resides or may be found by  
23 an adult person having personal knowledge of the facts of the  
24 case.

25 (c) *Oath; contents of application; who may inspect applica-*  
26 *tion; when application cannot be filed.* —

27 (1) The person making the application shall do so under  
28 oath.



29       (2) The application shall contain statements by the appli-  
30 cant that he or she believes because of symptoms of mental  
31 illness or addiction the individual is likely to cause serious  
32 harm to himself, herself or to others and the grounds for the  
33 belief, stating in detail the recent overt acts upon which the  
34 belief is based.

35       (3) The written application, certificate, affidavit and any  
36 warrants issued pursuant thereto, including any papers and  
37 documents related thereto, filed with any circuit court or mental  
38 hygiene commissioner for the involuntary hospitalization of any  
39 individual are not open to inspection by any person other than  
40 the individual, except upon authorization of the individual or  
41 his or her legal representative or by order of the circuit court,  
42 and the records may not be published except upon the authori-  
43 zation of the individual or his or her legal representative.

44       (4) Applications may not be accepted for individuals who  
45 only have epilepsy, a mental deficiency or senility.

46       (d) *Certificate filed with application; contents of certifi-*  
47 *cate; affidavit by applicant in place of certificate. —*

48       (1) The applicant shall file with his or her application the  
49 certificate of a physician or a psychologist stating that in his or  
50 her opinion the individual is mentally ill or addicted and that  
51 because of the mental illness or addiction the individual is  
52 likely to cause serious harm to himself, herself or to others if he  
53 or she is allowed to remain at liberty and therefore he or she  
54 should be hospitalized, stating in detail the recent overt acts  
55 upon which the conclusion is based.

56       (2) A certificate is not necessary only when an affidavit is  
57 filed by the applicant showing facts and the individual has  
58 refused to submit to examination by a physician or a psycholo-  
59 gist.

60       (e) *Notice requirements; eight days' notice required.* —  
61 Upon receipt of an application, the mental hygiene commis-  
62 sioner or circuit court shall review the application and if it is  
63 determined that the facts alleged, if any, are sufficient to  
64 warrant involuntary hospitalization, forthwith fix a date for and  
65 have the clerk of the circuit court give notice of the hearing: (1)  
66 To the individual; (2) to the applicant or applicants; (3) to the  
67 individual's spouse, one of the parents or guardians, or if the  
68 individual does not have a spouse, parents or parent or guard-  
69 ian, to one of the individual's adult next of kin if the next of kin  
70 is not the applicant; (4) to the mental health authorities serving  
71 the area; (5) to the circuit court in the county of the individual's  
72 residence if the hearing is to be held in a county other than that  
73 of the individual's residence; and (6) to the prosecuting attorney  
74 of the county in which the hearing is to be held. The notice shall  
75 be served on the individual by personal service of process not  
76 less than eight days prior to the date of the hearing and shall  
77 specify the nature of the charges against the individual; the  
78 facts underlying and supporting the application of involuntary  
79 commitment; the right to have counsel appointed; the right to  
80 consult with and be represented by counsel at every stage of the  
81 proceedings; and the time and place of the hearing. The notice  
82 to the individual's spouse, parents or parent or guardian, the  
83 individual's adult next of kin, or to the circuit court in the  
84 county of the individual's residence may be by personal service  
85 of process or by certified or registered mail, return receipt  
86 requested, and shall state the time and place of the hearing.

87       (f) *Examination of individual by court-appointed physician*  
88 *or psychologist; custody for examination; dismissal of proceed-*  
89 *ings.* —

90       (1) Except as provided in subdivision (3) of this subsection,  
91 within a reasonable time after notice of the commencement of  
92 final commitment proceedings is given, the circuit court or  
93 mental hygiene commissioner shall appoint a physician or

94 psychologist to examine the individual and report to the circuit  
95 court or mental hygiene commissioner his or her findings as to  
96 the mental condition or addiction of the individual and the  
97 likelihood of him or her causing serious harm to himself,  
98 herself or to others.

99 (2) If the designated physician or psychologist reports to the  
100 circuit court or mental hygiene commissioner that the individ-  
101 ual has refused to submit to an examination, the circuit court or  
102 mental hygiene commissioner shall order him or her to submit  
103 to the examination. The circuit court or mental hygiene  
104 commissioner may direct that the individual be detained or  
105 taken into custody for the purpose of an immediate examination  
106 by the designated physician or psychologist. All such orders  
107 shall be directed to the sheriff of the county or other appropriate  
108 law-enforcement officer. After the examination has been  
109 completed, the individual shall be released from custody unless  
110 proceedings are instituted pursuant to section three of this  
111 article.

112 (3) If the reports of the appointed physician or psychologist  
113 do not confirm that the individual is mentally ill or addicted and  
114 might be harmful to himself, herself or to others then the  
115 proceedings for involuntary hospitalization shall be dismissed.

116 (g) *Rights of the individual at the final commitment*  
117 *hearing; seven days' notice to counsel required.* —

118 (1) The individual shall be present at the final commitment  
119 hearing and he or she, the applicant and all persons entitled to  
120 notice of the hearing shall be afforded an opportunity to testify  
121 and to present and cross-examine witnesses.

122 (2) In the event that the individual has not retained counsel,  
123 the court or mental hygiene commissioner at least six days prior  
124 to hearing shall appoint a competent attorney and shall inform

125 the individual of the name, address and telephone number of his  
126 or her appointed counsel.

127 (3) The individual has the right to have an examination by  
128 an independent expert of his or her choice and testimony from  
129 the expert as a medical witness on his or her behalf. The cost of  
130 the independent expert shall be borne by the individual unless  
131 he or she is indigent.

132 (4) The individual may not be compelled to be a witness  
133 against himself or herself.

134 (h) *Duties of counsel representing individual; payment of*  
135 *counsel representing indigent.* —

136 (1) The counsel representing an individual shall conduct a  
137 timely interview, make investigation and secure appropriate  
138 witnesses and shall be present at the hearing and protect the  
139 interest of the individual.

140 (2) Any counsel representing an individual is entitled to  
141 copies of all medical reports, psychiatric or otherwise.

142 (3) The circuit court, by order of record, may allow the  
143 attorney a reasonable fee not to exceed the amount allowed for  
144 attorneys in defense of needy persons as provided in article  
145 twenty-one, chapter twenty-nine of this code.

146 (i) *Conduct of hearing; receipt of evidence; no evidentiary*  
147 *privilege; record of hearing.* —

148 (1) The circuit court or mental hygiene commissioner shall  
149 hear evidence from all interested parties in chamber, including  
150 testimony from representatives of the community mental health  
151 facility.

152       (2) The circuit court or mental hygiene commissioner shall  
153 receive all relevant and material evidence which may be  
154 offered.

155       (3) The circuit court or mental hygiene commissioner is  
156 bound by the rules of evidence promulgated by the Supreme  
157 Court of Appeals except that statements made to physicians or  
158 psychologists by the individual may be admitted into evidence  
159 by the physician's or psychologist's testimony, notwithstanding  
160 failure to inform the individual that this statement may be used  
161 against him or her. Any psychologist or physician testifying  
162 shall bring all records pertaining to the individual to the  
163 hearing. The medical evidence obtained pursuant to an exami-  
164 nation under this section, or section two or three of this article,  
165 is not privileged information for purposes of a hearing pursuant  
166 to this section.

167       (4) All final commitment proceedings shall be reported or  
168 recorded, whether before the circuit court or mental hygiene  
169 commissioner, and a transcript shall be made available to the  
170 individual, his or her counsel or the prosecuting attorney within  
171 thirty days, if it is requested for the purpose of further proceed-  
172 ings. In any case where an indigent person intends to pursue  
173 further proceedings, the circuit court shall, by order entered of  
174 record, authorize and direct the court reporter to furnish a  
175 transcript of the hearings.

176       (j) *Requisite findings by the court.* —

177       (1) Upon completion of the final commitment hearing, and  
178 the evidence presented in the hearing, the circuit court or  
179 mental hygiene commissioner shall make findings as to whether  
180 or not the individual is mentally ill or addicted and because of  
181 illness or addiction is likely to cause serious harm to himself,  
182 herself or to others if allowed to remain at liberty and is a

183 resident of the county in which the hearing is held or currently  
184 is a patient at a mental health facility in the county.

185 (2) The circuit court or mental hygiene commissioner shall  
186 also make a finding as to whether or not there is a less restric-  
187 tive alternative than commitment appropriate for the individual.  
188 The burden of proof of the lack of a less restrictive alternative  
189 than commitment is on the person or persons seeking the  
190 commitment of the individual.

191 (3) The findings of fact shall be incorporated into the order  
192 entered by the circuit court and must be based upon clear,  
193 cogent and convincing proof.

194 (k) *Orders issued pursuant to final commitment hearing;*  
195 *entry of order; change in order of court; expiration of order. —*

196 (1) Upon the requisite findings, the circuit court may order  
197 the individual to a mental health facility for an indeterminate  
198 period or for a temporary observatory period not exceeding six  
199 months.

200 (2) The individual may not be detained in a mental health  
201 facility for a period in excess of ten days after a final commit-  
202 ment hearing pursuant to this section unless an order has been  
203 entered and received by the facility.

204 (3) If the order pursuant to a final commitment hearing is  
205 for a temporary observation period, the circuit court or mental  
206 hygiene commissioner may, at any time prior to the expiration  
207 of such period on the basis of a report by the chief medical  
208 officer of the mental health facility in which the patient is  
209 confined, hold another hearing pursuant to the terms of this  
210 section and in the same manner as the hearing was held as if it  
211 were an original petition for involuntary hospitalization to  
212 determine whether the original order for a temporary observa-  
213 tion period should be modified or changed to an order of

214 indeterminate hospitalization of the patient. At the conclusion  
215 of the hearing, the circuit court shall order indeterminate  
216 hospitalization of the patient or dismissal of the proceedings.

217 (4) An order for an indeterminate period expires of its own  
218 terms at the expiration of two years from the date of the last  
219 order of commitment unless prior to the expiration, the Depart-  
220 ment of Health and Human Resources, upon findings based on  
221 an examination of the patient by a physician or a psychologist,  
222 extends the order for indeterminate hospitalization: *Provided,*  
223 That if the patient or his or her counsel requests a hearing, then  
224 a hearing shall be held by the mental hygiene commissioner or  
225 by the circuit court of the county as provided in subsection (a)  
226 of this section.

227 (l) *Dismissal of proceedings.* — If the circuit court or  
228 mental hygiene commissioner finds that the individual is not  
229 mentally ill or addicted, the proceedings shall be dismissed. If  
230 the circuit court or mental hygiene commissioner finds that the  
231 individual is mentally ill or addicted but is not because of the  
232 illness or addiction likely to cause serious harm to himself,  
233 herself or to others if allowed to remain at liberty, the proceed-  
234 ings shall be dismissed.

235 (m) *Immediate notification of order of hospitalization.* —  
236 The clerk of the circuit court in which an order directing  
237 hospitalization is entered, if not in the county of the individual's  
238 residence, shall immediately upon entry of the order forward a  
239 certified copy of the order to the clerk of the circuit court of the  
240 county of which the individual is a resident.

241 (n) *Consideration of transcript by circuit court of county of*  
242 *individual's residence; order of hospitalization; execution of*  
243 *order.* —

244 (1) If the circuit court or mental hygiene commissioner is  
245 satisfied that hospitalization should be ordered but finds that the

246 individual is not a resident of the county in which the hearing  
247 is held and the individual is not currently a resident of a mental  
248 health facility, a transcript of the evidence adduced at the final  
249 commitment hearing of the individual, certified by the clerk of  
250 the circuit court, shall forthwith be forwarded to the clerk of the  
251 circuit court of the county of which the individual is a resident,  
252 who shall immediately present the transcript to the circuit court  
253 or mental hygiene commissioner of the county.

254 (2) If the circuit court or mental hygiene commissioner of  
255 the county of the residence of the individual is satisfied from  
256 the evidence contained in the transcript that the individual  
257 should be hospitalized as determined by the standard set forth  
258 above, the circuit court shall order the appropriate hospitaliza-  
259 tion as though the individual had been brought before the circuit  
260 court or its mental hygiene commissioner in the first instance.

261 (3) This order shall be transmitted forthwith to the clerk of  
262 the circuit court of the county in which the hearing was held  
263 who shall execute the order promptly.

264 (o) *Order of custody to responsible person.* — In lieu of  
265 ordering the patient to a mental health facility, the circuit court  
266 may order the individual delivered to some responsible person  
267 who will agree to take care of the individual and the circuit  
268 court may take from the responsible person a bond in an  
269 amount to be determined by the circuit court with condition to  
270 restrain and take proper care of the individual until further order  
271 of the court.

