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SB 558

FILED

2006 APR -5 P 3: 10

WEST VIRGINIA LEGISLATURE
Regular Session, 2006

ENROLLED

SENATE BILL NO. 558

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

PASSED March 11, 2006

In Effect July 1, 2006 Passage

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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Senate Bill No. 558

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

[Passed March 11, 2006; to take effect July 1, 2006.]

AN ACT to amend and reenact §6-7-2 and §6-7-2a of the Code of West Virginia, 1931, as amended; to amend and reenact §9A-1-5 of said code; to amend and reenact §15-2-2 of said code; to amend and reenact §16-5P-5 of said code; to amend and reenact §17-2A-3 of said code; to amend and reenact §18-3-1 of said code; to amend and reenact §19-1A-5 of said code; to amend and reenact §20-1-5 of said code; to amend and reenact §21-1-2 of said code; to amend and reenact §21A-4-5 of said code; to amend and reenact §22-1-6 of said code; to amend and reenact §29-1-1 of said code; to amend and reenact §29-12-5 of said code; to amend and reenact §33-2-2 of said code; and to amend and reenact §60-2-9 of said code, all relating to salary adjustments for certain public officials.

Be it enacted by the Legislature of West Virginia:

That §6-7-2 and §6-7-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §9A-1-5 of said code be amended and reenacted; that §15-2-2 of said code be amended and reenacted; that §16-5P-5 of said code be amended and reenacted; that §17-2A-3 of said code be amended and reenacted; that §18-3-1 of said code be amended and reenacted; that §19-1A-5 of said code be amended and reenacted; that §20-1-5 of said code be amended and reenacted; that §21-1-2 of said code be amended and reenacted; that §21A-4-5 of said code be amended and reenacted; that §22-1-6 of said code be amended and reenacted; that §29-1-1 of said code be amended and reenacted; that §29-12-5 of said code be amended and reenacted; that §33-2-2 of said code be amended and reenacted; and that §60-2-9 of said code be amended and reenacted, all to read as follows:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2. Salaries of certain state officers.

1 (a) Beginning in the calendar year two thousand five,
2 and for each calendar year after that, salaries for each of
3 the state constitutional officers are as follows:

4 (1) The salary of the Governor is ninety-five thousand
5 dollars per year;

6 (2) The salary of the Attorney General is eighty thousand
7 dollars per year;

8 (3) The salary of the Auditor is seventy-five thousand
9 dollars per year;

10 (4) The salary of the Secretary of State is seventy
11 thousand dollars per year;

12 (5) The salary of the Commissioner of Agriculture is
13 seventy-five thousand dollars per year; and

14 (6) The salary of the State Treasurer is seventy-five
15 thousand dollars per year.

16 (b) Notwithstanding the provisions of subsection (a) of
17 this section, beginning in the calendar year two thousand
18 nine, and for each calendar year thereafter, salaries for
19 each of the state constitutional officers shall be as follows:

20 (1) The salary of the Governor shall be one hundred fifty
21 thousand dollars per year;

22 (2) The salary of the Attorney General shall be ninety-
23 five thousand dollars per year;

24 (3) The salary of the Auditor shall be ninety-five thou-
25 sand dollars per year;

26 (4) The salary of the Secretary of State shall be ninety-
27 five thousand dollars per year;

28 (5) The salary of the Commissioner of Agriculture shall
29 be ninety-five thousand dollars per year; and

30 (6) The salary of the State Treasurer shall be ninety-five
31 thousand dollars per year.

**§6-7-2a. Terms of certain appointive state officers; appoint-
ment; qualifications; powers and salaries of such
officers.**

1 (a) Each of the following appointive state officers named
2 in this subsection shall be appointed by the Governor, by
3 and with the advice and consent of the Senate. Each of the
4 appointive state officers serves at the will and pleasure of
5 the Governor for the term for which the Governor was
6 elected and until the respective state officers' successors
7 have been appointed and qualified. Each of the appointive
8 state officers are subject to the existing qualifications for
9 holding each respective office and each has and is hereby
10 granted all of the powers and authority and shall perform
11 all of the functions and services heretofore vested in and
12 performed by virtue of existing law respecting each office.

