

SB 149

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WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

Committee Substitute for Committee Substitute for
SENATE BILL NO. 149

*(By Senators Tomblin, Mr. President, and Sprouse, Jr.
By Request of the Executive)*

PASSED March 13, 2004

In Effect 90 days from Passage

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

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FOR

Senate Bill No. 149

(BY SENATORS TOMBLIN, MR. PRESIDENT,
AND SPROUSE, BY REQUEST OF THE EXECUTIVE)

[Passed March 13, 2004; in effect ninety days from passage.]

AN ACT to repeal §5A-2-2, §5A-2-3, §5A-2-4, §5A-2-5, §5A-2-6, §5A-2-7, §5A-2-8, §5A-2-9, §5A-2-10, §5A-2-11, §5A-2-12, §5A-2-13, §5A-2-14, §5A-2-14a, §5A-2-15, §5A-2-16, §5A-2-17, §5A-2-18, §5A-2-19, §5A-2-20, §5A-2-21, §5A-2-22, §5A-2-23, §5A-2-26, §5A-2-27, §5A-2-28, §5A-2-29, §5A-2-30 and §5A-2-31 of the code of West Virginia, 1931, as amended; to amend and reenact §5A-1-2, §5A-1-4 and §5A-1-5 of said code; to amend and reenact §5A-2-1, §5A-2-24 and §5A-2-32 of said code; and to amend said code by adding thereto a new chapter, designated §11B-1-1, §11B-1-2, §11B-1-3, §11B-1-4, §11B-1-5, §11B-1-6, §11B-1-7, §11B-2-1, §11B-2-2, §11B-2-3, §11B-2-4, §11B-2-5, §11B-2-6, §11B-

2-7, §11B-2-8, §11B-2-9, §11B-2-10, §11B-2-11, §11B-2-12, §11B-2-13, §11B-2-14, §11B-2-15, §11B-2-16, §11B-2-17, §11B-2-18, §11B-2-19, §11B-2-20, §11B-2-21, §11B-2-22, §11B-2-23, §11B-2-24, §11B-2-25, §11B-2-26, §11B-2-27, §11B-2-28, §11B-2-29, §11B-2-30 and §11B-2-31, all relating generally to department of tax and revenue and office of secretary of tax and revenue and their powers, duties and responsibilities; changing the name of department of tax and revenue to department of revenue; changing name of office of secretary of tax and revenue to office of secretary of revenue; increasing membership of council of finance and administration by making secretary of revenue an ex officio member; continuing misdemeanor penalties for noncompliance by secretaries and spending officers with requirements to provide certain budget and budget-related information; identifying agencies, boards, commissions, division and offices comprising department of revenue; specifying powers and duties of secretary; requiring periodic reports; authorizing delegations of authority; providing rules for safeguarding confidential information; providing right of appeal from interference with functioning of an agency; transferring budget section of finance division of department of administration to department of revenue and making secretary of revenue state budget director; providing rules to effectuate transfer of budget section and transition; moving language pertaining to work of budget section and preparation of budget to new chapter of the code; and making other technical or conforming changes to implement or effectuate these various changes.

Be it enacted by the Legislature of West Virginia:

That §5A-2-2, §5A-2-3, §5A-2-4, §5A-2-5, §5A-2-6, §5A-2-7, §5A-2-8, §5A-2-9, §5A-2-10, §5A-2-11, §5A-2-12, §5A-2-13, §5A-2-14, §5A-2-14a, §5A-2-15, §5A-2-16, §5A-2-17, §5A-2-18, §5A-2-19, §5A-2-20, §5A-2-21, §5A-2-22, §5A-2-23, §5A-2-26, §5A-2-27, §5A-2-28, §5A-2-29, §5A-2-30 and §5A-2-31 of the code of West Virginia, 1931, as amended, be repealed; that §5A-1-2, §5A-1-4 and §5A-1-5 of said code be amended and reen-

acted; that §5A-2-1, §5A-2-24 and §5A-2-32 of said code be amended and reenacted; and that said code be amended by adding thereto a new chapter, designated §11B-1-1, §11B-1-2, §11B-1-3, §11B-1-4, §11B-1-5, §11B-1-6, §11B-1-7, §11B-2-1, §11B-2-2, §11B-2-3, §11B-2-4, §11B-2-5, §11B-2-6, §11B-2-7, §11B-2-8, §11B-2-9, §11B-2-10, §11B-2-11, §11B-2-12, §11B-2-13, §11B-2-14, §11B-2-15, §11B-2-16, §11B-2-17, §11B-2-18, §11B-2-19, §11B-2-20, §11B-2-21, §11B-2-22, §11B-2-23, §11B-2-24, §11B-2-25, §11B-2-26, §11B-2-27, §11B-2-28, §11B-2-29, §11B-2-30 and §11B-2-31, all to read as follows:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-2. Department of administration and office of secretary; secretary; division of finance and administration abolished; division directors.

1 (a) The department of administration and the office of
2 secretary of administration are hereby continued in the
3 executive branch of state government. The secretary shall
4 be the chief executive officer of the department and shall
5 be appointed by the governor, by and with the advice and
6 consent of the Senate, for a term not exceeding the term of
7 the governor. The department of administration is hereby
8 authorized to receive federal funds.

9 (b) The secretary shall serve at the will and pleasure of
10 the governor. The annual compensation of the secretary
11 shall be as specified in section two-a, article seven, chapter
12 six of this code.

13 (c) There shall be in the department of administration a
14 finance division, a general services division, an informa-
15 tion services and communications division, an insurance
16 and retirement division, a personnel division and a pur-
17 chasing division. The insurance and retirement division
18 shall be comprised of the public employees retirement
19 system and board of trustees, the public employees insur-
20 ance agency and public employees advisory board, the

21 teachers' retirement system and teachers' retirement
22 board, and the board of risk and insurance management.
23 Each division shall be headed by a director who may also
24 head any and all sections within that division and who
25 shall be appointed by the secretary. In addition to the
26 divisions enumerated above, there shall also be in the
27 department of administration those agencies, boards,
28 commissions and councils specified in section one, article
29 two, chapter five-f of this code.

§5A-1-4. Council of finance and administration.