272 (p) *Individual not a resident of this state.* — If the individ-  
273 ual found to be mentally ill or addicted by the circuit court or  
274 mental hygiene commissioner is a resident of another state, this  
275 information shall be forthwith given to the Secretary of the  
276 Department of Health and Human Resources, or to his or her  
277 designee, who shall make appropriate arrangements for transfer  
278 of the individual to the state of his or her residence conditioned



279 on the agreement of the individual except as qualified by the  
280 interstate compact on mental health.

281 (q) *Report to the Secretary of the Department of Health and*  
282 *Human Resources.* —

283 (1) The chief medical officer of a mental health facility  
284 admitting a patient pursuant to proceedings under this section  
285 shall forthwith make a report of the admission to the Secretary  
286 of the Department of Health and Human Resources or to his or  
287 her designee.

288 (2) Whenever an individual is released from custody due to  
289 the failure of an employee of a mental health facility to comply  
290 with the time requirements of this article, the chief medical  
291 officer of the mental health facility shall forthwith after the  
292 release of the individual make a report to the Secretary of the  
293 Department of Health and Human Resources or to his or her  
294 designee of the failure to comply.

295 (r) *Payment of some expenses by the state; mental hygiene*  
296 *fund established; expenses paid by the county commission.* —

297 (1) The state shall pay the commissioner's fee and the court  
298 reporter fees that are not paid and reimbursed under article  
299 twenty-one, chapter twenty-nine of this code out of a special  
300 fund to be established within the Supreme Court of Appeals to  
301 be known as the Mental Hygiene Fund.

302 (2) The county commission shall pay out of the county  
303 treasury all other expenses incurred in the hearings conducted  
304 under the provisions of this article whether or not hospitaliza-  
305 tion is ordered, including any fee allowed by the circuit court by  
306 order entered of record for any physician, psychologist and  
307 witness called by the indigent individual.

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## CHAPTER 128

**(H. B. 4683 — By Delegates Amores, Staton, Beane,  
Palumbo, Trump, Schadler and Walters)**

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[Passed March 9, 2006; in effect ninety days from passage.]  
[Approved by the Governor on April 3, 2006.]

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AN ACT to amend and reenact §49-5-6 of the Code of West Virginia, 1931, as amended, relating to jury trials in juvenile proceedings; establishing the right to trial by a twelve person jury when a juvenile is accused of acts of juvenile delinquency which constitute a crime if committed by an adult which would subject an adult to incarceration; and eliminating the right to demand trial by jury for status offenses allegedly committed by a juvenile or where the court has ruled pre-trial that incarceration is not a possibility.

*Be it enacted by the Legislature of West Virginia:*

That §49-5-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. JUVENILE PROCEEDINGS.**

**§49-5-6. Jury trial under article.**

- 1 (a) In a proceeding under this article, the juvenile, the
- 2 juvenile's counsel or the juvenile's parent or guardian may
- 3 demand, or the judge on his or her own motion may order a jury
- 4 trial on any question of fact, in which the juvenile is accused of
- 5 any act or acts of delinquency which, if committed by an adult
- 6 would expose the adult to incarceration.

7 (b) A juvenile who is charged with a status offense or other  
8 offense where incarceration is not a possibility due either to the  
9 statutory penalty or where the court rules pre-trial that a  
10 sentence of incarceration will not be imposed upon adjudication  
11 is not entitled to a trial by jury.

12 (c) The provisions of this section are inapplicable to  
13 proceedings held pursuant to the provisions of section thirteen-d  
14 of this article.

15 (d) Juries shall consist of twelve members.

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## CHAPTER 129

**(Com. Sub. for S. B. 517 — By Senators Foster, Unger and Hunter)**

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[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §49-5-13a and §49-5-20 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-5D-3 of said code, all relating to juvenile proceedings and multidisciplinary teams; requiring the Division of Juvenile Services to establish a multidisciplinary team treatment planning process for certain juveniles in its custody; requiring multidisciplinary team to be convened and directed by the Division of Juvenile Services for juveniles committed to its custody by the court for examination and diagnosis; specifying members of the multidisciplinary team; requiring multidisciplinary team to be convened for juveniles prior to discharge from a juvenile correctional facility; authorizing those who convene a multidisciplinary team meeting to obtain an order

of the circuit court setting a hearing and compelling attendance; and exceptions to team meeting requirement.

*Be it enacted by the Legislature of West Virginia:*

That §49-5-13a and §49-5-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-5D-3 of said code be amended and reenacted, all to read as follows:

**Article**

**5. Juvenile Proceedings.**

**5D. Multidisciplinary Teams.**

**ARTICLE 5. JUVENILE PROCEEDINGS.**

§49-5-13a. Examination, diagnosis and classification; period of custody.

§49-5-20. After-care plans.

**§49-5-13a. Examination, diagnosis and classification; period of custody.**

1 (a) As a part of the dispositional proceeding for a juvenile  
2 who has been adjudicated delinquent, the court may, upon its  
3 own motion or upon request of counsel, order the juvenile to be  
4 delivered into the custody of the Director of the Division of  
5 Juvenile Services, who shall cause the juvenile to be transferred  
6 to a juvenile diagnostic center for a period not to exceed sixty  
7 days. During this period, the juvenile shall undergo examina-  
8 tion, diagnosis, classification and a complete medical examina-  
9 tion and shall at all times be kept apart from the general  
10 juvenile inmate population in the director's custody.

11 (b) During the examination period established by subsec-  
12 tion (a) of this section, the director, or his or her designee, shall  
13 convene and direct a multidisciplinary treatment team for the  
14 juvenile which team shall include the juvenile, if appropriate,  
15 the juvenile's probation officer, the juvenile's social worker, if  
16 any, the juvenile's custodial parent or parents, the juvenile's  
17 guardian, attorneys representing the juvenile or the parents, the

18 guardian ad litem, if any, the prosecuting attorney and an  
19 appropriate school official or representative. The team may also  
20 include, where appropriate, a court-appointed special advocate,  
21 a member of a child advocacy center and any other person who  
22 may assist in providing recommendations for the particular  
23 needs of the juvenile and the family.

24 (c) Not later than sixty days after commitment pursuant to  
25 this section the juvenile shall be remanded and delivered to the  
26 custody of the director, an appropriate agency or any other  
27 person that the court by its order directs. Within ten days after  
28 the end of the examination, diagnosis and classification, the  
29 Director of the Division of Juvenile Services shall make or  
30 cause to be made a report to the court containing the results,  
31 findings, conclusions and recommendations of the  
32 multidisciplinary team with respect to that juvenile.

#### **§49-5-20. After-care plans.**

1 (a) Prior to the discharge of a juvenile from any institution  
2 or facility to which the juvenile was committed pursuant to  
3 subdivision (5) or (6), subsection (b), section thirteen of this  
4 article, the superintendent of the institution or facility shall call  
5 a meeting of the multidisciplinary treatment team to which the  
6 child has been referred or, if no referral has been made,  
7 convene a multidisciplinary treatment team for any child for  
8 which a multidisciplinary treatment plan is required by the  
9 provisions of section three, article five-d of this chapter and  
10 forward a copy of the juvenile's proposed after-care plan to the  
11 circuit court which committed the juvenile. A copy of the plan  
12 shall also be sent to: (1) The juvenile's parents or legal guard-  
13 ian; (2) the juvenile's lawyer; (3) the juvenile's probation  
14 officer or community mental health center professional; (4) the  
15 prosecuting attorney of the county in which the original  
16 commitment proceedings were held; and (5) the principal of the  
17 school which the juvenile will attend. The plan shall have a list  
18 of the names and addresses of these persons attached to it.

19       (b) The after-care plan shall contain a detailed description  
20 of the education, counseling and treatment which the juvenile  
21 received while at the institution or facility and it shall also  
22 propose a plan for education, counseling and treatment for the  
23 juvenile upon the juvenile's discharge. The plan shall also  
24 contain a description of any problems the juvenile has, includ-  
25 ing the source of those problems, and it shall propose a manner  
26 for addressing those problems upon discharge.

27       (c) Within twenty-one days of receiving the plan, the  
28 juvenile's probation officer or community mental health center  
29 professional shall submit written comments upon the plan to the  
30 circuit court which committed the juvenile. Any other person  
31 who received a copy of the plan pursuant to subsection (a) of  
32 this section may submit written comments upon the plan to the  
33 circuit court which committed the juvenile. Any person who  
34 submits comments upon the plan shall send a copy of those  
35 comments to every other person who received a copy of the  
36 plan.

37       (d) Within twenty-one days of receiving the plan, the  
38 juvenile's probation officer or community mental health center  
39 professional shall contact all persons, organizations and  
40 agencies which are to be involved in executing the plan to  
41 determine whether they are capable of executing their responsi-  
42 bilities under the plan and to further determine whether they are  
43 willing to execute their responsibilities under the plan.

44       (e) If adverse comments or objections regarding the plan  
45 are submitted to the circuit court, it shall, within forty-five days  
46 of receiving the plan, hold a hearing to consider the plan and  
47 the adverse comments or objections. Any person, organization  
48 or agency which has responsibilities in executing the plan, or  
49 their representatives, may be required to appear at the hearing  
50 unless they are excused by the circuit court. Within five days of  
51 the hearing, the circuit court shall issue an order which adopts

52 the plan as submitted or as modified in response to any  
53 comments or objections.

54 (f) If no adverse comments or objections are submitted, a  
55 hearing need not be held. In that case, the circuit court shall  
56 consider the plan as submitted and shall, within forty-five days  
57 of receiving the plan, issue an order which adopts the plan as  
58 submitted.

59 (g) Notwithstanding the provisions of subsections (e) and  
60 (f) of this section, the plan which is adopted by the circuit court  
61 shall be in the best interests of the juvenile and shall also be in  
62 conformity with West Virginia's interest in youth as embodied  
63 in subsection (b), section thirteen of this article.

64 (h) The circuit court which committed the juvenile shall  
65 appoint the juvenile's probation officer or community mental  
66 health center professional to act as supervisor of the plan. The  
67 supervisor shall report the juvenile's progress under the plan to  
68 the circuit court every sixty days or until the circuit court  
69 determines that no report or no further care is necessary.

#### **ARTICLE 5D. MULTIDISCIPLINARY TEAMS.**

##### **§49-5D-3. Multidisciplinary treatment planning process.**

1 (a)(1) A multidisciplinary treatment planning process shall  
2 be established within each county of the state, either separately  
3 or in conjunction with a contiguous county, by the secretary of  
4 the department with advice and assistance from the prosecutor's  
5 advisory council as set forth in section four, article four, chapter  
6 seven of this code. The Division of Juvenile Services shall  
7 establish a similar treatment planning process for delinquency  
8 cases in which the juvenile has been committed to the custody  
9 of the director of the division.

10 (2) Treatment teams shall assess, plan and implement a  
11 comprehensive, individualized service plan for children who are

12 victims of abuse or neglect and their families when a judicial  
13 proceeding has been initiated involving the child or children for  
14 juveniles and their families involved in status offense or  
15 delinquency proceedings when, in a status offense proceeding,  
16 the court refers the juvenile for services pursuant to sections  
17 eleven and eleven-a, article five of this chapter and when, in a  
18 delinquency proceeding, the court is considering placing the  
19 juvenile in the department's custody or placing the juvenile  
20 out-of-home at the department's expense pursuant to the  
21 provisions of section thirteen of said article. In any such status  
22 offense or delinquency case, the juvenile probation officer shall  
23 notify the local office of the Department of Health and Human  
24 Resources and the Division of Juvenile Services at least five  
25 working days before the court proceeding in order to allow the  
26 multidisciplinary treatment team to convene and develop a  
27 comprehensive individualized service plan for the child:  
28 *Provided*, That such notice is not required in cases where the  
29 child is already in state custody or there exist exigent circum-  
30 stances which justify taking the child immediately into custody  
31 without a judicial proceeding. In developing an individualized  
32 service plan for a child, the team shall utilize a uniform  
33 comprehensive assessment of the child. The department shall  
34 adopt a standard uniform comprehensive assessment instrument  
35 or protocol to be used by treatment teams.

36 (3) Prior to disposition, in each case in which a treatment  
37 planning team has been convened, the team shall advise the  
38 court as to the types of services the team has determined are  
39 needed and the type of placement, if any, which will best serve  
40 the needs of the child. If the team determines that an out-of-  
41 home placement will best serve the needs of the child, the team  
42 shall first consider placement at facilities or programs located  
43 within the state. The team may only recommend placement in  
44 an out-of-state facility if it concludes, after considering the best  
45 interests and overall needs of the child, that there are no  
46 available and suitable in-state facilities which can satisfactorily  
47 meet the specific needs of the child.