13 Prior to the first day of July, two thousand six, each such
14 named appointive state officer shall continue to receive
15 the annual salaries they were receiving as of the effective
16 date of the enactment of this section in two thousand six,
17 and thereafter, notwithstanding any other provision of this
18 code to the contrary, the annual salary of each named
19 appointive state officer shall be as follows:

20 Commissioner, Division of Highways, ninety-two
21 thousand five hundred dollars; Commissioner, Division of
22 Corrections, eighty thousand dollars; Director, Division of
23 Natural Resources, seventy-five thousand dollars; Super-
24 intendent, State Police, eighty-five thousand dollars;
25 Commissioner, Division of Banking, seventy-five thousand
26 dollars; Commissioner, Division of Culture and History,
27 sixty-five thousand dollars; Commissioner, Alcohol
28 Beverage Control Commission, seventy-five thousand
29 dollars; Commissioner, Division of Motor Vehicles,
30 seventy-five thousand dollars; Director, Division of
31 Personnel, seventy thousand dollars; Chairman, Health
32 Care Authority, eighty thousand dollars; members, Health
33 Care Authority, seventy thousand dollars; Director,
34 Human Rights Commission, fifty-five thousand dollars;
35 Commissioner, Division of Labor, seventy thousand
36 dollars; Director, Division of Veterans' Affairs, sixty-five
37 thousand dollars; Chairperson, Board of Parole, fifty-five
38 thousand dollars; members, Board of Parole, fifty thou-
39 sand dollars; members, Employment Security Review
40 Board, seventeen thousand dollars; and Commissioner,
41 Bureau of Employment Programs, seventy-five thousand
42 dollars. Secretaries of the departments shall be paid an
43 annual salary as follows: Health and Human Resources,
44 ninety-five thousand dollars; Transportation, ninety-five
45 thousand dollars; Revenue, ninety-five thousand dollars;
46 Military Affairs and Public Safety, ninety-five thousand
47 dollars; Administration, ninety-five thousand dollars;
48 Education and the Arts, ninety-five thousand dollars;
49 Commerce, ninety-five thousand dollars; and Environmen-
50 tal Protection, ninety-five thousand dollars: *Provided,*

51 That any increase in the salary of any current appointive
52 state officer named in this subsection pursuant to the
53 reenactment of this subsection during the regular session
54 of the Legislature in two thousand six that exceeds five
55 thousand dollars shall be paid to such officer or his or her
56 successor beginning on the first day of July, two thousand
57 six, in annual increments of five thousand dollars per
58 fiscal year, up to the maximum salary provided in this
59 subsection.

60 (b) Each of the state officers named in this subsection
61 shall continue to be appointed in the manner prescribed in
62 this code and, prior to the first day of July, two thousand
63 six, each of the state officers named in this subsection
64 shall continue to receive the annual salaries he or she was
65 receiving as of the effective date of the enactment of this
66 section in two thousand six and shall thereafter, notwith-
67 standing any other provision of this code to the contrary,
68 be paid an annual salary as follows:

69 Director, Board of Risk and Insurance Management,
70 eighty thousand dollars; Director, Division of Rehabilita-
71 tion Services, seventy thousand dollars; Executive Direc-
72 tor, Educational Broadcasting Authority, seventy-five
73 thousand dollars; Secretary, Library Commission, seventy-
74 two thousand dollars; Director, Geological and Economic
75 Survey, seventy-five thousand dollars; Executive Director,
76 Prosecuting Attorneys Institute, seventy thousand dollars;
77 Executive Director, Public Defender Services, seventy
78 thousand dollars; Commissioner, Bureau of Senior Ser-
79 vices, seventy-five thousand dollars; Director, State Rail
80 Authority, sixty-five thousand dollars; Executive Director,
81 Women's Commission, forty-five thousand dollars; Direc-
82 tor, Hospital Finance Authority, thirty-five thousand
83 dollars; member, racing commission, twelve thousand
84 dollars; chairman, Public Service Commission, eighty-five
85 thousand dollars; members, Public Service Commission,
86 eighty-five thousand dollars; Director, Division of For-
87 estry, seventy-five thousand dollars; Director, Division of

88 Juvenile Services, eighty thousand dollars; and Executive
89 Director, Regional Jail Authority, eighty thousand dollars:
90 *Provided*, That any increase in the salary of any current
91 appointive state officer named in this subsection pursuant
92 to the reenactment of this subsection during the regular
93 session of the Legislature in two thousand six that exceeds
94 five thousand dollars shall be paid to such officer or his or
95 her successor beginning on the first day of July, two
96 thousand six, in annual increments of five thousand
97 dollars per fiscal year, up to the maximum salary provided
98 in this subsection.