1 (a) The council of finance and administration is hereby
2 created and shall be composed of eleven members, five of
3 whom shall serve ex officio and six of whom shall be
4 appointed as herein provided. The ex officio members
5 shall be the secretary of the department of administration,
6 the secretary of revenue, the attorney general or his or her
7 designee, the state treasurer or his or her designee and the
8 state auditor or his or her designee; such designees being
9 authorized voting ones. From the membership of the
10 Legislature, the president of the Senate shall appoint three
11 senators as members of the council, not more than two of
12 whom shall be members of the same political party, and
13 the speaker of the House of Delegates shall appoint three
14 delegates as members of the council, not more than two of
15 whom shall be members of the same political party.
16 Members of the council appointed by the president of the
17 Senate and the speaker of the House of Delegates shall
18 serve at the will and pleasure of the officer making their
19 appointment. The secretary of administration shall serve
20 as chairman of the council. Meetings of the council shall
21 be upon call of the chairman or a majority of the members
22 thereof. It shall be the duty of the chairman to call no less
23 than four meetings in each fiscal year, one in each quarter,
24 or more often as necessary, and all meetings shall be open
25 to the public. All meetings of the council shall be held at
26 the capitol building in a suitable committee room which
27 shall be made available by the Legislature for such

28 purpose: *Provided*, That the second quarterly meeting in
29 each fiscal year shall be held in November and shall be a
30 joint meeting with the joint committee on government and
31 finance of the Legislature called jointly by the president of
32 the Senate, speaker of the House of Delegates and secre-
33 tary of administration.

34 (b) The council shall serve the department of administra-
35 tion and the director of the budget in an advisory capacity
36 for purposes of reviewing the performance of the adminis-
37 trative and fiscal procedures of the state, including the
38 oversight of all federal funds, and shall have the following
39 duties:

40 (1) To advise with the director of the budget in respect to
41 matters of budgetary intent and efficiency, including the
42 budget bill and budget document detail and format;

43 (2) To advise with the secretary and the director of the
44 budget concerning studies of government and administra-
45 tion concerning fiscal policy as it considers appropriate;

46 (3) To advise with the secretary and the director of the
47 budget in the preparation of studies designed to provide
48 long-term capital planning and finance for state institu-
49 tions and agencies; and

50 (4) To advise with the secretary and the director of the
51 budget in respect to the application for, and receipt and
52 expenditure of, anticipated or unanticipated federal funds.

53 (c) The appointed, non ex officio members of the council
54 shall be entitled to receive compensation and reimburse-
55 ment for expenses in connection with performance of their
56 duties, during interim periods, if not otherwise receiving
57 the same for identical periods, as is authorized by the
58 applicable sections of article two-a, chapter four of the
59 code in respect to performance of duties either within the
60 state or, if necessary, out of state. Compensation and
61 expenses shall be incurred and paid only after approval by
62 the joint committee on government and finance.

§5A-1-5. Reports by secretary.

1 The secretary shall make an annual report to the gover-
2 nor concerning the conduct of the department and the
3 administration of the state finances as they pertain to
4 programs administered by the department of administra-
5 tion. The secretary shall also make other reports as the
6 governor may require.

ARTICLE 2. FINANCE DIVISION.

§5A-2-1. Finance division created; director; sections; powers and duties.

1 (a) The finance division of the department of administra-
2 tion is hereby continued except that the budget section is
3 transferred to and shall become a part of the department
4 of revenue on the effective date of this section as amended
5 in the year two thousand four. The finance division shall
6 be under the supervision and control of a director, who
7 shall be appointed by the secretary. There shall be in the
8 finance division an accounting section and a financial
9 accounting and reporting section.

10 (b) The accounting section shall have the duties con-
11 ferred upon it by this article and by the secretary, includ-
12 ing, but not limited to, general financial accounting,
13 payroll, accounts payable and accounts receivable for the
14 department of administration.

15 (c) The financial accounting and reporting section shall
16 establish and maintain the centralized accounting system
17 required by section twenty-four of this article and issue
18 annual general purpose financial statements in accordance
19 with generally accepted accounting principles and with
20 this article.

§5A-2-24. Management accounting.

1 (a) It is the intent of this section to establish a central-
2 ized accounting system for the offices of the auditor,
3 treasurer, board of investments, secretary of administra-

4 tion and each spending unit of state government to provide
5 more accurate and timely financial data and increase
6 public accountability.

7 (b) Notwithstanding any provision of this code to the
8 contrary, the secretary of administration shall develop and
9 implement a new centralized accounting system for the
10 planning, reporting and control of state expenditures in
11 accordance with generally accepted accounting principles
12 to be used by the auditor, treasurer, board of investments,
13 secretary and all spending units. The accounting system
14 shall provide for adequate internal controls, accounting
15 procedures, recording income collections, systems opera-
16 tion procedures and manuals, and periodic and annual
17 general purpose financial statements, as well as provide
18 for the daily exchange of needed information among users.

19 (c) The financial statements shall be audited annually by
20 outside independent certified public accountants, who
21 shall also issue an annual report on federal funds in
22 compliance with federal requirements.

23 (d) The secretary shall implement the centralized ac-
24 counting system no later than the thirty-first day of
25 December, one thousand nine hundred ninety-three, and,
26 after approval of the system by the governor, shall require
27 its use by all spending units. The auditor, treasurer, board
28 of investments, secretary and every spending unit shall
29 maintain their computer systems and data files in a
30 standard format in conformity with the requirements of
31 the centralized accounting system. Any system changes
32 must be approved in advance of the change by the secre-
33 tary. The auditor, treasurer, board of investments, budget
34 director and secretary of administration shall provide on-
35 line interactive access to the daily records maintained by
36 their offices.

**§5A-2-32. Submission of requests, amendments, reports, etc., to
legislative auditor; misdemeanor penalty for
noncompliance.**

1 (a) The provisions of section twenty-five of this article
2 requiring the secretary to supply copies of the documents
3 specified therein to the legislative auditor shall be strictly
4 adhered to by the secretary.

5 (b) Any failure by a secretary to comply with the provi-
6 sions of subsection (a) of this section shall be a misde-
7 meanor and, upon conviction thereof, the secretary shall
8 be fined the sum of one thousand dollars. This penalty
9 shall be in addition to other penalties provided elsewhere
10 in this article and other remedies provided by law.

CHAPTER 11B. DEPARTMENT OF REVENUE.

ARTICLE 1. DEPARTMENT OF REVENUE.

§11B-1-1. Department of tax and revenue renamed department of revenue; office of secretary of tax and revenue renamed office of secretary of revenue.

1 (a) The department of tax and revenue and the office of
2 secretary of tax and revenue are hereby renamed, respec-
3 tively, the department of revenue and the office of secre-
4 tary of revenue and continued in the executive branch of
5 state government. Wherever in this code the words "office
6 of secretary of tax and revenue" or "secretary of tax and
7 revenue" are used, such words shall now mean the office
8 of secretary of revenue or the secretary of revenue.

9 (b) The secretary of revenue shall be the chief executive
10 officer of the department and director of the budget. The
11 secretary shall be appointed by the governor, by and with
12 the advice and consent of the Senate, for a term not
13 exceeding the term of the governor.