48 (b) Each treatment team shall be convened and directed by  
49 the child's or family's case manager in the Department of  
50 Health and Human Resources or the Division of Juvenile  
51 Services if the juvenile has been ordered into its custody for  
52 examination and diagnosis pursuant to section thirteen, article  
53 five of this chapter. The treatment team shall consist of the  
54 child's custodial parent or parents, guardian or guardians, other  
55 immediate family members, the attorney or attorneys represent-  
56 ing the child, the parent or parents of the child, the child's  
57 attorney, the guardian ad litem, if any, the prosecuting attorney  
58 or his or her designee and where appropriate to the particular  
59 case under consideration and available, a court-appointed  
60 special advocate, a member of a child advocacy center, an  
61 appropriate school official and any other person or an agency  
62 representative who may assist in providing recommendations  
63 for the particular needs of the child and family. The child may  
64 participate in multidisciplinary treatment team meetings if such  
65 is deemed appropriate by the multidisciplinary treatment team.  
66 For purposes of delinquency proceedings, the juvenile proba-  
67 tion officer shall be a member of the treatment team. Any  
68 person authorized by the provisions of this chapter to convene  
69 a multidisciplinary team meeting may seek and receive an order  
70 of the circuit court setting such meeting and directing atten-  
71 dance. Members of the multidisciplinary team may participate  
72 in team meetings by telephone or video conferencing.

73 (c) The treatment team shall coordinate its activities and  
74 membership with local family resource networks and coordi-  
75 nate with other local and regional child and family service  
76 planning committees to assure the efficient planning and  
77 delivery of child and family services on a local and regional  
78 level.

79 (d) State, county and local agencies shall provide the  
80 multidisciplinary treatment teams with any information  
81 requested in writing by the team as allowable by law or upon

82 receipt of a certified copy of the circuit court's order directing  
83 said agencies to release information in its possession relating to  
84 the child. The team shall assure that all information received  
85 and developed in connection with the provisions of this article  
86 remain confidential. For purposes of this section, the term  
87 "confidential" shall be construed in accordance with the  
88 provisions of section one, article seven of this chapter.

89 (e) Nothing in this section may be construed to require a  
90 multidisciplinary team meeting to be held prior to temporarily  
91 placing a child out-of-home under exigent circumstances or  
92 upon a court order placing the juvenile in a juvenile facility  
93 operated by the Division of Juvenile Services.

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## CHAPTER 130

**(H. B. 4355 — By Delegates Brown, DeLong, Mahan and Amores)**

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[Passed March 11, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §48-27-403 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-5-7 and §49-5-8 of said code, all relating to custody by law-enforcement officials of juveniles who are respondents in an emergency protective order in which the petitioner resides with the juvenile respondent.

*Be it enacted by the Legislature of West Virginia:*

That §48-27-403 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-5-7 and §49-5-8 of said code be amended and reenacted, all to read as follows:

**Chapter****48. Domestic Relations.****49. Child Welfare.****CHAPTER 48. DOMESTIC RELATIONS.****ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.****§48-27-403. Emergency protective orders of court; hearings; persons present.**

1           (a) Upon the filing of a verified petition under this article,  
2 the magistrate court may enter an emergency protective order  
3 as it may deem necessary to protect the petitioner or minor  
4 children from domestic violence and, upon good cause shown,  
5 may do so ex parte without the necessity of bond being given  
6 by the petitioner. Clear and convincing evidence of immediate  
7 and present danger of abuse to the petitioner or minor children  
8 shall constitute good cause for the issuance of an emergency  
9 protective order pursuant to this section. If the respondent is not  
10 present at the proceeding, the petitioner or the petitioner's legal  
11 representative shall certify to the court, in writing, the efforts  
12 which have been made to give notice to the respondent or just  
13 cause why notice should not be required. Copies of medical  
14 reports or records may be admitted into evidence to the same  
15 extent as though the original thereof. The custodian of such  
16 records shall not be required to be present to authenticate such  
17 records for any proceeding held pursuant to this subsection. If  
18 the magistrate court determines to enter an emergency protec-  
19 tive order, the order shall prohibit the respondent from possess-  
20 ing firearms.

21           (b) Following the proceeding, the magistrate court shall  
22 order a copy of the petition to be served immediately upon the  
23 respondent, together with a copy of any emergency protective  
24 order entered pursuant to the proceedings, a notice of the final

25 hearing before the family court and a statement of the right of  
26 the respondent to appear and participate in the final hearing, as  
27 provided in subsection (d) of this section. Copies of any order  
28 entered under the provisions of this section, a notice of the final  
29 hearing before the family court and a statement of the right of  
30 the petitioner to appear and participate in the final hearing, as  
31 provided in subsection (d) of this section, shall also be deliv-  
32 ered to the petitioner. Copies of any order entered shall also be  
33 delivered to any law-enforcement agency having jurisdiction to  
34 enforce the order, including municipal police, the county  
35 sheriff's office and local office of the State Police, within  
36 twenty-four hours of the entry of the order. An emergency  
37 protective order is effective until modified by order of the  
38 family court upon hearing as provided in subsection (d) of this  
39 section. The order is in full force and effect in every county in  
40 this state.

41 (c) Subsequent to the entry of the emergency protective  
42 order, service on the respondent and the delivery to the peti-  
43 tioner and law-enforcement officers, the court file shall be  
44 transferred to the office of the clerk of the circuit court for use  
45 by the family court.

46 (d) The family court shall schedule a final hearing on each  
47 petition in which an emergency protective order has been  
48 entered by a magistrate. The hearing shall be scheduled not  
49 later than ten days following the entry of the order by the  
50 magistrate. The notice of the final hearing shall be served on the  
51 respondent and delivered to the petitioner, as provided in  
52 subsection (b) of this section, and must set forth the hearing  
53 date, time and place and include a statement of the right of the  
54 parties to appear and participate in the final hearing. The notice  
55 must also provide that the petitioner's failure to appear will  
56 result in a dismissal of the petition and that the respondent's  
57 failure to appear may result in the entry of a protective order  
58 against him or her for a period of ninety or one hundred eighty

59 days, as determined by the court. The notice must also include  
60 the name, mailing address, physical location and telephone  
61 number of the family court having jurisdiction over the  
62 proceedings. To facilitate the preparation of the notice of final  
63 hearing required by the provisions of this subsection, the family  
64 court must provide the magistrate court with a day and time in  
65 which final hearings may be scheduled before the family court  
66 within the time required by law.

67 (e) Upon final hearing the petitioner must prove, by a  
68 preponderance of the evidence, the allegation of domestic  
69 violence or that he or she reported or witnessed domestic  
70 violence against another and has, as a result, been abused,  
71 threatened, harassed or has been the subject of other actions to  
72 attempt to intimidate him or her, or such petition shall be  
73 dismissed by the family court. If the respondent has not been  
74 served with notice of the emergency protective order, the  
75 hearing may be continued to permit service to be effected. The  
76 failure to obtain service upon the respondent does not constitute  
77 a basis to dismiss the petition. Copies of medical reports may  
78 be admitted into evidence to the same extent as though the  
79 original thereof, upon proper authentication, by the custodian  
80 of such records.

81 (f) No person requested by a party to be present during a  
82 hearing held under the provisions of this article shall be  
83 precluded from being present unless such person is to be a  
84 witness in the proceeding and a motion for sequestration has  
85 been made and such motion has been granted. A person found  
86 by the court to be disruptive may be precluded from being  
87 present.

88 (g) Upon hearing, the family court may dismiss the petition  
89 or enter a protective order for a period of ninety days or, in the  
90 discretion of the court, for a period of one hundred eighty days.  
91 The hearing may be continued on motion of the respondent, at

92 the convenience of the court. Otherwise, the hearing may be  
93 continued by the court no more than seven days. If a hearing is  
94 continued, the family court may modify the emergency  
95 protective order as it deems necessary.

96 (h) Notwithstanding any other provision of this code to the  
97 contrary, a petition filed pursuant to this section that results in  
98 the issuance of an emergency protective order naming a  
99 juvenile as the respondent in which the petition for the emer-  
100 gency protective order is filed by or on behalf of the juvenile's  
101 parent, guardian or custodian or other person with whom the  
102 juvenile resides shall be treated as a petition authorized by  
103 section seven, article five, chapter forty-nine of this code,  
104 alleging the juvenile is a juvenile delinquent: *Provided*, That the  
105 magistrate court shall notify the prosecuting attorney in the  
106 county where the emergency protective order is issued within  
107 twenty-four hours of the issuance of the emergency protective  
108 order and the prosecuting attorney may file an amended verified  
109 petition to comply with the provisions of subsection (a) of  
110 section seven, article five, chapter forty-nine of this code within  
111 two judicial days.

## CHAPTER 49. CHILD WELFARE.

### ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-7. Institution of proceedings by petition; notice to juvenile and parents;  
subpoena.

§49-5-8. Taking a juvenile into custody.

#### **§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 multi-disciplinary 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  
62 and Human Services which will assign a case manager who will  
63 initiate assessment and be responsible for convening and  
64 directing the multi-disciplinary treatment planning process.

65 (f) Notwithstanding any other provision of this code to the  
66 contrary, a petition filed pursuant to section four hundred three,  
67 article twenty-seven, chapter forty-eight of this code in which  
68 the petition for the emergency protective order is filed by or on



69 behalf of the juvenile's parent, guardian or custodian or other  
70 person with whom the juvenile resides and that results in the  
71 issuance of an emergency protective order naming a juvenile as  
72 the respondent, shall be treated as a petition authorized by this  
73 section, alleging the juvenile is a juvenile delinquent: *Provided,*  
74 That the magistrate court shall notify the prosecuting attorney  
75 in the county where the emergency protective order is issued  
76 within twenty-four hours of the issuance of the emergency  
77 protective order and the prosecuting attorney may file an  
78 amended verified petition to comply with the provisions of  
79 subsection (a) of this section within two judicial days.

**§49-5-8. Taking a juvenile into custody.**

1 (a) In proceedings formally instituted by the filing of a  
2 juvenile petition, the circuit court, a juvenile referee or a  
3 magistrate may issue an order directing that a juvenile be taken  
4 into custody before adjudication only upon a showing of  
5 probable cause to believe that one of the following conditions  
6 exists: (1) The petition shows that grounds exist for the arrest  
7 of an adult in identical circumstances; (2) the health, safety and  
8 welfare of the juvenile demand such custody; (3) the juvenile  
9 is a fugitive from a lawful custody or commitment order of a  
10 juvenile court; or (4) the juvenile is alleged to be a juvenile  
11 delinquent with a record of willful failure to appear at juvenile  
12 proceedings and custody is necessary to assure his or her  
13 presence before the court. A detention hearing pursuant to  
14 section eight-a of this article shall be held by the judge, juvenile  
15 referee or magistrate authorized to conduct such hearings  
16 without unnecessary delay and in no event may any delay  
17 exceed the next day.

18 (b) Absent a court order, a juvenile may be taken into  
19 custody by a law-enforcement official only if one of the  
20 following conditions exists: (1) Grounds exist for the arrest of  
21 an adult in identical circumstances; (2) emergency conditions

22 exist which, in the judgment of the officer, pose imminent  
23 danger to the health, safety and welfare of the juvenile; (3) the  
24 official has reasonable grounds to believe that the juvenile has  
25 left the care of his or her parents, guardian or custodian without  
26 the consent of such person, and the health, safety and welfare  
27 of the juvenile is endangered; (4) the juvenile is a fugitive from  
28 a lawful custody or commitment order of a juvenile court; (5)  
29 the official has reasonable grounds to believe the juvenile to  
30 have been driving a motor vehicle with any amount of alcohol  
31 in his or her blood; or (6) the juvenile is the named respondent  
32 in an emergency protective order issued pursuant to section four  
33 hundred three, article twenty-seven, chapter forty-eight of this  
34 code and the individual filing the petition for the emergency  
35 protective order is the juvenile's parent, guardian, or custodian  
36 or other person with whom the juvenile resides.

37 (c) Upon taking a juvenile into custody, with or without a  
38 court order, the official shall:

39 (1) Immediately notify the juvenile's parent, guardian,  
40 custodian or, if the parent, guardian or custodian cannot be  
41 located, a close relative;

42 (2) Release the juvenile into the custody of his or her  
43 parent, guardian or custodian unless:

44 (A) Circumstances present an immediate threat of serious  
45 bodily harm to the juvenile if released;

46 (B) No responsible adult can be found into whose custody  
47 the juvenile can be delivered: *Provided*, That each day the  
48 juvenile is detained, a written record must be made of all  
49 attempts to locate such a responsible adult; or

50 (C) The juvenile has been taken into custody for an alleged  
51 act of delinquency for which secure detention is permissible.