99 (c) Each of the following appointive state officers named
100 in this subsection shall be appointed by the Governor, by
101 and with the advice and consent of the Senate. Each of the
102 appointive state officers serves at the will and pleasure of
103 the Governor for the term for which the Governor was
104 elected and until the respective state officers' successors
105 have been appointed and qualified. Each of the appointive
106 state officers are subject to the existing qualifications for
107 holding each respective office and each has and is hereby
108 granted all of the powers and authority and shall perform
109 all of the functions and services heretofore vested in and
110 performed by virtue of existing law respecting each office.

111 Prior to the first day of July, two thousand six, each such
112 named appointive state officer shall continue to receive
113 the annual salaries they were receiving as of the effective
114 date of the enactment of this section in two thousand six,
115 and thereafter, notwithstanding any other provision of this
116 code to the contrary, the annual salary of each named
117 appointive state officer shall be as follows:

118 Commissioner, State Tax Division, ninety-two thousand
119 five hundred dollars; Commissioner, Insurance Commis-
120 sion, ninety-two thousand five hundred dollars; Director,
121 Lottery Commission, ninety-two thousand five hundred
122 dollars; Director, Division of Homeland Security and

123 Emergency Management, sixty-five thousand dollars; and
124 Adjutant General, ninety-two thousand five hundred
125 dollars;

126 (d) No increase in the salary of any appointive state
127 officer pursuant to this section shall be paid until and
128 unless the appointive state officer has first filed with the
129 State Auditor and the Legislative Auditor a sworn state-
130 ment, on a form to be prescribed by the Attorney General,
131 certifying that his or her spending unit is in compliance
132 with any general law providing for a salary increase for his
133 or her employees. The Attorney General shall prepare and
134 distribute the form to the affected spending units.

CHAPTER 9A. VETERANS' AFFAIRS.

ARTICLE 1. DIVISION OF VETERANS' AFFAIRS.

§9A-1-5. Compensation of director, veterans' affairs officers, assistants and employees; payment to Veterans' Council members; traveling expenses; meetings of Veterans' Council.

1 The director shall receive an annual salary as provided
2 in section two-a, article seven, chapter six of this code and
3 necessary traveling expenses incident to the performance
4 of his or her duties. The salaries of the veterans' affairs
5 officers, assistants and employees shall be fixed by the
6 Veterans' Council. The members of the Veterans' Council
7 shall receive no salary, but each member shall receive the
8 same compensation and expense reimbursement as is paid
9 to members of the Legislature for their interim duties as
10 recommended by the Citizens Legislative Compensation
11 Commission and authorized by law for each day or portion
12 thereof engaged in the discharge of official duties. The
13 requisition for such expenses and traveling expenses shall
14 be accompanied by a sworn and itemized statement, which
15 shall be filed with the Auditor and permanently preserved
16 as a public record. The Veterans' Council shall hold its
17 initial meeting on the call of the Governor, and thereafter

18 shall meet on the call of its chairman, except as otherwise
19 provided. With the exception of the first three meetings of
20 the Veterans' Council, none of which shall be of a duration
21 longer than two weeks each, for organizational purposes,
22 the Veterans' Council shall meet not more than once every
23 two months at such times as may be determined by and
24 upon the call of the chairman for a period of not more than
25 two days, unless there should be an emergency requiring
26 a special meeting or for a longer period and so declared
27 and called by the Governor or by the chairman with the
28 approval of the Governor. A majority of the members of
29 the Veterans' Council shall constitute a quorum for the
30 conduct of official business.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-2. Superintendent; departmental headquarters; continuation of the State Police.