14 (c) The department of revenue is hereby authorized to
15 receive federal funds.

16 (d) The secretary shall serve at the will and pleasure of
17 the governor. The annual compensation of the secretary
18 shall be as specified in section two-a, article seven, chapter
19 six of this code.

§11B-1-2. Agencies, boards, commissions, divisions and offices comprising the department of finance and revenue.

1 (a) There shall be in the department of revenue the
2 following agencies, boards, commissions, divisions and
3 offices, including all of the allied, advisory, affiliated or
4 related entities which are incorporated in and shall be
5 administered as part of the department of revenue:

6 (1) The alcohol beverage control commissioner provided
7 for in article sixteen, chapter eleven of this code and
8 article one, chapter sixty of this code;

9 (2) The division of banking provided for in article two,
10 chapter thirty-one-a of this code;

11 (3) The board of banking and financial institutions
12 provided for in article three, chapter thirty-one-a of this
13 code;

14 (4) The state budget office, heretofore known as the
15 budget section of the finance division, department of
16 administration, previously provided for in article two,
17 chapter five-a of this code and now provided for in article
18 two of this chapter;

19 (5) The agency of insurance commissioner provided for
20 in article two, chapter thirty-three of this code;

21 (6) The lending and credit rate board provided for in
22 chapter forty-seven-a of this code;

23 (7) The lottery commission and the position of lottery
24 director provided for in article twenty-two, chapter
25 twenty-nine of this code;

26 (8) The municipal bond commission provided for in
27 article three, chapter thirteen of this code;

28 (9) The office of tax appeals provided for in article ten-a,
29 chapter eleven of this code;

30 (10) The state athletic commission provided for in article
31 five-a, chapter twenty-nine of this code;

32 (11) The tax division provided for in article one, chapter
33 eleven of this code; and

34 (12) The West Virginia racing commission provided for
35 in article twenty-three, chapter nineteen of this code.

36 (b) The department shall also include any other agency,
37 board, commission, division, office or unit subsequently
38 incorporated in the department by the Legislature.

**§11B-1-3. Powers and duties of secretary, administrators,
division heads and employees.**

1 (a) The secretary shall have control and supervision of
2 the department of revenue and shall be responsible for the
3 work of each of its employees.

4 (b) The secretary shall have the power and authority
5 specified in this article and article two, chapter five-f of
6 this code and as specified elsewhere in this code, whether
7 heretofore or hereinafter enacted by the Legislature and
8 whether the code provision refers to the secretary of
9 revenue or to the secretary of tax and revenue.

10 (c) The secretary has authority to assess agencies, boards,
11 commissions, divisions and offices in the department of
12 revenue for the payment of expenses of the office of the
13 secretary.

14 (d) The secretary shall have plenary power and authority
15 within and for the department to employ professional
16 staff, including, but not limited to, certified public accoun-
17 tants, economists and attorneys, assistants and other
18 employees as necessary for the efficient operation of the
19 department.

20 (e) The secretary and administrators, division heads and
21 other employees of the department shall perform the
22 duties specified in this code for their respective offices or

23 positions and shall also perform other duties as the
24 governor prescribes.

§11B-1-4. Reports by secretary.

1 The secretary shall make an annual report to the gover-
2 nor concerning the conduct of the department and the
3 administration of the budget. The secretary shall also
4 make other reports as the governor may require.

§11B-1-5. Delegation of powers and duties by secretary.

1 The secretary may delegate powers and duties vested in
2 the secretary to his or her assistants and employees, but
3 the secretary shall be responsible for all official acts of the
4 department.

§11B-1-6. Confidentiality of information.

1 (a) *Information provided to secretary under expectation*
2 *of confidentiality.* – Information that would be confiden-
3 tial under the laws of this state when provided to a
4 division, agency, board, commission or office within the
5 department of revenue shall be confidential when that
6 information is provided to the secretary of the department
7 of revenue or to an employee in the office of the secretary.
8 The confidential information may be disclosed only: (1) To
9 the applicable agency, board, commission or division of
10 the department to which the information relates; or (2) in
11 the manner authorized by provisions of this code applica-
12 ble to that agency, board, commission or division. This
13 confidentiality rule is a specific exemption from disclosure
14 under article one, chapter twenty-nine-b of this code.

15 (b) *Interdepartmental communication of confidential*
16 *information.* – Notwithstanding any provision of this code
17 to the contrary, information that by statute is confidential
18 in the possession of any division, agency, board, commis-
19 sion or office of the department of revenue may be dis-
20 closed to the secretary, or an employee in the office of the
21 secretary, who must safeguard the information and may

22 not further disclose the information except under the same
23 conditions, restrictions and limitations applicable to the
24 administrator of the agency, board, commission, division
25 or office of the department in whose hands the information
26 is confidential: *Provided*, That nothing contained in this
27 section shall be construed to require the disclosure to the
28 secretary or to an employee in the office of the secretary of
29 individually identifiable health care or other information
30 that, under federal law, may not be disclosed by the
31 administrator without subjecting the administrator or the
32 agency, board, commission, division or office to sanctions
33 or other penalties by the United States or any agency
34 thereof. This confidentiality rule is a specific exemption
35 from disclosure under article one, chapter twenty-nine-b
36 of this code.

**§11B-1-7. Right of appeal from interference with functioning of
agency.**

1 Upon occasion of a showing that the application of the
2 authority vested under the provisions of this article may
3 interfere with the successful functioning of any depart-
4 ment, institution or agency of the government, that
5 department, institution or agency has the right of appeal
6 to the governor for review of the case and the decision or
7 conclusion of the governor shall control in appeals.

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-1. Budget office.

1 The budget section of the department of administration
2 is hereby transferred to the department of revenue and
3 continued as the budget office. The budget office shall act
4 as staff agency for the governor in the exercise of his
5 powers and duties under section fifty-one, article VI of the
6 constitution of West Virginia and shall exercise and
7 perform the other powers and duties of the budget office
8 set forth in this article or previously conferred upon the
9 budget section of the finance division, department of
10 administration, prior to the effective date of this section in

11 calendar year two thousand four, and set forth whether in
12 article two, chapter five-a of this code, prior to the effec-
13 tive date of this section in calendar year two thousand
14 four, this article or elsewhere in this code.

§11B-2-2. General powers and duties of secretary as director of budget.