52 (3) If the juvenile is an alleged status offender or has been  
53 taken into custody pursuant to subdivision (6) of subsection (b),  
54 immediately notify the Department of Health and Human  
55 Resources, and, if the circumstances of either paragraph (A) or  
56 (B), subdivision (2) of this subsection exist and the require-  
57 ments therein are met, the official may detain the juvenile, but  
58 only in a nonsecure or staff-secure facility;

59 (4) Take the juvenile without unnecessary delay before a  
60 juvenile referee or judge of the circuit court for a detention  
61 hearing pursuant to section eight-a of this article: *Provided,*  
62 That if no judge or juvenile referee is then available in the  
63 county, the official shall take the juvenile without unnecessary  
64 delay before any magistrate then available in the county for the  
65 sole purpose of conducting such a detention hearing. In no  
66 event may any delay in presenting the juvenile for a detention  
67 hearing exceed the next day after he or she is taken into  
68 custody.

69 (d) In the event that a juvenile is delivered into the custody  
70 of a sheriff or director of a detention facility, the sheriff or  
71 director shall immediately notify the court or juvenile referee.  
72 The sheriff or director shall immediately provide to every  
73 juvenile who is delivered into his or her custody a written  
74 statement explaining the juvenile's right to a prompt detention  
75 hearing, his or her right to counsel, including appointed counsel  
76 if he or she cannot afford counsel, and his or her privilege  
77 against self-incrimination. In all cases when a juvenile is  
78 delivered into a sheriff's or detention center director's custody,  
79 that official shall release the juvenile to his or her parent,  
80 guardian or custodian by the end of the next day unless the  
81 juvenile has been placed in detention after a hearing conducted  
82 pursuant to section eight-a of this article.

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## CHAPTER 131

**(Com. Sub. for S. B. 364 — By Senators Hunter, Tomblin, Mr. President, White, Bailey, Plymale, McCabe, Helmick, Dempsey, Bowman, Sharpe, Kessler, Foster, Harrison, Unger and Prezioso)**

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[Passed March 8, 2006; in effect from passage.]  
[Approved by the Governor on March 22, 2006.]

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AN ACT to repeal §21-1C-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §21-1C-5 of said code, relating to continuing the West Virginia Jobs Act; and requiring annual reports by the Division of Labor.

*Be it enacted by the Legislature of West Virginia:*

That §21-1C-7 of the Code of West Virginia, 1931, as amended, be repealed; and that §21-1C-5 of said code be amended and reenacted to read as follows:

**ARTICLE 1C. WEST VIRGINIA JOBS ACT.**

**§21-1C-5. Applicability and scope of article; reporting requirements.**

1           (a) This article applies to expenditures for construction  
2 projects by any public authority for public improvements as  
3 defined by this article.

4           (b) For public improvement projects let pursuant to this  
5 article, the public authority shall file, or require an employer as  
6 defined in section two of this article to file, with the Division of  
7 Labor copies of the waiver certificates and certified payrolls,  
8 pursuant to article five-a of this chapter, or other comparable

9 documents that include the number of employees, the county  
10 and state wherein the employees reside and their occupation.

11 (c) The Division of Labor shall compile the information  
12 required by this section and submit it annually to the Joint  
13 Committee on Government and Finance by the fifteenth day of  
14 October. The joint committee may forward these reports to the  
15 Legislative Auditor to review and make comments regarding  
16 the usefulness of the information collected and to suggest  
17 changes to the division's method of reporting to ensure the  
18 information collected will prove useful in evaluating the  
19 effectiveness of the provisions of this article.

20 (d) Each public authority has the duty to implement the  
21 reporting requirements of this article. Every public improve-  
22 ment contract or subcontract let by a public authority shall  
23 contain provisions conforming to the requirements of this  
24 article.

25 (e) The Division of Labor is authorized to establish  
26 procedures for the efficient collection of data, collection of civil  
27 penalties prescribed in section six of this article and transmittal  
28 of data to the Joint Committee on Government and Finance.

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## CHAPTER 132

**(Com. Sub. for H. B. 4454 — By Mr. Speaker, Mr. Kiss, and  
Delegates Morgan, Pethtel, Stemple, Trump, Amores,  
Schadler, Hartman, Sobonya, Craig and Azinger)**

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[Passed March 10, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §21-5-4 of the Code of West Virginia,  
1931, as amended, relating to wages withheld from an employee;

and providing that liquidated damages will equal three times the amount of wages unpaid when due.

*Be it enacted by the Legislature of West Virginia:*

That §21-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

**§21-5-4. Cash orders; employees separated from payroll before paydays.**

1       (a) In lieu of lawful money of the United States, any person,  
2 firm or corporation may compensate employees for services by  
3 cash order which may include checks or money orders on banks  
4 convenient to the place of employment where suitable arrange-  
5 ments have been made for the cashing of such checks by  
6 employees for the full amount of wages.

7       (b) Whenever a person, firm or corporation discharges an  
8 employee, such person, firm or corporation shall pay the  
9 employee's wages in full within seventy-two hours.

10       (c) Whenever an employee quits or resigns, the person, firm  
11 or corporation shall pay the employee's wages no later than the  
12 next regular payday, either through the regular pay channels or  
13 by mail if requested by the employee, except that if the  
14 employee gives at least one pay period's notice of intention to  
15 quit the person, firm or corporation shall pay all wages earned  
16 by the employee at the time of quitting.

17       (d) When work of any employee is suspended as a result of  
18 a labor dispute, or when an employee for any reason whatsoever  
19 is laid off, the person, firm or corporation shall pay in full to  
20 such employee not later than the next regular payday, either  
21 through the regular pay channels or by mail if requested by the  
22 employee, wages earned at the time of suspension or layoff.

23 (e) If a person, firm or corporation fails to pay an employee  
24 wages as required under this section, such person, firm or  
25 corporation shall, in addition to the amount which was unpaid  
26 when due, be liable to the employee for three times that unpaid  
27 amount as liquidated damages. Every employee shall have such  
28 lien and all other rights and remedies for the protection and  
29 enforcement of such salary or wages, as he or she would have  
30 been entitled to had he or she rendered service therefor in the  
31 manner as last employed; except that, for the purpose of such  
32 liquidated damages, such failure shall not be deemed to  
33 continue after the date of the filing of a petition in bankruptcy  
34 with respect to the employer if he or she is adjudicated bankrupt  
35 upon such petition.

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## CHAPTER 133

**(H. B. 4479 — By Delegates Pethtel, Poling, Cann, Frederick,  
Browning, Martin, Talbott and Hartman)**

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[Passed March 10, 2006; in effect from passage.]  
[Approved by the Governor on April 3, 2006.]

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AN ACT to amend and reenact §21-9-9 and §21-9-10 of the Code of West Virginia, 1931, as amended, all relating to Manufactured Housing Construction and Safety Standards; creating a fund; providing for spending from certain funds; and authorizing the assessment of annual fees in satisfaction of assurance requirements.

*Be it enacted by the Legislature of West Virginia:*

That §21-9-9 and §21-9-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted all to read as follows:

**ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.**

§21-9-9. License required; fees; form of license; display of license; denial, suspension or revocation.

§21-9-10. Licensee to furnish bond or other form of assurance.

**§21-9-9. License required; fees; form of license; display of license; denial, suspension or revocation.**

1           (a) No manufacturer, dealer, distributor or contractor shall  
2 engage in business in this state without first having applied for  
3 and received a license pursuant to this section. The license shall  
4 authorize the holder to engage in the business permitted by the  
5 license. All license applications shall be accompanied by the  
6 required fee and surety bond or other form of assurance or fee  
7 assessed in satisfaction of assurance as required by rule or  
8 regulation promulgated by the board.

9           (b) All licenses shall be granted or refused within thirty  
10 days after proper and complete application. All licenses shall  
11 expire on the thirtieth day of June of each year, unless sooner  
12 revoked or suspended. Applications shall be deemed valid for  
13 a period of thirty days.

14           (c) The annual license fees shall be in the amounts pre-  
15 scribed from time to time by rules promulgated by the board but  
16 in no event less than the following amounts:

17           (1) For manufacturers, three hundred dollars;

18           (2) For dealers, one hundred dollars;

19           (3) For distributors, one hundred dollars; and

20           (4) For contractors, fifty dollars: *Provided*, That if a  
21 contractor has met the licensing requirements of this article and  
22 the West Virginia Contractor Licensing Act in article eleven of  
23 this chapter, has paid the annual license fee under section eight,



24 article eleven of this chapter and has furnished bond or other  
25 assurance or fee under section ten of this article, he or she shall  
26 not be required to pay the annual license fee set forth in this  
27 section.

28 (d) The board shall prescribe the form of license and each  
29 license shall have affixed thereon the seal of the State Division  
30 of Labor.

31 (e) Each licensee shall conspicuously display the license in  
32 its established place of business.

33 (f) Pursuant to such rules and regulations as may be  
34 promulgated by the board, the board may deny the issuance of  
35 a license or revoke or suspend any license.

36 (g) All license fees collected shall be deposited in a special  
37 account in the State Treasury to be known as the "State Manu-  
38 factured Housing Administration Fund". Expenditures from the  
39 fund shall be for the administration of the provisions of this  
40 article and are not authorized from collections but are to be  
41 made only in accordance with appropriation by the Legislature  
42 and in accordance with the provisions of article two, chapter  
43 eleven-b of this code: *Provided*, That for the fiscal year ending  
44 the thirtieth day of June, 2006, expenditures are authorized  
45 from collections rather than pursuant to appropriation by the  
46 Legislature.

**§21-9-10. Licensee to furnish bond or other form of assurance.**

1 (a) Each manufacturer, dealer, distributor or contractor  
2 which applies for a license under section nine of this article  
3 shall, at the time of making application for the license, furnish  
4 a surety bond or any other form of assurance of the applicant's  
5 financial responsibility permitted by the board by rule or  
6 regulation, the surety bond or other form of assurance to be in  
7 the amount prescribed by rule or regulation. In the event of

8 forfeiture of any bond or security, the proceeds thereof shall be  
9 deposited in the special account continued in subsection (c) of  
10 this section.

11 (b) The board may assess an annual fee on licensees in  
12 satisfaction of the surety bond or other form of assurance  
13 required by subsection (a). This annual fee shall be in the  
14 amounts prescribed from time to time by legislative rules  
15 promulgated by the board but in no event less than the follow-  
16 ing amounts:

17 (1) For each manufacturer's licensed business location, two  
18 thousand five hundred dollars;

19 (2) For each dealer's and/or distributor's licensed business  
20 location, one thousand dollars;

21 (3) For each licensed contractor, five hundred dollars.

22 (c) All fees collected from fees assessed pursuant to this  
23 section or the proceeds from the forfeiture of any bond or other  
24 security provided pursuant to this section or any fines paid to  
25 the board shall be deposited in the special account in the State  
26 Treasury known as the "State Manufactured Housing Recovery  
27 Fund". Expenditures from the fund shall be for the purposes set  
28 forth in subsection (d) of this section. The assets of the fund  
29 may be invested and reinvested by the board in accordance with  
30 applicable law. Interest revenues derived from the fund shall be  
31 used solely to maintain the fund. If the balance of the fund on  
32 the thirtieth day of June of any year equals or exceeds three  
33 hundred thousand dollars, no assessments shall be collected  
34 from any previously licensed manufacturer, dealer, distributor  
35 or contractor for the next licensure period. New applicants for  
36 licensure shall pay the applicable assessment fee regardless of  
37 the balance of the fund. The board is authorized at any time to  
38 make special assessments upon all licensed manufacturers,  
39 dealers, distributors, and contractors if the board determines

40 that the assessments are necessary to maintain the fiscal  
41 integrity of the fund. In no event may a special assessment be  
42 issued by the board until or unless the balance of the fund falls  
43 below two hundred fifty thousand dollars.