1 The Department of Public Safety, heretofore established,
2 shall be continued and hereafter shall be known as the
3 West Virginia State Police. Wherever the words "Depart-
4 ment of Public Safety" or "Division of Public Safety"
5 appear in this code, they shall mean the West Virginia
6 State Police. The Governor shall nominate and, by and
7 with the advice and consent of the Senate, appoint a
8 superintendent to be the executive and administrative
9 head of the department. The superintendent shall be paid
10 an annual salary as provided in section two-a, article
11 seven, chapter six of this code. The superintendent shall
12 hold the rank of colonel and is entitled to all rights,
13 benefits and privileges of regularly enlisted members. On
14 the date of his or her appointment, the superintendent
15 shall be at least thirty years of age. Before entering upon
16 the discharge of the duties of his or her office, he or she
17 shall execute a bond in the penalty of ten thousand dollars,
18 payable to the State of West Virginia and conditioned
19 upon the faithful performance of his or her duties. Such

20 bond both as to form and security shall be approved as to
21 form by the Attorney General and to sufficiency by the
22 Governor.

23 Before entering upon the duties of his or her office, the
24 superintendent shall subscribe to the oath hereinafter
25 provided. The headquarters of the department shall be
26 located in Kanawha County.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5P. SENIOR SERVICES.

§16-5P-5. Compensation; traveling expenses.

1 The Commissioner of the Bureau of Senior Services shall
2 receive an annual salary as provided in section two-a,
3 article seven, chapter six of this code and the necessary
4 traveling expenses incident to the performance of his or
5 her duties. Requisition for traveling expenses shall be
6 accompanied by a sworn itemized statement which shall
7 be filed with the Auditor and preserved as a public record.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

§17-2A-3. Salary and expenses.

1 The commissioner shall receive an annual salary as
2 provided in section two-a, article seven, chapter six of this
3 code. He or she shall be allowed and paid necessary
4 traveling expenses incident to the performance of his or
5 her duties. Statements covering such expenses shall be
6 itemized and verified by the commissioner.

CHAPTER 18. EDUCATION.

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-1. Appointment; qualifications; compensation; traveling expenses; office and residence; evaluation.

1 There shall be appointed by the state board a State
2 Superintendent of Schools who shall serve at the will and
3 pleasure of the state board. He or she shall be a person of
4 good moral character, of recognized ability as a school
5 administrator, holding at least a master's degree in
6 educational administration, and shall have had not less
7 than five years of experience in public school work. He or
8 she shall receive an annual salary set by the state board, to
9 be paid monthly: *Provided*, That the annual salary may not
10 exceed one hundred forty-six thousand one hundred
11 dollars: *Provided, however*, That after the thirtieth day of
12 June, two thousand six, the annual salary may not exceed
13 one hundred seventy-five thousand dollars. The state
14 superintendent also shall receive necessary traveling
15 expenses incident to the performance of his or her duties
16 to be paid out of the General School Fund upon warrants
17 of the State Auditor. The state superintendent shall have
18 his or her office at the State Capitol. The state board shall
19 report to the Legislative Oversight Commission on Educa-
20 tion Accountability upon request concerning its progress
21 during any hiring process for a state superintendent.

22 The state board annually shall evaluate the performance
23 of the state superintendent and publicly announce the
24 results of the evaluation.

CHAPTER 19. AGRICULTURE.

ARTICLE 1A. DIVISION OF FORESTRY.

§19-1A-5. Director of Division of Forestry; appointment; qualifications.

1 The Director of the Division of Forestry shall be ap-
2 pointed by the Governor, by and with the advice and
3 consent of the Senate, and shall serve at the will and
4 pleasure of the Governor. The director shall be a graduate
5 of a school of forestry accredited by the Society of Amer-
6 ican Foresters and have a minimum of ten years' experi-
7 ence in forest management. The director shall be paid an

8 annual salary as provided in section two-a, article seven,
9 chapter six of this code: *Provided*, That the director's
10 salary shall be paid solely from budget appropriations to
11 the division.

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

§20-1-5. Salary, expenses, oath and bond of director.

1 The director shall receive an annual salary as provided
2 in section two-a, article seven, chapter six of this code,
3 payable in equal monthly installments and shall be
4 allowed and paid necessary expenses incident to the
5 performance of his or her official duties. Prior to the
6 assumption of the duties of his or her office, he or she shall
7 take and subscribe to the oath required of public officers
8 by the Constitution of West Virginia and shall execute a
9 bond, with surety approved by the Governor, in the penal
10 sum of ten thousand dollars, which executed oath and
11 bond shall be filed in the office of the Secretary of State.
12 Premiums on the bond shall be paid from division funds.