1 The secretary of revenue, under the immediate supervi-
2 sion of the governor, shall have the power and duty to:

3 (1) Exercise general supervision of, and make rules and
4 regulations for, the government of this division;

5 (2) Administer the budget in accordance with this article;

6 (3) Serve the governor in the consideration of requests
7 for appropriations and the preparation of the budget
8 document;

9 (4) Make investigations and submit reports as the
10 governor requires;

11 (5) Make a continuous study of state expenditures and
12 eligibility for federal matching dollars and make recom-
13 mendations to the governor for the more economical use of
14 state funds as he or she shall find practicable;

15 (6) Render assistance to spending officers with respect to
16 the fiscal affairs of spending units; and

17 (7) Exercise other powers as are vested in the secretary
18 by this article, or which may be appropriate to the dis-
19 charge of the secretary's duties under this article.

§11B-2-3. Requests for appropriations; copies to legislative auditor.

1 (a) The spending officer of each spending unit, other
2 than the legislative and the judicial branches of state
3 government, shall, on or before the first day of September
4 of each year, submit to the secretary a request for appro-
5 priations for the fiscal year next ensuing. On or before the

6 same date, the spending officer shall also transmit two
7 copies of the request to the legislative auditor for the use
8 of the finance committees of the Legislature.

9 (b) If the spending officer of any spending unit fails to
10 transmit to the legislative auditor two copies of the
11 request for appropriations within the time specified in this
12 section, the legislative auditor or the state budget office
13 shall notify the secretary, auditor and treasurer of the
14 failure. Upon notification, no funds appropriated to that
15 spending unit shall be encumbered or expended until the
16 spending officer thereof has transmitted two copies of the
17 request for appropriation to the legislative auditor.

18 (c) If a spending officer submits to the secretary an
19 amendment to the request for appropriations, two copies
20 of the amendment shall forthwith be transmitted to the
21 legislative auditor.

22 (d) Notwithstanding any provision in this section to the
23 contrary, the state superintendent of schools shall, on or
24 before the fifteenth day of December of each year, submit
25 to the secretary a request for appropriations for the fiscal
26 year next ensuing for state aid to schools and submit two
27 copies of the request to the legislative auditor for the use
28 of the finance committees of the Legislature. The request
29 for appropriation shall be accompanied with copies of
30 certified enrollment and employee lists from all county
31 superintendents for the current school year. If certified
32 enrollment and employee lists are not available to the state
33 superintendent from any of the county school boards, the
34 state superintendent shall notify those school boards and
35 no funds shall be expended for salary or compensation to
36 their county superintendent until the certified lists of
37 enrollment and employees are submitted.

§11B-2-4. Contents of requests.

1 A request for an appropriation for a spending unit shall
2 specify and itemize in written form:

3 (1) A statement showing the amount and kinds of
4 revenue and receipts collected for use of the spending
5 agency during the next preceding fiscal year and antici-
6 pated collections for the fiscal year next ensuing;

7 (2) A statement by purposes and objects of the amount of
8 appropriations requested for the spending unit without
9 deducting the amount of anticipated collections of special
10 revenue, federal funds or other receipts;

11 (3) A statement showing the actual expenditures of the
12 spending unit for the preceding year and estimated
13 expenditures for the current fiscal year itemized by
14 purposes and objects, including those from regular and
15 supplementary appropriations, federal funds, private
16 contributions, transfers, allotments from an emergency or
17 contingency fund and any other expenditures made by or
18 for the spending unit;

19 (4) A statement showing the number, classification and
20 compensation of persons employed by the spending unit
21 distinguishing between regular, special and casual em-
22 ployees during the preceding fiscal year and during the
23 current fiscal year. The statement shall show the person-
24 nel requirements in similar form for the ensuing fiscal year
25 for which appropriations are requested;

26 (5) A statement showing in detail the purposes for which
27 increased amounts of appropriations, if any, are requested
28 and giving a justification statement for the expenditure of
29 the increased amount. A construction or other improve-
30 ment request shall show in detail the kind and scope of
31 construction or improvement requested;

32 (6) A statement of money claims against the state arising
33 out of the activities of the spending unit; and

34 (7) Any other information as the secretary requests.

§11B-2-5. Form of requests.

1 The secretary shall specify the form and detail of
2 itemization of requests for appropriations and statements

3 to be submitted by a spending unit: *Provided*, That a
4 request for appropriations must include at a minimum the
5 information required by section four of this article. The
6 secretary shall furnish blank forms for this purpose.

§11B-2-6. Information concerning state finances.

1 The secretary shall ascertain for the preceding year and
2 as estimated for the current fiscal year:

3 (1) The condition of each of the funds of the state;

4 (2) A statement of all revenue collections both general
5 and special; and

6 (3) Any other information relating to the finances of the
7 state as the governor requests.

§11B-2-7. Appropriations for judiciary.

1 The governor shall transmit to the secretary the appro-
2 priations required by law for the judiciary for the fiscal
3 year next ensuing and which have been certified to the
4 governor by the auditor. The auditor shall certify the
5 appropriations to the governor in accordance with section
6 fifty-one, article VI of the constitution of West Virginia on
7 or before the first day of September of each year.

§11B-2-8. Examination of requests for appropriations.

1 (a) The secretary shall examine the requests of a spend-
2 ing unit with respect to requested appropriations, itemiza-
3 tion, sufficiency of justification statements and accuracy
4 and completeness of all other information which the
5 spending officer is required to submit.

6 (b) If the secretary finds a request, report or statement of
7 a spending unit inaccurate, incomplete or inadequate, he
8 or she shall consult with the spending officer of the unit
9 and require the submission of the requests in proper form

10 and content. The secretary shall assist spending officers in
11 the preparation of their requests.

§11B-2-9. Appropriation requests by other than spending units.

1 A person or organization, other than a spending officer,
2 who desires to request a general appropriation in the state
3 budget, shall submit his or her request to the secretary on
4 or before the first day of September of each year. The
5 request shall be in the form prescribed by the secretary
6 and shall be accompanied by a justification statement.

§11B-2-10. Powers of secretary in administration of expenditures.

1 (a) The secretary shall supervise and control the expen-
2 diture of appropriations made by the Legislature exclud-
3 ing those made to the Legislature and those made to the
4 judicial branch of the state government.

5 (b) The expenditure of an appropriation made by the
6 Legislature, except made for the Legislature itself and the
7 judicial branch of state government, shall be conditioned
8 upon compliance by the spending unit with the provisions
9 of this article.

10 (c) An appropriation made by the Legislature, except
11 made for the Legislature itself and the judicial branch of
12 state government, shall be expended only in accordance
13 with this article.

**§11B-2-11. Estimates of revenue; reports on revenue collections;
withholding department funds on noncompliance.**

1 (a) Prior to the beginning of each fiscal year, the secre-
2 tary shall estimate the revenue to be collected month by
3 month by each classification of tax for that fiscal year as
4 it relates to the official estimate of revenue for each tax for
5 that fiscal year and the secretary shall certify this estimate
6 to the governor and the legislative auditor and the West
7 Virginia investment management board by the first day of
8 July for that fiscal year.