44 (d) Moneys in the fund shall cover any misappropriation of  
45 funds of a purchaser or prospective purchaser of a manufac-  
46 tured home, any deception or false or fraudulent representations  
47 or deceitful practices in selling or representing a product, any  
48 failure by a licensee, because of bankruptcy, insolvency or  
49 other reason, to fulfill warranty obligations and any failure of  
50 the licensee, its agents or employees, to comply with federal  
51 standards, this article or any rules or regulations promulgated  
52 by the board pursuant to this article: *Provided*, That any  
53 payment to purchasers or prospective purchasers by the board  
54 from licensee bonds or other forms of financial assurance shall  
55 not include punitive or exemplary damages, any compensation  
56 for property damage other than to the manufactured home, any  
57 recompense for any personal injury or inconvenience, any  
58 reimbursement for alternate housing, or any payments for  
59 attorney fees, legal expenses or court costs.

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## CHAPTER 134

**(S. B. 479 — By Senators Kessler, Dempsey, Fanning, Foster,  
Hunter, Jenkins, Minard, Oliverio, White, Caruth,  
Deem, Harrison, Lanham and Weeks)**

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[Passed March 8, 2006; in effect from passage.]  
[Approved by the Governor on March 23, 2006.]

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AN ACT to amend and reenact §15-11-2 of the Code of West Virginia, 1931, as amended, relating to expanding the funeral

expense payment benefit to include all probation officers killed in the line of duty.

*Be it enacted by the Legislature of West Virginia:*

That §15-11-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 11. PAYMENT OF FUNERAL EXPENSES.**

**§15-11-2. Payment of funeral expenses of law-enforcement, safety and emergency workers killed in the line of duty.**

1           (a) The Secretary of Military Affairs and Public Safety  
2 shall, upon written request, direct payment from the fund in the  
3 form of a draft as provided in this article up to and including an  
4 amount not exceeding eight thousand dollars for the reasonable  
5 funeral expenses, including burial expenses, of a law-enforce-  
6 ment, safety or emergency worker killed on or after the first day  
7 of January, one thousand nine hundred ninety-nine, while  
8 carrying out official duties: *Provided*, That no funds shall be  
9 expended for any funeral expense that is otherwise payable  
10 pursuant to the provisions of article four, chapter twenty-three  
11 of this code, as amended, or other benefit programs established  
12 by a provision of this code which does not involve employee  
13 participation: *Provided, however*, That where other funds for  
14 funeral expenses are provided pursuant to the laws of this state,  
15 from whatever source, which amount to less than eight  
16 thousand dollars, funds provided by the provisions of this  
17 section shall be expended so as to ensure that at least eight  
18 thousand dollars is available for reasonable funeral expenses.  
19 The secretary shall direct payment of the funeral expenses upon  
20 written request of an employer or head of a volunteer organiza-  
21 tion, as is appropriate pursuant to this article, certifying that the  
22 individual for whom funeral expenses are requested was killed  
23 while performing official duties.

24 (b) The secretary shall supply the draft in the name of the  
25 person contracting for the funeral services and, if known, the  
26 service provider to the employer or agency head making the  
27 request who shall tender the draft to the person who contracted  
28 for the services.

29 (c) For the purposes of this section, “law-enforcement,  
30 safety or emergency worker” means:

31 (1) Any duly authorized member of a law-enforcement  
32 agency who is authorized to maintain public peace and order,  
33 prevent and detect crime, make arrests and enforce the laws of  
34 the state or any county or municipality of the state, other than  
35 parking ordinances, and including those persons employed as  
36 security officers at municipal, county, regional or state offices,  
37 authorities or institutions, although their employers may not be  
38 public law-enforcement agencies, employed by the Hatfield-  
39 McCoy Regional Recreation Authority and members of the  
40 West Virginia National Guard while engaged in active duty  
41 service: *Provided*, That this section does not apply to those  
42 persons employed by private security firms or agencies;

43 (2) Any state, regional, county or municipal correctional  
44 employee;

45 (3) Any firefighter employed by the state or any political  
46 subdivision of the state and any volunteer firefighter perform-  
47 ing as a member of a volunteer fire department;

48 (4) Any “emergency medical services personnel”, as  
49 defined in section three, article four-c, chapter sixteen of this  
50 code, employed by or volunteering for any state agency or  
51 institution or political subdivision of the state; or

52 (5) Any probation officer appointed under the provisions of  
53 either section five, article twelve, chapter sixty-two of this code  
54 or section fifteen, article five, chapter forty-nine of this code.

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## CHAPTER 135

(H. B. 4321 — By Delegates Perdue, Hatfield, Staton,  
Browning, Rick Thompson and Stemple)

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[Passed March 10, 2006; in effect ninety days from passage.]  
[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §16-35-3 and §16-35-7 of the Code of West Virginia, 1931, as amended, all relating to definitions and modifications of exemptions from notification and licensure with respect to lead abatement.

*Be it enacted by the Legislature of West Virginia:*

That §16-35-3 and §16-35-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 35. LEAD ABATEMENT.**

§16-35-3. Definitions.

§16-35-7. Exemptions from notification and licensure.

**§16-35-3. Definitions.**

1       (a) “Abatement” means any measure or set of measures  
2 designed to permanently eliminate lead-based paint hazards.  
3 Abatement includes, but is not limited to:

4       (1) The removal of lead-based paint and lead-contaminated  
5 dust, the permanent enclosure or encapsulation of lead-based  
6 paint, the replacement of lead-painted surfaces or fixtures, and  
7 the removal or covering of lead-contaminated soil;

8       (2) All preparation, cleanup, disposal, and post-abatement  
9 clearance testing activities associated with such measures;

10       (3) Projects for which there is a written contract to perma-  
11 nently eliminate lead-based paint hazards from a dwelling unit  
12 or child-occupied building;

13       (4) Projects involving the permanent elimination of  
14 lead-based paint or lead-contaminated soil; and

15       (5) Projects involving the permanent elimination of  
16 lead-based paint hazards that are conducted in response to  
17 federal, state or local abatement orders.

18       (b) “Child lead poisoning” means that the amount of lead  
19 circulating in the blood stream of children is at or exceeds the  
20 level defined by the United States center for disease control.

21       (c) “Child-occupied building” means any of the following  
22 structures built before one thousand nine hundred sev-  
23 enty-eight: Public or private buildings, or portions thereof, or a  
24 room in a residential dwelling or unit, any of which structures  
25 are currently visited, or intended to be visited, three hours a day  
26 twice a week or more often by a child age six or under, includ-  
27 ing, but not limited to, day care centers, kindergarten class-  
28 rooms, schools, camps and recreational facilities.

29       (d) “Contained work area” means a designated room or  
30 rooms, spaces, or other areas, including a decontamination  
31 structure, where lead abatement activities are performed,  
32 separated from the uncontaminated environment in accordance  
33 with OSHA standards.

34       (e) “Commissioner” means the Commissioner of the West  
35 Virginia Bureau for Public Health or his or her representative.

36       (f) “Discipline” means any one of the following: Lead  
37 abatement contractor, lead abatement supervisor, lead inspector,

38 lead risk assessor, lead abatement worker, or lead abatement  
39 project designer.

40 (g) “Elevated blood-lead level” means a concentration of  
41 lead in the blood stream as defined by the United States Center  
42 for Disease Control.

43 (h) “Industrial facility” means any factory, mill, plant,  
44 refinery, warehouse, building or complex of buildings or other  
45 industrial structures including the land on which it is located.

46 (i) “Inspection” means a surface-by-surface investigation to  
47 determine the presence of lead-based paint or lead hazards and  
48 the provision of a report explaining the results of the investiga-  
49 tion.

50 (j) “Interim controls” means a set of measures designed to  
51 temporarily reduce human exposure or likely exposure to  
52 lead-based paint hazards, including specialized cleaning,  
53 repairs, maintenance, painting, temporary containment, ongoing  
54 monitoring of lead-based paint hazards or potential hazards, and  
55 the establishment and operation of management and resident  
56 education programs.

57 (k) “Lead” means elemental lead and all inorganic and  
58 organic lead compounds.

59 (l) “Lead abatement contractor” means any person who  
60 contracts to conduct any lead abatement activity.

61 (m) “Lead abatement designer” means an individual who  
62 designs lead abatement projects and occupant protection plans.

63 (n) “Lead abatement project” means an activity in target  
64 housing or child-occupied buildings intended to permanently  
65 remove or encapsulate lead-based paint, lead-containing dust,  
66 lead-containing soil or other lead-containing materials and



67 decontamination of an area, but does not include interim  
68 controls which do not permanently eliminate lead hazards.

69 (o) "Lead abatement worker" means an individual who is  
70 employed by a lead abatement contractor for a lead abatement  
71 project.

72 (p) "Lead-based paint" means paint or other surface  
73 coatings that contains lead at a level defined by the commis-  
74 sioner by legislative rule as provided in section four of this  
75 article.

76 (q) "Lead hazard" means any condition that may result in  
77 exposure to lead including, but not limited to,  
78 lead-contaminated dust, lead-contaminated soil, or lead-based  
79 paint present on accessible surfaces, friction surfaces, impact  
80 surfaces or other lead sources that could result in adverse  
81 effects on human health.

82 (r) "Lead inspector" means an individual who conducts  
83 inspections to determine and report the existence, nature,  
84 severity and location of lead-based paint or lead hazards.

85 (s) "Lead risk assessment" means an investigation of the  
86 potential risk to human health or the environment posed by lead  
87 abatement projects or lead hazards, including, but not limited  
88 to, considerations of toxicity, concentration, form, mobility and  
89 potential of exposure.

90 (t) "Lead risk assessor" means an individual who is  
91 responsible for or conducts lead risk assessments and estab-  
92 lishes priorities for a lead abatement project.

93 (u) "Lead supervisor" means a person employed by a lead  
94 abatement contractor to supervise workers on a lead abatement  
95 project, to develop occupant protection plans and to develop  
96 abatement reports.

97 (v) "OSHA" means the United States Occupational Safety  
98 and Health Administration.

99 (w) "Owner-occupied housing" means a detached single  
100 unit residence owned by the individual living within the unit.

101 (x) "Person" means any individual, partnership, firm,  
102 society, association, trust, corporation, other business entity or  
103 any agency, unit, or instrumentality of federal, state or local  
104 government.

105 (y) "Target housing" means residential structures built prior  
106 to one thousand nine hundred seventy-eight or residential  
107 structures that are confirmed by inspection to contain  
108 lead-based paint.

#### **§16-35-7. Exemptions from notification and licensure.**

1 (a) Homeowners performing lead abatement or interim  
2 abatement controls on their single unit owner-occupied housing  
3 are exempt from the requirements of this article: *Provided*, That  
4 the provisions of this section do not apply to any residential  
5 dwelling occupied by a person or persons other than the owner  
6 or the owner's immediate family as well as to any residential  
7 dwelling where a child with a documented elevated blood lead  
8 level resides.

9 (b) Abatement does not include renovation, remodeling,  
10 landscaping or other activities, when the purpose of such  
11 activities are not intended to permanently eliminate lead-based  
12 paint hazards, but, instead, are designed to repair, restore or  
13 remodel a given structure or dwelling, even though these  
14 activities may incidentally result in a reduction or elimination  
15 of lead-based paint hazards. Abatement also does not include  
16 interim controls, operations and maintenance activities, or other  
17 measures and activities designed to temporarily, but not  
18 permanently reduce lead-based paint hazards.

19 (c) The provisions of this article do not apply to lead-hazard  
20 reduction activities or to persons performing such activities  
21 when such activities are performed wholly within or on an  
22 industrial facility and are performed by persons who are subject  
23 to the training requirements of OSHA: *Provided*, That the  
24 provisions of this article do apply to any child-occupied  
25 building or area such as a child day care center located at an  
26 industrial facility.

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## CHAPTER 136

**(H. B. 4774 — By Delegates Amores, Schadler and Mahan)**

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[Passed March 9, 2006; in effect ninety days from passage.]

[Approved by the Governor on April 3, 2006.]

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AN ACT to amend and reenact §29A-2-7 of the Code of West Virginia, 1931, as amended, relating to the publication of the code of state rules; permitting the technical changes to the procedure governing the publication of the rules; and allowing the use of electronic media.

*Be it enacted by the Legislature of West Virginia:*

That §29A-2-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**§29A-2-7. Publication of state register.**

1 (a) The Legislature intends that the secretary of state offer  
2 to the public convenient and efficient access to copies of the  
3 state register or parts thereof desired by the citizens. The  
4 provisions of this section are enacted in order to provide a

5 means of doing so pending any other means provided by law or  
6 legislative rule.

7 (b) All materials filed in the state register shall be indexed  
8 daily in chronological order of filing with a brief description of  
9 the item filed and a columnar cross index to (1) agency and (2)  
10 section, article and chapter of the code to which it relates and  
11 by which it is filed in the state register and (3) such other  
12 information in the description or cross index as the secretary of  
13 state believes will aid a citizen in using the chronological index.