CHAPTER 21. LABOR.

ARTICLE 1. DIVISION OF LABOR.

§21-1-2. Appointment of Commissioner of Labor; qualifications; term of office; salary.

1 The state Commissioner of Labor shall be appointed by
2 the Governor, by and with the advice and consent of the
3 Senate. He or she shall be a competent person, who is
4 identified with the labor interests of the state. The
5 Commissioner of Labor in office on the effective date of
6 this section shall, unless sooner removed, continue to serve
7 until his or her term expires and his or her successor has
8 been appointed and has qualified. On or before the first
9 day of April, one thousand nine hundred forty-one, and on
10 or before the first day of April of each fourth year thereaf-
11 ter, the Governor shall appoint a Commissioner of Labor

12 to serve for a term of four years, commencing on said first
13 day of April. The commissioner shall receive an annual
14 salary as provided in section two-a, article seven, chapter
15 six of this code.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 4. BOARD OF REVIEW.

§21A-4-5. Compensation and travel expenses.

1 Each member of the board shall receive an annual
2 salary as provided in section two-a, article seven, chapter
3 six of this code and the necessary traveling expenses
4 incurred in the performance of his or her duties.

5 Requisition for traveling expenses shall be accompanied
6 by a sworn and itemized statement which shall be filed
7 with the Auditor and preserved as a public record.

8 The salaries and expenses of the members shall be paid
9 from the administration fund.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

**§22-1-6. Secretary of the Department of Environmental Protec-
tion.**

1 (a) The secretary is the chief executive officer of the
2 division. Subject to section seven of this article and other
3 provisions of law, the secretary shall organize the depart-
4 ment into such offices, sections, agencies and other units
5 of activity as may be found by the secretary to be desirable
6 for the orderly, efficient and economical administration of
7 the department and for the accomplishment of its objects
8 and purposes. The secretary may appoint a deputy
9 secretary, chief of staff, assistants, hearing officers, clerks,
10 stenographers and other officers, technical personnel and
11 employees needed for the operation of the department and

12 may prescribe their powers and duties and fix their
13 compensation within amounts appropriated.

14 (b) The secretary has the power to and may designate
15 supervisory officers or other officers or employees of the
16 department to substitute for him or her on any board or
17 commission established under this code or to sit in his or
18 her place in any hearings, appeals, meetings or other
19 activities with such substitute having the same powers,
20 duties, authority and responsibility as the secretary. The
21 secretary has the power to delegate, as he or she considers
22 appropriate, to supervisory officers or other officers or
23 employees of the department his or her powers, duties,
24 authority and responsibility relating to issuing permits,
25 hiring and training inspectors and other employees of the
26 department, conducting hearings and appeals and such
27 other duties and functions set forth in this chapter or
28 elsewhere in this code.

29 (c) The secretary has responsibility for the conduct of the
30 intergovernmental relations of the department, including
31 assuring:

32 (1) That the department carries out its functions in a
33 manner which supplements and complements the environ-
34 mental policies, programs and procedures of the federal
35 government, other state governments and other instrumen-
36 talities of this state; and

37 (2) That appropriate officers and employees of the
38 division consult with individuals responsible for making
39 policy relating to environmental issues in the federal
40 government, other state governments and other instrumen-
41 talities of this state concerning differences over environ-
42 mental policies, programs and procedures and concerning
43 the impact of statutory law and rules upon the environ-
44 ment of this state.