9 (1) The secretary shall ascertain the collection of the
10 revenue of the state and shall determine for each month of
11 the fiscal year the proportion which the amount actually
12 collected during a month bears to the collection estimated
13 by him or her for that month. The secretary shall certify
14 to the governor, the legislative auditor and the investment
15 management board, as soon as possible after the close of
16 each month, and not later than the fifteenth day of each
17 month, and at other times as the governor, the legislative
18 auditor or the investment management board may request,
19 the condition of the state revenues and of the several funds
20 of the state and the proportion which the amount actually
21 collected during the preceding month bears to the collec-
22 tion estimated by him or her for that month. The secretary
23 shall include in this certification the same information
24 previously certified for prior months in each fiscal year.
25 For the purposes of this section, the secretary shall have
26 the authority to require all necessary estimates and reports
27 from any spending unit of the state government.

28 (2) If the secretary fails to certify to the governor, the
29 legislative auditor and the investment management board
30 the information required by this subsection within the
31 time specified herein, the legislative auditor shall notify
32 the auditor and treasurer of the failure and thereafter no
33 funds appropriated to the department of revenue may be
34 expended until the secretary has certified the information
35 required by this subsection.

36 (b) Prior to the first day of July of each fiscal year, the
37 secretary shall estimate daily revenue flows for the general
38 revenue fund for the next fiscal year as it relates to the
39 official estimate of revenue. Subsequent to the end of each
40 fiscal year, the secretary shall compare the projected daily
41 revenue flows with the actual daily revenue flows from the
42 previous year. The secretary may for any month or
43 months, at his or her discretion, revise the annual projec-
44 tions of the daily revenue flows. The secretary shall certify
45 to the governor, the legislative auditor and the investment
46 management board, as soon as possible after the close of

47 each month and not later than the fifteenth day of each
48 month, and at other times as the governor, the legislative
49 auditor or the investment management board may request,
50 the condition of the general revenue fund and the compari-
51 son of the projected daily revenue flows with the actual
52 daily revenue flows. If the secretary fails to certify to the
53 governor, the legislative auditor and the investment
54 management board the information required by this
55 subsection within the time specified herein, the legislative
56 auditor shall notify the auditor and treasurer of the failure
57 and thereafter no funds appropriated to the department of
58 revenue may be expended until the secretary has certified
59 the information required by this subsection.

**§11B-2-12. Submission of expenditure schedules; contents;
submission of information on unpaid obliga-
tions; copies to legislative auditor.**

1 (a) Prior to the beginning of each fiscal year, the spend-
2 ing officer of a spending unit shall submit to the secretary
3 a detailed expenditure schedule for the ensuing fiscal year.
4 The schedule shall be submitted in such form and at such
5 time as the secretary may require. The schedule shall
6 show:

7 (1) A proposed monthly rate of expenditure for amounts
8 appropriated for personal services;

9 (2) Each and every position budgeted under personal
10 services for the next ensuing fiscal year, with the monthly
11 salary or compensation of each position;

12 (3) A proposed quarterly rate of expenditure for amounts
13 appropriated for employee benefits, current expenses,
14 equipment and repairs and alterations classified by a
15 uniform system of accounting as called for in section
16 twenty-five of this article for each item of every appropri-
17 ation;

18 (4) A proposed yearly plan of expenditure for amounts
19 appropriated for buildings and lands; and

20 (5) A proposed quarterly plan of receipts itemized by
21 type of revenue.

22 (b) The secretary may accept a differently itemized
23 expenditure schedule from a spending unit to which the
24 above itemizations are not applicable.

25 (c) The secretary shall consult with and assist spending
26 officers in the preparation of expenditure schedules.

27 (d) Within fifteen days after the end of each month of the
28 fiscal year, the head of every spending unit shall certify to
29 the legislative auditor the status of obligations and
30 payments of the spending unit for amounts of employee
31 benefits, including, but not limited to, obligations and
32 payments for social security withholding and employer
33 matching, public employees insurance premiums and
34 public employees retirement and teachers retirement
35 systems.

36 (e) In the event the legislative auditor determines from
37 certified reports or from other sources that any spending
38 unit is not making all payments and transfers for employee
39 benefits from funds appropriated for that purpose, the
40 legislative auditor shall notify the secretary of administra-
41 tion, auditor and treasurer of the determination and
42 thereafter no funds appropriated to the spending unit shall
43 be encumbered or expended for the salary or compensation
44 to the head of the spending unit until the legislative
45 auditor determines that the payments or transfers are
46 being made on a timely basis.

47 (f) When a spending officer submits an expenditure
48 schedule to the secretary as required by this section, the
49 spending officer shall at the same time transmit a copy
50 thereof to the legislative auditor and the joint committee
51 on government and finance or its designee. If a spending
52 officer of a spending unit fails to transmit a copy to the
53 legislative auditor on or before the beginning of the fiscal
54 year, the legislative auditor shall notify the secretary,
55 auditor and treasurer of the failure and thereafter no

56 funds appropriated to the spending unit shall be encum-
57 bered or expended until the spending officer thereof has
58 transmitted a copy to the legislative auditor.

**§11B-2-13. Examination and approval of expenditure sched-
ules; amendments; copies to legislative auditor.**

1 (a) The secretary shall examine the expenditure schedule
2 of each spending unit and if it conforms to the appropria-
3 tions made by the Legislature, the requirements of this
4 article and is in accordance with sound fiscal policy, the
5 secretary shall approve the schedule. In addition, the
6 secretary shall give special consideration in the approval
7 of expenditure schedules to accounts in which the approp-
8 riations consist predominantly of personal services funds
9 so that the quarterly allotments of funds to the various
10 spending units are sufficient to pay personnel costs in the
11 quarter in which they are due.

12 (b) The expenditure of the appropriations made to a
13 spending unit shall be only in accordance with the ap-
14 proved expenditure schedule unless the schedule is
15 amended with the consent of the secretary, or unless
16 appropriations are reduced in accordance with the provi-
17 sions of sections twenty to twenty-two, inclusive, of this
18 article. The spending officer of a spending unit shall
19 transmit to the legislative auditor a copy of each and every
20 requested amendment to the schedule at the same time
21 that the requested amendment is submitted to the secre-
22 tary. The secretary shall send to the legislative auditor
23 copies of any schedule amended with the secretary's
24 approval.

§11B-2-14. Reserves for emergencies.

1 The secretary, with the approval of the governor, may
2 require that an expenditure schedule provide for a reserve
3 for emergencies out of the total amount appropriated to
4 the spending unit. The amount of the reserve shall be
5 determined by the secretary in consultation with the
6 spending officer.