14 (c) To give users of the code of state rules a means to know  
15 whether the rule is being superseded by a version of the rule  
16 that has become effective, but not yet been final-filed, prepared,  
17 proofed and distributed, or may be superseded by a rule which  
18 is being proposed and promulgated pursuant to article three but  
19 not yet become final, the Secretary of State shall provide with  
20 each update of the code of state rules, a copy of the rule monitor  
21 and its cross index which shows the rules that have become  
22 effective but not yet distributed and the rules which may be  
23 superseded by a rule which is being proposed. The copy of the  
24 rule monitor distributed with the updates of the code of state  
25 rules shall state plainly that this version of the rule monitor only  
26 shows the status of the promulgation of rules as of the date of  
27 distribution of the update of the code of state rules, and that to  
28 obtain the most recent status of the rules, the user should  
29 consult the rule monitor in the most recent publication of the  
30 state register. With the first distribution to the loose leaf version  
31 of the code of state rules the Secretary of State shall also  
32 distribute a divider where the current rule monitor shall be  
33 maintained. With the first distribution, the Secretary of State  
34 shall also include instructions, with a copy for insertion in or on  
35 the front of each volume of the loose-leaf versions of the code  
36 of state rules, to users on how the rule monitor can be utilized  
37 to determine whether the version of the rule in the code of state  
38 rules is currently in effect. This subsection is not to be con-

39 strued to require that subscribers to the updates of the code of  
40 state rules receive a subscription to the state register.

41 (d) The Secretary of State shall cause to be duplicated in  
42 such number as shall be required, on white paper with three  
43 punches suitable for fastening in three-ring binders or electronic  
44 media, the permanent biennial state register, the chronological  
45 index and other materials filed in the register, or any part by  
46 agency or section, article or chapter for subscription at a cost  
47 including labor, paper and postage, sufficient in his judgment  
48 to defray the expense of such duplication. The Secretary of  
49 State shall also offer, at least at monthly intervals, supplements  
50 to the published materials listed above. Any subscription for  
51 monthly supplements shall be offered annually and shall  
52 include the chronological index and materials related to such  
53 agency or agencies, or section, article or chapter of the code as  
54 a person may designate. A person may limit the request to  
55 notices only, to notices and rules, or to notices and proposed  
56 rules, or any combination thereof.

57 (e) Every two years, the Secretary of State shall offer for  
58 purchase succeeding biennial permanent state registers which  
59 shall consist of all rules effective on the date of publication  
60 selected by the Secretary of State, which date shall be at least  
61 two years from the last such publication date, and materials  
62 filed in the state register relating thereto. The cost of the  
63 succeeding biennial permanent state register and for the portion  
64 relating to any agency or any section, article or chapter of the  
65 code which may be designated by a person purchasing the same  
66 shall be fixed in the same manner specified in section eleven of  
67 this article.

68 (f) The Secretary of State may omit from any duplication  
69 made pursuant to subsection (e) of this section any rules the  
70 duplication of which would be unduly cumbersome, expensive  
71 or otherwise inexpedient, if a copy of such rules is made

72 available from the original filing of such rule, at a price not  
73 exceeding the cost of duplication, and if the volume from which  
74 such rule is omitted includes a notice in that portion of the  
75 publication in which the rule would have been located, stating  
76 (1) the general subject matter of the omitted rule, (2) each  
77 section, article and chapter of this code to which the omitted  
78 rule relates, and (3) the means by which a copy of the omitted  
79 rule may be obtained.

80 (g) The Secretary of State may propose changes to the  
81 procedures outlined in the section above by proposing a  
82 legislative rule under the provisions of section nine, article  
83 three of this chapter, but may promulgate no rules containing  
84 those changes unless authorized by the Legislature pursuant to  
85 article three of this chapter.

86 (h) Beginning the first day of July, two thousand one, one  
87 half of the fees and amounts collected for the sale of the state  
88 register, the code of state rules and other copies or data  
89 provided by the Secretary of State shall be deposited in the state  
90 general revenue fund and one half of the fees in the service fees  
91 and collections account established by section two, article one,  
92 chapter fifty-nine of this code for the operations of the office of  
93 the Secretary of State. Any balance remaining on the thirtieth  
94 day of June, two thousand one, in the existing special revenue  
95 account entitled "state register" as established by chapter one  
96 hundred twenty-one, acts of the Legislature, regular session,  
97 one thousand nine hundred eighty-two, shall be transferred to  
98 the service fees and collections account established by section  
99 two, article one, chapter fifty-nine of this code for the operation  
100 of the office of the Secretary of State. The Secretary of State  
101 shall dedicate sufficient resources from that fund or other funds  
102 to provide the services required in this article.

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## CHAPTER 137

**(Com. Sub. for H. B. 4172 — By Delegates Mahan,  
Palumbo, Cann, Pino, Armstead and Overington)**

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[Amended and again passed March 19, 2006,  
as a result of the objections of the Governor; in effect from passage.]  
[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact §64-1-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact article 2, chapter 64 of said code, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; the promulgation of administrative rules by the Department of Administration and the procedures relating thereto legislative mandate or authorization; the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-Making Review Committee and as amended by the Legislature; and disapproving certain rules; authorizing the Department of Administration to promulgate a legislative rule relating to leasing space on behalf of state spending units; authorizing the Department of Administration to promulgate a legislative rule relating to selecting de-

sign-builders under the Design Build Procurement Act; disapproving promulgation of a rule by the Department of Administration relating to cannibalization of state property; disapproving promulgation of a rule by the Department of Administration relating to waste disposal of state property; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to benefit determination and appeals; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Teachers' Defined Benefit Plan; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to service credit for accrued and unused sick and annual leave; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the West Virginia State Police; authorizing the Consolidated Public Retirement Board to promulgate a legislative rule relating to the Deputy Sheriff Retirement System; authorizing the Ethics Commission to promulgate a legislative rule relating to the Commission; authorizing the Ethics Commission to promulgate a legislative rule relating to complaints, investigations and hearings; authorizing the Ethics Commission to promulgate a legislative rule relating to lobbying; authorizing the Ethics Commission to promulgate a legislative rule relating to a code of conduct for administrative law judges; authorizing the Ethics Commission to promulgate a legislative rule relating to the filing of verified time records; authorizing the Ethics Commission to promulgate a legislative rule relating to compliance audits; and authorizing the Ethics Commission to promulgate a legislative rule relating to ethics training requirements for designated public officials.

*Be it enacted by the Legislature of West Virginia:*

That §64-1-1 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that article 2, chapter 64 of said code be amended and reenacted, all to read as follows:



**Article**

1. **General Legislative Authorization.**
2. **Authorization for Department of Administration to Promulgate Legislative Rules.**

**ARTICLE 1. GENERAL LEGISLATIVE AUTHORIZATION.****§64-1-1. Legislative authorization.**

1 Under the provisions of article three, chapter twenty-nine-a  
2 of the Code of West Virginia, the Legislature expressly  
3 authorizes the promulgation of the rules described in articles  
4 two through eleven, inclusive, of this chapter, subject only to  
5 the limitations set forth with respect to each such rule in the  
6 section or sections of this chapter authorizing its promulgation.  
7 Legislative rules promulgated pursuant to the provisions of  
8 articles one through eleven, inclusive, of this chapter in effect  
9 at the effective date of this section shall continue in full force  
10 and effect until reauthorized in this chapter by legislative  
11 enactment or until amended by emergency rule pursuant to the  
12 provisions of article three, chapter twenty-nine-a of this code.

**ARTICLE 2. AUTHORIZATION FOR DEPARTMENT OF ADMINISTRATION TO PROMULGATE LEGISLATIVE RULES.**

- §64-2-1. Department of Administration.  
§64-2-2. Consolidated Public Retirement Board.  
§64-2-3. Ethics Commission.

**§64-2-1. Department of Administration.**

1 (a) The legislative rule filed in the State Register on the  
2 twenty-ninth day of July, two thousand five, authorized under  
3 the authority of section forty-two, article three, chapter five-a  
4 of this code, modified by the Department of Administration to  
5 meet the objections of the Legislative Rule-Making Review  
6 Committee and refiled in the State Register on the third day of  
7 January, two thousand six, relating to the Department of  
8 Administration (Leasing space on behalf of state spending

9 units, 148 CSR 2), is authorized, with the following amend-  
10 ments:

11 On page one, subsection 3.2, following the word “re-  
12 quested” and the comma by striking out the remainder of  
13 subsection 3.2;

14 And,

15 On page seven, subsection 12.4, by striking out the word  
16 “disbar” and inserting in lieu thereof the word “debar”.

17 (b) The legislative rule filed in the State Register on the  
18 twenty-ninth day of July, two thousand five, authorized under  
19 the authority of section six, article twenty-two-a, chapter five of  
20 this code, modified by the Department of Administration to  
21 meet the objections of the Legislative Rule-Making Review  
22 Committee and refiled in the State Register on the eighteenth  
23 day of January, two thousand six, relating to the Department of  
24 Administration (Selecting design-builders under the Design  
25 Build Procurement Act, 148 CSR 11), is authorized, with the  
26 following amendments:

27 On page seven, subsection 13.2, following the word  
28 “Agency” by striking out the remainder of subsection 13.2 and  
29 inserting in lieu thereof the following: “at any time prior to the  
30 start of construction if any requirement of the project is not  
31 satisfied.”; and

32 On page eight, following subsection 14.7 by inserting the  
33 following:

34 **“§148-11-15. Public emergencies.**

35 15.1. If an application for a Design-Build proposal is filed  
36 which indicates a public emergency, the Design-Build Board  
37 shall take immediate action to determine if the project meets the  
38 criteria for a design-build project.

39       15.2. If the criteria are satisfied, the board shall meet to  
40 approve or disapprove the application. If this situation occurs,  
41 the board shall file a notice of emergency meeting with the  
42 Secretary of State in accordance with the Open Governmental  
43 Meetings Act.

44       15.3. A design-build project application may not indicate a  
45 public emergency if the emergency indicated is the result of  
46 self-imposed hardships, such as, neglect, poor planning, or a  
47 lack of organization by the applicant.”

48       (c) The legislative rule filed in the State Register on the  
49 twenty-ninth day of July, two thousand five, authorized under  
50 the authority of section forty-five, article three, chapter five-a  
51 of this code, modified by the Department of Administration to  
52 meet the objections of the Legislative Rule-Making Review  
53 Committee and refiled in the State Register on the fifth day of  
54 December, two thousand five, relating to the Department of  
55 Administration (Cannibalization of state property, 148 CSR  
56 16), is disapproved and not authorized.

57       (d) The legislative rule filed in the State Register on the  
58 twenty-ninth day of July, two thousand five, authorized under  
59 the authority of section forty-five, article three, chapter five-a  
60 of this code, modified by the Department of Administration to  
61 meet the objections of the Legislative Rule-Making Review  
62 Committee and refiled in the State Register on the fifth day of  
63 December, two thousand five, relating to the Department of  
64 Administration (Waste disposal of state property, 148 CSR 17),  
65 is disapproved and not authorized.

#### **§64-2-2. Consolidated Public Retirement Board.**

1       (a) The legislative rule filed in the State Register on the  
2 twenty-ninth day of July, two thousand five, authorized under  
3 the authority of section one, article ten-d, chapter five of this  
4 code, modified by the Consolidated Public Retirement Board to

5 meet the objections of the Legislative Rule-Making Review  
6 Committee and refiled in the State Register on the third day of  
7 January, two thousand six, relating to the Consolidated Public  
8 Retirement Board (Benefit determination and appeal, 162 CSR  
9 2), is authorized.

10 (b) The legislative rule filed in the State Register on the  
11 twenty-ninth day of July, two thousand five, authorized under  
12 the authority of section one, article ten-d, chapter five of this  
13 code, modified by the Consolidated Public Retirement Board to  
14 meet the objections of the Legislative Rule-Making Review  
15 Committee and refiled in the State Register on the third day of  
16 January, two thousand six, relating to the Consolidated Public  
17 Retirement Board (Teachers' Defined Benefit Plan, 162 CSR  
18 4), is authorized.