45 (d) In addition to other powers, duties and responsibili-
46 ties granted and assigned to the secretary by this chapter,
47 the secretary is hereby authorized and empowered to:

48 (1) Sign and execute in the name of the state by the
49 "Department of Environmental Protection" any contract
50 or agreement with the federal government or its depart-
51 ments or agencies, subdivisions of the state, corporations,
52 associations, partnerships or individuals: *Provided*, That
53 the powers granted to the secretary to enter into agree-
54 ments or contracts and to make expenditures and obliga-
55 tions of public funds under this subdivision may not
56 exceed or be interpreted as authority to exceed the powers
57 granted by the Legislature to the various commissioners,
58 directors or board members of the various departments,
59 agencies or boards that comprise and are incorporated into
60 each secretary's department pursuant to the provisions of
61 chapter five-f of this code;

62 (2) Conduct research in improved environmental protec-
63 tion methods and disseminate information to the citizens
64 of this state;

65 (3) Enter private lands to make surveys and inspections
66 for environmental protection purposes; to investigate for
67 violations of statutes or rules which the division is charged
68 with enforcing; to serve and execute warrants and pro-
69 cesses; to make arrests; issue orders, which for the pur-
70 poses of this chapter include consent agreements; and to
71 otherwise enforce the statutes or rules which the division
72 is charged with enforcing;

73 (4) Acquire for the state in the name of the "Department
74 of Environmental Protection" by purchase, condemnation,
75 lease or agreement, or accept or reject for the state, in the
76 name of the Department of Environmental Protection,
77 gifts, donations, contributions, bequests or devises of
78 money, security or property, both real and personal, and
79 any interest in property;

80 (5) Provide for workshops, training programs and other
81 educational programs, apart from or in cooperation with
82 other governmental agencies, necessary to ensure adequate
83 standards of public service in the department. The

84 secretary may provide for technical training and special-
85 ized instruction of any employee. Approved educational
86 programs, training and instruction time may be compen-
87 sated for as a part of regular employment. The secretary
88 is authorized to pay out of federal or state funds, or both,
89 as such funds are available, fees and expenses incidental
90 to such educational programs, training, and instruction.
91 Eligibility for participation by employees will be in
92 accordance with guidelines established by the secretary;

93 (6) Issue certifications required under 33 U. S. C. §1341
94 of the federal Clean Water Act and enter into agreements
95 in accordance with the provisions of section seven-a,
96 article eleven of this chapter. Prior to issuing any certifi-
97 cation the secretary shall solicit from the Division of
98 Natural Resources reports and comments concerning the
99 possible certification. The Division of Natural Resources
100 shall direct the reports and comments to the secretary for
101 consideration; and

102 (7) Notwithstanding any provisions of this code to the
103 contrary, employ in-house counsel to perform all legal
104 services for the secretary and the department, including,
105 but not limited to, representing the secretary, any chief,
106 the department or any office thereof in any administrative
107 proceeding or in any proceeding in any state or federal
108 court. Additionally, the secretary may call upon the
109 Attorney General for legal assistance and representation
110 as provided by law.

111 (e) The secretary shall be appointed by the Governor, by
112 and with the advice and consent of the Senate, and serves
113 at the will and pleasure of the Governor.

114 (f) At the time of his or her initial appointment, the
115 secretary must be at least thirty years old and must be
116 selected with special reference and consideration given to
117 his or her administrative experience and ability, to his or
118 her demonstrated interest in the effective and responsible
119 regulation of the energy industry and the conservation and

120 wise use of natural resources. The secretary must have at
121 least a bachelor's degree in a related field and at least
122 three years of experience in a position of responsible
123 charge in at least one discipline relating to the duties and
124 responsibilities for which the secretary will be responsible
125 upon assumption of the office. The secretary may not be
126 a candidate for or hold any other public office, may not be
127 a member of any political party committee and shall
128 immediately forfeit and vacate his or her office as secre-
129 tary in the event he or she becomes a candidate for or
130 accepts appointment to any other public office or political
131 party committee.

132 (g) The secretary shall receive an annual salary as
133 provided in section two-a, article seven, chapter six of this
134 code and will be allowed and paid necessary expenses
135 incident to the performance of his or her official duties.
136 Prior to the assumption of the duties of his or her office,
137 the secretary shall take and subscribe to the oath required
138 of public officers prescribed by section five, article IV of
139 the Constitution of West Virginia and shall execute a bond,
140 with surety approved by the Governor, in the penal sum of
141 ten thousand dollars, which executed oath and bond will
142 be filed in the Office of the Secretary of State. Premiums
143 on the bond will be paid from the department funds.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1. Division of Culture and History continued; sections and commissions; purposes; definitions; effective date.