§11B-2-15. Reserves for public employees insurance program.

1 (a) There is hereby continued a special revenue account
2 in the state treasury, designated the "Public Employees
3 Insurance Reserve Fund", which is an interest-bearing
4 account and may be invested in accordance with the
5 provisions of article six, chapter twelve of this code, with
6 the interest income a proper credit to the fund.

7 (b) The fund shall consist of moneys appropriated by the
8 Legislature and moneys transferred annually pursuant to
9 the provisions of subsection (c) of this section. These
10 moneys shall be held in reserve and appropriated by the
11 Legislature only for the support of the programs provided
12 by the public employees insurance agency: *Provided*, That
13 in only the fiscal year beginning the first day of July, two
14 thousand two, and in each of the next two fiscal years
15 thereafter, and ending on the thirtieth day of June, two
16 thousand five, the moneys held in the fund may be appro-
17 priated to the bureau of medical services of the depart-
18 ment of health and human resources.

19 (c) Annually each state agency, except for the higher
20 education central office created in article four, chapter
21 eighteen-b of this code; the higher education governing
22 boards as defined in articles two and three of said chapter;
23 and the state institutions of higher education as defined in
24 section two, article one of said chapter shall transfer one
25 percent of its annualized expenditures from state funds,
26 excluding federal funds based on filled full-time equiva-
27 lents as determined by the state budget office as of the
28 first day of April for that fiscal year, to the public employ-
29 ees insurance reserve fund. The secretary may exempt that
30 transfer only upon a showing by the requesting agency
31 that the continued operation of that agency is dependent
32 upon receipt of the exemption.

33 (d) Annually the secretary shall provide a report to the
34 governor and the Legislature on the amount of reserves
35 established pursuant to the provisions of this section, the

36 number of exemptions granted and the agencies receiving
37 those exemptions.

§11B-2-16. Limitation on expenditures.

1 The expenditures of a spending unit during a quarter of
2 the fiscal year shall not exceed the amount of the approved
3 allotment, unless the governor approves the expenditure of
4 a larger amount. Any amounts remaining unexpended at
5 the close of the quarter shall be available for reallocation
6 and expenditure during any succeeding quarter of the
7 same fiscal year.

**§11B-2-17. Transfers between items of appropriation of execu-
tive, legislative and judicial branches.**

1 Notwithstanding any other provision of law to the
2 contrary, there shall be no transfer of amounts between
3 items of appropriations nor shall moneys appropriated for
4 any particular purpose be expended for any other purpose
5 by any spending unit of the executive, legislative or
6 judicial branch except as hereinafter provided:

7 (1) Any transfer of amounts between items of appropria-
8 tions for the executive branch of state government shall be
9 made only as authorized by the Legislature.

10 (2) Any transfer of amounts between items of appropria-
11 tions for the legislative branch of state government shall
12 be made only pursuant to the joint rules adopted by the
13 body and any amendments thereto, as certified to the state
14 auditor, the state treasurer and the legislative auditor.

15 (3) Any transfer of amounts between items of appropria-
16 tions for the judicial branch of state government shall be
17 made only pursuant to rules adopted by the supreme court
18 of appeals and any amendments thereto, as certified to the
19 state auditor, the state treasurer and the legislative
20 auditor.

§11B-2-18. Expenditure of excess in collections; notices to auditor and treasurer.

1 (a) If the amount actually collected by a spending unit
2 exceeds the amount which it is authorized to expend from
3 collections, the excess in collections shall be set aside in a
4 special surplus fund for the spending unit. Expenditures
5 from this fund shall be made only in accordance with the
6 following procedure:

7 (1) The spending officer shall submit to the secretary:

8 (A) A plan of expenditure showing the purposes for
9 which the excess is to be expended; and

10 (B) A justification statement showing the reasons why
11 the expenditure is necessary and desirable.

12 (2) The secretary shall submit the request to the governor
13 with his or her recommendation.

14 (3) If the governor approves the plan of expenditure and
15 justification statement and is satisfied that the expendi-
16 ture is required to defray the additional cost of the service
17 or activity of the spending unit and that the expenditure
18 is in accordance with sound fiscal policy, he or she may
19 authorize the use of the excess during the current fiscal
20 year. Notices of the authorization shall be sent to the state
21 auditor, the state treasurer and the legislative auditor.

22 (b) An expenditure from a special surplus fund without
23 the authorization of the governor, or other than in accor-
24 dance with this section, shall be an unlawful use of public
25 funds.

§11B-2-19. Reports by spending units; copies to legislative auditor.

1 A spending unit shall submit to the secretary reports
2 with respect to the work and expenditures of the unit as
3 the secretary may request for the purposes of this article.
4 Upon receipt thereof, the secretary shall immediately send
5 a copy of each report to the legislative auditor.

§11B-2-20. Reduction of appropriations; powers of governor; revenue shortfall reserve fund and permissible expenditures therefrom.

1 (a) Notwithstanding any provision of this section, the
2 governor may reduce appropriations according to any of
3 the methods set forth in sections twenty-one and twenty-
4 two of this article. The governor may, in lieu of imposing
5 a reduction in appropriations, request an appropriation by
6 the Legislature from the revenue shortfall reserve fund
7 established in this section.

8 (b) A revenue shortfall reserve fund is hereby continued
9 within the state treasury. The revenue shortfall reserve
10 fund shall be funded as set forth in this subsection from
11 surplus revenues, if any, in the state fund, general revenue,
12 as the surplus revenues may accrue from time to time.
13 Within sixty days of the end of each fiscal year, the
14 secretary shall cause to be deposited into the revenue
15 shortfall reserve fund the first fifty percent of all surplus
16 revenues, if any, determined to have accrued during the
17 fiscal year just ended. The revenue shortfall reserve fund
18 shall be funded continuously and on a revolving basis in
19 accordance with this subsection up to an aggregate
20 amount not to exceed five percent of the total appropria-
21 tions from the state fund, general revenue, for the fiscal
22 year just ended. If at the end of any fiscal year the revenue
23 shortfall reserve fund is funded at an amount equal to or
24 exceeding five percent of the state's general revenue fund
25 budget for the fiscal year just ended, then there shall be no
26 further obligation of the secretary under the provisions of
27 this section to apply any surplus revenues as set forth in
28 this subsection until that time the revenue shortfall reserve
29 fund balance is less than five percent of the total appropria-
30 tions from the state fund, general revenue.