19 (c) The legislative rule filed in the State Register on the  
20 twenty-ninth day of July, two thousand five, authorized under  
21 the authority of section one, article ten-d, chapter five of this  
22 code, modified by the Consolidated Public Retirement Board to  
23 meet the objections of the Legislative Rule-Making Review  
24 Committee and refiled in the State Register on the third day of  
25 January, two thousand six, relating to the Consolidated Public  
26 Retirement Board (Service credit for accrued and unused sick  
27 and annual leave, 162 CSR 8), is authorized, with the following  
28 amendment:

29 On page four, line twenty-seven, by striking out subsection  
30 7.2 in its entirety and inserting in lieu thereof the following:

31 "7.2. Limitation on the Accrual of Unused Sick and Annual  
32 Leave. – If the West Virginia State Police policy for the accrual  
33 of unused sick and annual leave is more generous than that of  
34 the State of West Virginia for its state agency employees,  
35 trooper members shall receive service credit only for unused  
36 sick and annual leave as provided for by the State of West  
37 Virginia for state employees who are covered by the rules of the

38 West Virginia Division of Personnel, except as provided in  
39 7.2.1.

40 7.2.1. Except as provided in 7.2.2 of this rule, for purposes  
41 of determining service credit that may be received by a trooper  
42 member for accrued and unused annual leave, a trooper member  
43 with up to 480 hours (60 work days) accrued and unused annual  
44 leave that was carried forward from 2005 to 2006 may carry  
45 forward accrued and unused annual leave from 2006 to 2007 in  
46 an amount not to exceed either the amount of accrued and  
47 unused annual leave actually carried over from 2005 to 2006 or  
48 the amount of accrued and unused annual leave actually  
49 remaining to the trooper member at the expiration of calendar  
50 year 2006, whichever is lesser. At the end of each calendar year  
51 thereafter, the trooper member may carry over the lesser of the  
52 amount carried over the previous year or the amount actually  
53 remaining to the trooper member at the expiration of calendar  
54 year.

55 7.2.2. If the amount of a trooper member's unused annual  
56 leave carried over from 2005 to 2006, or from any year to the  
57 next thereafter, is less than the amount of unused annual leave  
58 permitted to be carried over as provided for by the State of  
59 West Virginia for state employees who are covered by the rules  
60 of the West Virginia Division of Personnel, the provisions of  
61 7.2.1 of this rule do not apply and the trooper member shall  
62 thereafter be governed by the provisions of 7.2 of this rule and  
63 for purposes of determining service credit that may be received  
64 by a trooper member for accrued and unused annual leave, is  
65 permitted to carry over annual leave up to but not exceeding the  
66 amounts permitted to be carried over as provided for by the  
67 State of West Virginia for state employees who are covered by  
68 the rules of the West Virginia Division of Personnel.

69 7.2.3. The provisions of this rule govern the determination  
70 of service credit that may be received by a trooper member for  
71 accrued and unused annual leave, and may not be construed to

72 supersede any West Virginia State Police policy for the accrual  
73 of unused sick and annual leave applicable to contributing  
74 trooper members before retirement.”

75 (d) The legislative rule filed in the State Register on the  
76 twenty-ninth day of July, two thousand five, authorized under  
77 the authority of section one, article ten-d, chapter five of this  
78 code, modified by the Consolidated Public Retirement Board to  
79 meet the objections of the Legislative Rule-Making Review  
80 Committee and refiled in the State Register on the third day of  
81 January, two thousand six, relating to the Consolidated Public  
82 Retirement Board (West Virginia State Police, 162 CSR 9), is  
83 authorized.

84 (e) The legislative rule filed in the State Register on the  
85 twenty-ninth day of July, two thousand five, authorized under  
86 the authority of section one, article ten-d, chapter five of this  
87 code, modified by the Consolidated Public Retirement Board to  
88 meet the objections of the Legislative Rule-Making Review  
89 Committee and refiled in the State Register on the third day of  
90 January, two thousand six, relating to the Consolidated Public  
91 Retirement Board (Deputy Sheriff Retirement System, 162 CSR  
92 10), is authorized.

### **§64-2-3. Ethics Commission.**

1 (a) The legislative rule filed in the State Register on the  
2 twentieth day of July, two thousand five, authorized under the  
3 authority of section two, article two, chapter six-b of this code,  
4 modified by the Ethics Commission to meet the objections of  
5 the Legislative Rule-Making Review Committee and refiled in  
6 the State Register on the twentieth day of January, two thousand  
7 six, relating to the Ethics Commission (West Virginia Ethics  
8 Commission, 158 CSR 1), is authorized.

9 (b) The legislative rule filed in the State Register on the  
10 twentieth day of July, two thousand five, authorized under the

11 authority of section two, article two, chapter six-b of this code,  
12 relating to the Ethics Commission (Complaints, investigations  
13 and hearings, 158 CSR 3), is authorized.

14 (c) The legislative rule filed in the State Register on the  
15 twenty-seventh day of July, two thousand five, authorized under  
16 the authority of section two, article two, chapter six-b of this  
17 code, modified by the Ethics Commission to meet the objec-  
18 tions of the Legislative Rule-Making Review Committee and  
19 refiled in the State Register on the twentieth day of January,  
20 two thousand six, relating to the Ethics Commission (Lobbying,  
21 158 CSR 12), is authorized.

22 (d) The legislative rule filed in the State Register on the  
23 twentieth day of July, two thousand five, authorized under the  
24 authority of section five-a, article two, chapter six-b of this  
25 code, relating to the Ethics Commission (code of conduct for  
26 administrative law judges, 158 CSR 13), is authorized.

27 (e) The legislative rule filed in the State Register on the  
28 twenty-seventh day of July, two thousand five, authorized under  
29 the authority of section two, article two, chapter six-b of this  
30 code, relating to the Ethics Commission (filing of verified time  
31 records, 158 CSR 14), is authorized.

32 (f) The legislative rule filed in the State Register on the  
33 twentieth day of July, two thousand five, authorized under the  
34 authority of section two, article two, chapter six-b of this code,  
35 modified by the Ethics Commission to meet the objections of  
36 the Legislative Rule-Making Review Committee and refiled in  
37 the State Register on the twentieth day of January, two thousand  
38 six, relating to the Ethics Commission (Compliance audits, 158  
39 CSR 15), is authorized.

40 (g) The legislative rule filed in the State Register on the  
41 twenty-seventh day of July, two thousand five, authorized under  
42 the authority of section two, article two, chapter six-b of this

43 code, modified by the Ethics Commission to meet the objec-  
44 tions of the Legislative Rule-Making Review Committee and  
45 refiled in the State Register on the twentieth day of January,  
46 two thousand six, relating to the Ethics Commission (Ethics  
47 training requirements for designated public officials, 158 CSR  
48 18), is authorized.

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## CHAPTER 138

**(Com. Sub. for H. B. 4135 — By Delegates Mahan,  
Palumbo, Cann, Pino, Armstead and Overington)**

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[Passed March 11, 2006; in effect from passage.]

[Approved by the Governor on April 4, 2006.]

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AN ACT to amend and reenact article 3, chapter 64 of the Code of West Virginia, 1931, as amended, all relating generally to the promulgation of administrative rules by the various executive or administrative agencies and the procedures relating thereto; legislative mandate or authorization for the promulgation of certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the state register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the legislative rule-making review committee and as amended by the Legislature; directing studies and reports to the Legislature and further rulemaking in certain circum-



stances; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Nox Budget Trading Program as a means of the control and reduction of nitrogen oxides from non-electric generating units as a means to mitigate the transport of ozone precursors; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants pursuant to 40 CFR Part 61; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to standards of performance for new stationary sources Pursuant to 40 CFR Part 60; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to acid rain provisions and permits; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to emission standards for hazardous air pollutants for source categories pursuant to 40 CFR Part 63; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Mercury Budget Trading Program to reduce mercury emissions; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual nitrogen oxide emissions to mitigate interstate transport of fine particulate matter and nitrogen oxides; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of ozone season nitrogen oxide emissions to mitigate interstate transport of ozone and nitrogen oxides; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the control of annual sulfur dioxide emissions to mitigate interstate transport of fine particulate matter and sulfur dioxides; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to surface mining reclamation; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to coalbed methane wells; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Oil and Gas Conservation Commission; authorizing the Department of Environmen-

tal Protection to promulgate a legislative rule relating to solid waste management; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to hazardous waste management; relating to authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the requirements governing water quality standards; relating to authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Community Infrastructure Investment Program; authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the prevention and control of air pollution from hazardous waste treatment, storage or disposal facilities; and authorizing the Department of Environmental Protection to promulgate a legislative rule relating to the Environmental Excellence Program.

*Be it enacted by the Legislature of West Virginia:*

That article 3, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO PROMULGATE LEGISLATIVE RULES.**

§64-3-1. Division of Environmental Protection.

§64-3-2. Oil and Gas Conservation Commission.

§64-3-3. Directing further study of 45CSR37.

§64-3-4. Directing further study of 35CSR3.

**§64-3-1. Division of Environmental Protection.**

1           (a) The legislative rule filed in the state register on the  
2 twenty-second day of March, two thousand five, authorized  
3 under the authority of section four, article five, chapter twenty-  
4 two, of this code, relating to the Department of Environmental  
5 Protection (Nox Budget Trading Program as a means of the  
6 control and reduction of nitrogen oxides from non-electric  
7 generating units as a means to mitigate the transport of ozone  
8 precursors, 45 CSR 1), is authorized.

9 (b) The legislative rule filed in the state register on the  
10 twenty-ninth day of July, two thousand five, authorized under  
11 the authority of section four, article five, chapter twenty-two, of  
12 this code, relating to the Department of Environmental  
13 Protection (emission standards for hazardous air pollutants  
14 pursuant to 40 CFR Part 61, 45 CSR 15), is authorized.

15 (c) The legislative rule filed in the state register on the  
16 twenty-ninth day of July, two thousand five, authorized under  
17 the authority of section four, article five, chapter twenty-two, of  
18 this code, relating to the Department of Environmental  
19 Protection (standards of performance for new stationary sources  
20 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

21 (d) The legislative rule filed in the state register on the  
22 twenty-ninth day of July, two thousand five, authorized under  
23 the authority of section four, article five, chapter twenty-two, of  
24 this code, relating to the Department of Environmental  
25 Protection (acid rain provisions and permits, 45 CSR 33), is  
26 authorized.

27 (e) The legislative rule filed in the state register on the  
28 twenty-ninth day of July, two thousand five, authorized under  
29 the authority of section four, article five, chapter twenty-two, of  
30 this code, relating to the Department of Environmental  
31 Protection (emission standards for hazardous air pollutants for  
32 source categories pursuant to 40 CFR Part 63, 45 CSR 34), is  
33 authorized.

34 (f) The legislative rule filed in the state register on the  
35 twenty-ninth day of July, two thousand five, authorized under  
36 the authority of section four, article five, chapter twenty-two, of  
37 this code, relating to the Department of Environmental  
38 Protection (Mercury Budget Trading Program to reduce  
39 mercury emissions, 45 CSR 37), is authorized.

40 (g) The legislative rule filed in the state register on the  
41 twenty-ninth day of July, two thousand five, authorized under

42 the authority of section four, article five, chapter twenty-two, of  
43 this code, relating to the Department of Environmental  
44 Protection (control of annual nitrogen oxide emissions to  
45 mitigate interstate transport of fine particulate matter and  
46 nitrogen oxides, 45 CSR 39), is authorized.

47 (h) The legislative rule filed in the state register on the  
48 twenty-ninth day of July, two thousand five, authorized under  
49 the authority of section four, article five, chapter twenty-two, of  
50 this code, relating to the Department of Environmental  
51 Protection (control of ozone season nitrogen oxide emissions to  
52 mitigate interstate transport of ozone and nitrogen oxides, 45  
53 CSR 40), is authorized.

54 (i) The legislative rule filed in the state register on the  
55 twenty-ninth day of July, two thousand five, authorized under  
56 the authority of section four, article five, chapter twenty-two, of  
57 this code, relating to the Department of Environmental  
58 Protection (control of annual sulfur dioxide emissions to  
59 mitigate interstate transport of fine particulate matter and sulfur  
60 dioxides, 45 CSR 41), is authorized.

61 (j) The legislative rule filed in the state register on the  
62 second day of November, two thousand five, authorized under  
63 the authority of section four, article three, chapter twenty-two,  
64 of this code, relating to the Department of Environmental  
65 Protection (West Virginia surface mining reclamation, 38 CSR  
66 2), is authorized, with the following amendments:

67 On page seventy-one, section two, paragraph §38-2.7.2.e.1,  
68 after line five, by inserting a new paragraph, designated §38-  
69 2.7.2.e.1, to read as follows:

70 §38-2.7.2.e.1. Bio-oil Cropland. Agricultural production  
71 of renewable energy crops through long-term intensive  
72 cultivation of close-growing commercial biological oil species  
73 (such as soybeans, rapeseed or canola) for harvest and ultimate

74 production of bio-fuels as an alternative to petroleum based  
75 fuels and other valuable products;

76 On page seventy-one, section two, paragraph §38-2.7.3.d,  
77 after §38-2.7.3.c, by inserting a new paragraph, designated §38-  
78 2.7.3.d, to read as follows:

79 §38-2.7.3.d. A change in postmining land use to bio-oil  
80 cropland constitutes an equal or better use of the affected land,  
81 as compared with pre-mining use for purposes of W. Va. Code  
82 §22-3-13(c) in the determination of variances of approximate  
83 original contour for mountaintop removal operations subject to  
84 §38-2-7.8 of this rule;

85 On page one hundred two, after §38-2-7.7.f.3, by inserting  
86 a new subsection, designated §38-2-7.8, to read as follows:

87 **7.8. Bio-oil Crop Land.**

88 7.8.1. Criteria for Approving Bio-oil Cropland Postmining  
89 Land Use.

90 7.8.1.a. An alternative postmining land use for bio-oil  
91 cropland may be approved by the secretary after consultation  
92 with the landowner and/or land management agency having  
93 jurisdiction over state or federal lands: *Provided*, That the  
94 following conditions have been met.

95 7.8.1.a.1. There is a reasonable likelihood for the achieve-  
96 ment of bio-oil crop production (such as soybeans, rapeseed or  
97 canola) as witnessed by a contract between the landowner and  
98 a commercially viable individual or entity, binding the parties  
99 to the production of bio-oil crops for a measurement period of  
100 at least two years after the completion of all restoration activity  
101 within the permitted boundaries;

102 7.8.1.a.2. The bio-oil crop reclamation plan is reviewed  
103 and approved by an agronomist employed by the West Virginia

104 Department of Agriculture. The applicants shall pay for any  
105 review under this section;

106 7.8.1.a.3. The use does not present any actual or probable  
107 hazard to the public health or safety or threat of water diminu-  
108 tion or pollution;

109 7.8.1.a.4. Bio-oil crop production is not:

110 7.8.1.a.4.A. Impractical or unreasonable;

111 7.8.1.a.4.B. Inconsistent with applicable land use policies  
112 or plans;

113 7.8.1.a.4.C. Going to involve unreasonable delays in  
114 implementation; or

115 7.8.1.a.4.D. In violation of any applicable law.

116 7.8.2. Soil reconstruction specifications for bio-oil crop  
117 postmining land use shall be established by the W. Va.  
118 Department of Agriculture in consultation with the U. S.  
119 Natural Resources Conservation Service and based upon the  
120 standards of the National Cooperative Soil Survey and shall  
121 include, at a minimum, physical and chemical characteristics of  
122 reconstructed soils and soil descriptions containing soil-horizon  
123 depths, soil densities, soil pH, and other specifications such that  
124 constructed soils will have the capability of achieving levels of  
125 yield equal to, or higher than, those required for the production  
126 of commercial seed oils species (such as soybeans, rapeseed or  
127 canola) and meets the requirement of 14.3 of this rule.

128 7.8.3. Bond Release.

129 7.8.3.a. Phase I bond release shall not be approved until W.  
130 Va. Department of Agriculture certifies and the secretary finds  
131 that the soil meets the criteria established in this rule and has

132 been placed in accordance with this rule. The applicants shall  
133 pay for any review under this section.

134 7.8.3.b. The secretary may authorize in consultation with  
135 the W. Va. Department of Agriculture, the Phase III bond  
136 release only after the applicant affirmatively demonstrates, and  
137 the secretary finds, that the reclaimed land can support bio-oil  
138 production; and there is a binding contract for production which  
139 meets the requirements of subdivision 7.8.1.a of this rule; and  
140 the requirements of paragraph 9.3.f.2 of this rule are met. The  
141 applicant shall pay for any review under this section.

142 7.8.3.c. Once final bond release is authorized, the  
143 permittee's responsibility for implementing the bio-oil cropland  
144 reclamation plan shall cease.

145 (k) The legislative rule filed in the state register on the  
146 twenty-eighth day of July, two thousand five, authorized under  
147 the authority of section four, article twenty-one, chapter twenty-  
148 two, of this code, relating to the Department of Environmental  
149 Protection (coalbed methane wells, 35 CSR 3), is authorized.

150 (l) The legislative rule filed in the state register on the  
151 nineteenth day of July, two thousand five, authorized under the  
152 authority of section five, article fifteen, chapter twenty-two, of  
153 this code, relating to the Department of Environmental  
154 Protection (solid waste management, 33 CSR 1), is authorized.

155 (m) The legislative rule filed in the state register on the  
156 twenty-eighth day of July, two thousand five, authorized under  
157 the authority of section six, article eighteen, chapter twenty-  
158 two, of this code, relating to the Department of Environmental  
159 Protection (hazardous waste management, 33 CSR 20), is  
160 authorized.

161 (n) The legislative rule filed in the state register on the  
162 twenty-ninth day of July, two thousand five, authorized under

163 the authority of section seven-b, article eleven, chapter twenty-  
164 two, of this code, relating to the Department of Environmental  
165 Protection (requirements governing water quality standards, 47  
166 CSR 2), is authorized.

167 (o) The legislative rule filed in the state register on the  
168 twenty-sixth day of October, two thousand five, authorized  
169 under the authority of section nine, article twenty-eight, chapter  
170 twenty-two, of this code, relating to the Department of  
171 Environmental Protection (Community Infrastructure Invest-  
172 ment Program, 47 CSR 61), is authorized.

173 (p) The legislative rule filed in the state register on the  
174 twenty-ninth day of July, two thousand five, authorized under  
175 the authority of section four, article five, chapter twenty-two, of  
176 this code, modified by the Department of Environmental  
177 Protection to meet the objections of the legislative rule-making  
178 review committee and refiled in the state register on the twenty-  
179 first day of November, two thousand five, relating to the  
180 Department of Environmental Protection (to prevent and  
181 control air pollution from hazardous waste treatment, storage or  
182 disposal facilities, 45 CSR 25), is authorized.

183 (q) The legislative rule filed in the state register on the  
184 twenty-ninth day of July, two thousand five, authorized under  
185 the authority of section four, article twenty-five, chapter  
186 twenty-two, of this code, modified by the Department of  
187 Environmental Protection to meet the objections of the  
188 legislative rule-making review committee and refiled in the  
189 state register on the eighteenth day of January, two thousand  
190 six, relating to the Department of Environmental Protection  
191 (Environmental Excellence Program, 60 CSR 8), is authorized.

### **§64-3-2. Oil and Gas Conservation Commission.**

1 The legislative rule filed in the state register on the twenty-  
2 eighth day of July, two thousand five, authorized under the



3 authority of section five, article nine, chapter twenty-two-c, of  
4 this code, relating to the Department of Environmental  
5 Protection (rules of the Commission, 39 CSR 1), is authorized.

**§64-3-3. Directing further study of 45CSR37.**

1 (a) The Legislature declares that mercury is highly toxic,  
2 persistent and bioaccumulates in the food chain and is trans-  
3 ported through the atmosphere and deposits on land and water  
4 bodies, and according to the Environmental Protection Agency,  
5 other serious human health risks, known and unknown, may  
6 result from human exposure of mercury in any amount.  
7 Emissions from electric utility coal fired steam generating units  
8 and other industrial activities cause significant discharges of  
9 mercury in West Virginia, therefore, it is appropriate to closely  
10 monitor these activities and study this pollutant.

11 (b) The Commissioner of the Bureau for Public Health,  
12 pursuant to and consistent with section six, article one, chapter  
13 sixteen of this code, is directed to participate with the Depart-  
14 ment of Environmental Protection to conduct an assessment on  
15 the actual and potential human health pathways and risks from  
16 mercury consumption and make appropriate recommendations  
17 to the Department of Environmental Protection.

18 (c) Pursuant to and consistent with section three-a, article  
19 one, chapter twenty-two of this code, The Division of Air  
20 Quality and the Department of Environmental Protection are  
21 directed to further study 45CSR37 [Mercury Budget Trading  
22 Program to Reduce Mercury Emissions] to evaluate scientific  
23 evidence, considering specific environmental characteristics of  
24 West Virginia, hold public hearings and accept and review  
25 appropriate evidence regarding mercury exposure, including  
26 recommendations from the Bureau for Public Health. The  
27 Department of Environmental Protection shall also conduct an  
28 assessment which is also to include an evaluation of the  
29 available mercury control technologies for coal-fired steam

30 generating units and other industrial activities that emit  
31 mercury, the availability and cost of mercury measurements  
32 technology and an analysis of feasibility of implementation of  
33 these technologies. The Division of Air Quality shall also  
34 consider and address any Bureau for Public Health recommen-  
35 dations considering health risks of West Virginians, and enter  
36 a finding as to whether the citizens of West Virginia or regions  
37 of West Virginia are exposed to a potential health risk because  
38 of mercury contamination, and if so, to propose for legislative  
39 promulgation prior to the first day of January, two thousand  
40 seven, revisions to 45 CSR 37 and any other appropriate  
41 rulemaking to effectuate its findings. The division may also  
42 recommend legislation that may be necessary to protect human  
43 health and the environment consistent with the division's  
44 findings.

**§64-3-4. Directing further study of 35CSR3.**

1 (a) Department of Environmental Protection's Office of Oil  
2 and Gas's Legislative Rule 35CSR3, [Coalbed Methane Wells]  
3 authorized pursuant to section one of this article, addresses the  
4 new technology of horizontal drilling of coalbed methane, the  
5 process of drilling along coal seams to increase production of  
6 a single coalbed methane well. However, the Legislature finds,  
7 because of the newness of the technology and drilling methods,  
8 further review and study is required to consider and address any  
9 potential adverse environmental impacts from coalbed methane  
10 wells. The Office of Oil and Gas is directed to conduct a study  
11 of this new process as follows:

12 (1) Conduct an analysis of literature and seek input from  
13 experts in hydrology, geology and engineering, to develop a  
14 thorough understanding of coalbed methane drilling, how the  
15 drilling is physically done, the type of equipment utilized, fluids  
16 used or encountered, and pressures induced or encountered in  
17 the drilling process;

18       (2) Review the regulatory scheme of other states in the  
19 Appalachian basin to determine if innovative regulatory  
20 approaches would be instructive and should be incorporated  
21 into West Virginia's regulatory scheme;

22       (3) Review the potential effect of drilling coalbed methane  
23 wells in areas where abandoned or active gas or oil wells are  
24 located; and

25       (4) Assess whether special requirements should be adopted  
26 providing protections for groundwater and water wells, to  
27 prevent contamination and other adverse impacts.

28       (b) The Office of Oil and Gas shall call upon other  
29 divisions of the Department of Environmental Protection as  
30 needed to assist in this review, and report to the Legislature by  
31 the first of January, two thousand seven, and propose further  
32 legislative rule amendments to the rule as are necessary and  
33 appropriate.

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## CHAPTER 139

**(Com. Sub. for S. B. 396 — By Senators Minard,  
Fanning, Prezioso, Unger, Boley and Minear)**

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[Passed March 9, 2006; in effect from passage.]

[Approved by the Governor on March 22, 2006.]

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AN ACT to amend and reenact article 4, chapter 64 of the Code of West Virginia, 1931, as amended, relating generally to the promulgation of administrative rules by the Department of Education and the Arts and the procedures relating thereto; legislative mandate or authorization for the promulgation of

certain legislative rules by various executive or administrative agencies of the state; authorizing certain of the agencies to promulgate certain legislative rules in the form that the rules were filed in the State Register; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-making Review Committee; authorizing certain of the agencies to promulgate certain legislative rules as amended by the Legislature; authorizing certain of the agencies to promulgate certain legislative rules with various modifications presented to and recommended by the Legislative Rule-making Review Committee and as amended by the Legislature; and authorizing the Division of Rehabilitation Services to promulgate a legislative rule relating to the Ron Yost Personal Assistance Services Board.

*Be it enacted by the Legislature of West Virginia:*

That article 4, chapter 64 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 4. AUTHORIZATION FOR DEPARTMENT OF EDUCATION  
AND THE ARTS TO PROMULGATE LEGISLATIVE  
RULES.**

**§64-4-1. Division of Rehabilitation Services.**

1       The legislative rule filed in the State Register on the  
2 twenty-seventh day of May, two thousand five, authorized  
3 under the authority of section six, article ten-L, chapter eighteen  
4 of this code, modified by the Division of Rehabilitation  
5 Services to meet the objections of the Legislative Rule-making  
6 Review Committee and refiled in the State Register on the  
7 eighteenth day of November, two thousand five, relating to the  
8 Division of Rehabilitation Services (Ron Yost Personal  
9 Assistance Services Act Board, 198 CSR 1), is authorized.