31 (c) Not earlier than the first day of November of each
32 calendar year, if the state's fiscal circumstances are such
33 as to otherwise trigger the authority of the governor to
34 reduce appropriations under this section or section

35 twenty-one or section twenty-two of this article, then in
36 that event the governor may notify the presiding officers
37 of both houses of the Legislature in writing of his or her
38 intention to convene the Legislature pursuant to section
39 nineteen, article VI of the constitution of West Virginia for
40 the purpose of requesting the introduction of a supplemen-
41 tary appropriation bill or to request a supplementary
42 appropriation bill at the next preceding regular session of
43 the Legislature to draw money from the surplus revenue
44 shortfall reserve fund to meet any anticipated revenue
45 shortfall. If the Legislature fails to enact a supplementary
46 appropriation from the revenue shortfall reserve fund
47 during any special legislative session called for the pur-
48 poses set forth in this section or during the next preceding
49 regular session of the Legislature, then the governor may
50 proceed with a reduction of appropriations pursuant to
51 sections twenty-one and twenty-two of this article.
52 Should any amount drawn from the revenue shortfall
53 reserve fund pursuant to an appropriation made by the
54 Legislature prove insufficient to address any anticipated
55 shortfall, then the governor may also proceed with a
56 reduction of appropriations pursuant to sections twenty-
57 one and twenty-two of this article.

58 (d) Upon the creation of the fund, the Legislature is
59 authorized and may make an appropriation from the
60 revenue shortfall reserve fund for revenue shortfalls, for
61 emergency revenue needs caused by acts of God or natural
62 disasters or for other fiscal needs as determined solely by
63 the Legislature.

64 (e) Prior to the thirty-first day of October, in any fiscal
65 year in which revenues are inadequate to make timely
66 payments of the state's obligations, the governor may by
67 executive order, after first notifying the presiding officers
68 of both houses of the Legislature in writing, borrow funds
69 from the revenue shortfall reserve fund. The amount of
70 funds borrowed under this subsection shall not exceed one
71 and one-half percent of the general revenue estimate for
72 the fiscal year in which the funds are to be borrowed, or

73 the amount the governor determines is necessary to make
74 timely payment of the state's obligations, whichever is less.
75 Any funds borrowed pursuant to this subsection shall be
76 repaid, without interest, and redeposited to the credit of
77 the revenue shortfall reserve fund within ninety days of
78 their withdrawal.

§11B-2-21. Reduction of appropriations – Reduction of appropriations from general revenue.

1 If the governor determines that the amounts, or parts
2 thereof, appropriated from the general revenue cannot be
3 expended without creating an overdraft or deficit in the
4 general fund, he or she may instruct the secretary to
5 reduce all appropriations out of general revenue in a
6 degree as necessary to prevent an overdraft or a deficit in
7 the general fund.

§11B-2-22. Reduction of appropriations – Reduction of appropriations from other funds.

1 (a) The governor, in the manner set forth in section
2 twenty-one of this article, may reduce appropriations
3 from:

4 (1) Funds supported by designated taxes or fees; and

5 (2) Fees or other collections set aside for the support of
6 designated activities or services.

7 (b) Each fund and each fee or collection account shall be
8 treated separately.

§11B-2-23. Approval of secretary of requests for changes and receipt and expenditure of federal funds by state agencies; copies or sufficient summary information to be furnished to secretary; and consolidated report of federal funds.

1 (a) Every agency of the state government when making
2 requests or preparing budgets to be submitted to the
3 federal government for funds, equipment, material or

4 services, the grant or allocation of which is conditioned
5 upon the use of state matching funds, shall have the
6 request or budget approved in writing by the secretary
7 before submitting it to the proper federal authority. When
8 the federal authority has approved the request or budget,
9 the agency of the state government shall resubmit it to the
10 secretary for recording before any allotment or encum-
11 brance of the federal funds can be made. Whenever any
12 agency of the state government receives from any agency
13 of the federal government a grant or allocation of funds
14 which do not require state matching, the state agency shall
15 report to the secretary the amount of the federal funds
16 granted or allocated.

17 (b) Unless contrary to federal law, any agency of state
18 government, when making requests or preparing budgets
19 to be submitted to the federal government for funds for
20 personal services, shall include in the request or budget the
21 amount of funds necessary to pay for the costs of any
22 fringe benefits related to the personal service. For the
23 purposes of this section, "fringe benefits" means any
24 employment benefit granted by the state which involves
25 state funds, including, but not limited to, contributions to
26 insurance, retirement and social security and which does
27 not affect the basic rate of pay of an employee.

28 (c) In addition to the other requirements of this section,
29 the secretary shall, as soon as possible after the end of
30 each fiscal year but no later than the thirty-first day of
31 December of each year, submit to the governor a consoli-
32 dated report which shall contain a detailed itemization of
33 all federal funds received by the state during the preceding
34 and current fiscal years, as well as those scheduled or
35 anticipated to be received during the next ensuing fiscal
36 year. The itemization shall show:

37 (1) Each spending unit which has received or is sched-
38 uled or expected to receive federal funds in either of the
39 fiscal years;

40 (2) The amount of each separate grant or distribution
41 received or to be received; and

42 (3) A brief description of the purpose of every grant or
43 other distribution, with the name of the federal agency,
44 bureau or department making the grant or distribution:
45 *Provided*, That it is not necessary to include in the report
46 an itemization of federal revenue sharing funds deposited
47 in and appropriated from the revenue sharing trust fund,
48 or federal funds received for the benefit of the division of
49 highways of the department of transportation.

50 (d) The secretary may obtain from the spending units any
51 and all information necessary to prepare a report.

52 (e) Notwithstanding the other provisions of this section
53 and in supplementation of the provisions of this section,
54 the Legislature hereby determines that the department of
55 revenue and its secretary need to be the single and central
56 agency for receipt of information and documents in respect
57 of applications for, and changes, receipt and expenditure
58 of, federal funds by state agencies. Every agency of state
59 government, when making application for federal funds in
60 the nature of a grant, allocation or otherwise; when
61 amending the applications or requests; when in receipt of
62 federal funds; or when undertaking any expenditure of
63 federal funds, in all respective instances, shall provide to
64 the secretary of revenue document copies or sufficient
65 summary information in respect of the federal funds to
66 enable the secretary to provide approval in writing for any
67 activity in respect to the federal funds.

§11B-2-24. Expenditure of appropriations – Generally.

1 The expenditure of an appropriation made by the
2 Legislature shall be conditioned upon compliance by the
3 spending unit with sections twenty-five, twenty-six,
4 twenty-seven, twenty-eight and twenty-nine of this article.

§11B-2-25. Expenditure of appropriations – Other than for purchases of commodities.

1 A requisition for expenditure, other than an order for the
2 purchase of commodities, shall be submitted as follows:

3 (1) The spending officer shall prepare and submit to the
4 director a requisition showing the amount, purpose and
5 appropriation from which the expenditure is requested;

6 (2) The director of the budget shall examine the requisition
7 and determine whether the amount is within the
8 quarterly allotment, is in accordance with the approved
9 expenditure schedule and otherwise conforms to the
10 provisions of this article;

11 (3) If the director approves the requisition, he or she
12 shall encumber the proper account in the amount of the
13 requisition and shall transmit the requisition to the
14 auditor for disbursement in accordance with law; and

15 (4) If the director disapproves the requisition, he or she
16 shall return it to the spending unit with a statement of his
17 or her reasons.

§11B-2-26. Expenditure of appropriations – Purchases of commodities.

1 If a requisition is a request for a purchase of commodities,
2 the spending unit shall transmit the requisition to the
3 state budget office for the purpose of ascertaining whether
4 it conforms to the expenditure schedule. If it does not
5 conform, the requisition shall be returned by the state
6 budget office to the spending unit. If it conforms, the state
7 budget office shall transmit the requisition to the purchasing
8 division of the department of administration for
9 purchase in accordance with article three, chapter five-a
10 of this code. When a copy of the purchase order issued
11 pursuant thereto is received from the purchasing division
12 by the director in accordance with the provisions of
13 section fourteen, article three, chapter five-a of this code,
14 the director shall ascertain whether the unencumbered
15 balance in the appropriation concerned, in excess of all
16 unpaid obligations, is sufficient to defray the cost of the
17 order and, if so, shall encumber the proper account and

18 certify the fact to the purchasing division and, if not, shall
19 notify the purchasing division which, upon receipt of
20 notification, shall return the requisition to the spending
21 unit.

§11B-2-27. Expenditure of appropriations – Payment of personal services.

1 A requisition for the payment of personal services shall
2 upon receipt by the director of the budget be checked
3 against the personnel schedule of the spending unit
4 making the requisition. The director shall approve a
5 requisition for personal services only if the amounts
6 requested are in accordance with the personnel schedule of
7 the spending unit.

§11B-2-28. Expenditure of appropriations – Legislative and judicial expenditures.

1 (a) The provisions of sections twenty-six and twenty-
2 seven of this article shall not apply to the expenditure of
3 amounts appropriated for the use of the Legislature or for
4 the judiciary.

5 (b) In the case of appropriations made for the Legisla-
6 ture, the clerk of the House of Delegates or the clerk of the
7 Senate shall present his or her requisition directly to the
8 auditor.

9 (c) In the case of appropriations made for the judiciary,
10 the clerk of the court shall present his or her requisition or
11 claim directly to the auditor.

12 (d) In the case of appropriations made for criminal
13 charges, the clerk or the proper officer shall present his or
14 her claim directly to the auditor.

§11B-2-29. Appropriations for officers, commissions, boards or institutions without office at capitol.

1 All appropriations now or hereafter made for officers,
2 commissions, boards or institutions, public or private,
3 other than state institutions of higher education, state

4 charitable institutions, state hospitals and sanitariums and
5 state penal and correctional institutions, not having an
6 office at the state capitol, shall, unless otherwise provided
7 by law, be expended on requisitions of the officer, commis-
8 sion, board or institution, after approval by the secretary
9 of the department of revenue.

**§11B-2-30. Submission of requests, amendments, reports, etc.,
to legislative auditor; misdemeanor penalty for
noncompliance.**

1 (a) The provisions of sections three, eleven, twelve,
2 thirteen, nineteen and twenty-three of this article and
3 section twenty-five, article two, chapter five-a of this code
4 requiring the secretary or the spending officer of the
5 spending units to supply copies of the documents specified
6 therein to the legislative auditor shall be strictly adhered
7 to by all persons.

8 (b) Any failure by any person to comply with the provi-
9 sions of subsection (a) of this section shall be a misde-
10 meanor and, upon conviction thereof, the person shall be
11 fined the sum of one thousand dollars. This penalty shall
12 be in addition to other penalties provided elsewhere in this
13 article and other remedies provided by law.

**§11B-2-31. Effectuation of transfer of budget section and
transition.**

1 To effectuate the transfer of the budget section of the
2 finance division, department of administration to the
3 department of revenue upon the effective date of this
4 section in the year two thousand four:

5 (1) All employees, records, responsibilities, obligations,
6 assets and property, of whatever kind and character, of the
7 budget section, finance division of the department of
8 administration are hereby transferred to the state budget
9 office of the department of revenue beginning the effective
10 date of this section in the year two thousand four.

11 (2) The unencumbered balances of all funds allocated to
12 the budget section of the division of finance for fiscal years
13 ending the thirtieth day of June, two thousand four, and
14 the fiscal year ending the thirtieth day of June, two
15 thousand five, are hereby transferred to the state budget
16 office of the department of revenue on the effective date of
17 this section in the year two thousand four.

18 (3) All orders, determinations, rules, permits, grants,
19 contracts, certificates, licenses, waivers, bonds, authoriza-
20 tions and privileges which have been issued, made, granted
21 or allowed to become effective by the governor, any state
22 department or agency or official thereof, or by a court of
23 competent jurisdiction, in the performance of functions
24 which have been transferred to the secretary of the
25 department of revenue or to the department of revenue,
26 and were in effect on the date the transfer occurred
27 continue in effect, for the benefit of the department,
28 according to their terms until modified, terminated,
29 superseded, set aside, or revoked in accordance with the
30 law by the governor, the secretary of revenue, or other
31 authorized official, a court of competent jurisdiction or by
32 operation of law.

33 (4) Any proceedings, including, but not limited to,
34 notices of proposed rulemaking, in which the budget
35 section, finance division of the department of administra-
36 tion was an initiating or responding party are not affected
37 by the transfer of the budget section to the department of
38 revenue. Orders issued in any proceedings continue in
39 effect until modified, terminated, superseded or revoked
40 by the governor, the secretary of revenue, by a court of
41 competent jurisdiction or by operation of law. Nothing in
42 this subdivision prohibits the discontinuance or modifica-
43 tion of any proceeding under the same terms and condi-
44 tions and to the same extent that a proceeding could have
45 been discontinued or modified if the division had not been
46 transferred to the department of revenue. Transfer of the
47 budget section of the finance division does not affect suits
48 commenced prior to the effective date of the transfer and

49 all such suits and proceedings shall be had, appeals taken
50 and judgments rendered in the same manner and with like
51 effect as if the transfer had not occurred, except that the
52 secretary of the department of revenue or other officer
53 may, in an appropriate case, be substituted or added as a
54 party.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *6th*
Day of *April*, 2004.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

DATE 3/26/04

TIME 3:10 pm