1 (a) The Division of Culture and History and the office of
2 Commissioner of Culture and History heretofore created
3 are hereby continued. The Governor shall nominate, and
4 by and with the advice and consent of the Senate, appoint
5 the commissioner, who shall be the chief executive officer

6 of the division and shall be paid an annual salary as
7 provided in section two-a, article seven, chapter six of this
8 code. The commissioner so appointed shall have: (1) A
9 bachelor's degree in one of the fine arts, social sciences,
10 library science or a related field; or (2) four years' experi-
11 ence in the administration of museum management, public
12 administration, arts, history or a related field.

13 (b) The division shall consist of five sections as follows:

14 (1) The arts section;

15 (2) The archives and history section;

16 (3) The museums section;

17 (4) The historic preservation section; and

18 (5) The administrative section.

19 (c) The division shall also consist of two citizens com-
20 missions as follows:

21 (1) A Commission on the Arts; and

22 (2) A Commission on Archives and History.

23 (d) The commissioner shall exercise control and supervi-
24 sion of the division and shall be responsible for the
25 projects, programs and actions of each of its sections. The
26 purpose and duty of the division is to advance, foster and
27 promote the creative and performing arts and crafts,
28 including both indoor and outdoor exhibits and perfor-
29 mances; to advance, foster, promote, identify, register,
30 acquire, mark and care for historical, prehistorical,
31 archaeological and significant architectural sites, struc-
32 tures and objects in the state; to encourage the promotion,
33 preservation and development of significant sites, struc-
34 tures and objects through the use of economic development
35 activities such as loans, subsidies, grants and other
36 incentives; to coordinate all cultural, historical and artistic
37 activities in state government and at state-owned facili-

38 ties; to acquire, preserve and classify books, documents,
39 records and memorabilia of historical interest or impor-
40 tance; and, in general, to do all things necessary or conve-
41 nient to preserve and advance the culture of the state.

42 (e) The division shall have jurisdiction and control and
43 may set and collect fees for the use of all space in the
44 building presently known as the West Virginia Science and
45 Culture Center, including the deck and courtyards forming
46 an integral part thereof; the building presently known as
47 West Virginia Independence Hall in Wheeling, including
48 all the grounds and appurtenances thereof; "Camp Wash-
49 ington Carver" in Fayette County, as provided in section
50 fourteen of this article; and any other sites as may be
51 transferred to or acquired by the division. Notwithstand-
52 ing any provision of this code to the contrary, including
53 the provisions of article one of chapter five-b of this code,
54 beginning on and after the first day of July, one thousand
55 nine hundred ninety-three, the division shall have respon-
56 sibility for, and control of, all visitor touring and visitor
57 tour guide activities within the State Capitol Building at
58 Charleston.

59 (f) For the purposes of this article, "commissioner"
60 means the Commissioner of Culture and History, and
61 "division" means the Division of Culture and History.

ARTICLE 12. STATE INSURANCE.

§29-12-5. Powers and duties of board.

1 (a)(1) The board has, without limitation and in its
2 discretion as it seems necessary for the benefit of the
3 insurance program, general supervision and control over
4 the insurance of state property, activities and responsibili-
5 ties, including:

6 (A) The acquisition and cancellation of state insurance;

7 (B) Determination of the kind or kinds of coverage;

8 (C) Determination of the amount or limits for each kind
9 of coverage;

10 (D) Determination of the conditions, limitations, exclu-
11 sions, endorsements, amendments and deductible forms of
12 insurance coverage;

13 (E) Inspections or examinations relating to insurance
14 coverage of state property, activities and responsibilities;

15 (F) Reinsurance; and,

16 (G) Any and all matters, factors and considerations
17 entering into negotiations for advantageous rates on and
18 coverage of such state property, activities and responsibili-
19 ties.

20 (2) The board shall endeavor to secure reasonably broad
21 protection against loss, damage or liability to state prop-
22 erty and on account of state activities and responsibilities
23 by proper, adequate, available and affordable insurance
24 coverage and through the introduction and employment of
25 sound and accepted principles of insurance, methods of
26 protection and principles of loss control and risk.

27 (3) The board is not required to provide insurance for
28 every state property, activity or responsibility.

29 (4) Any policy of insurance purchased or contracted for
30 by the board shall provide that the insurer shall be barred
31 and estopped from relying upon the constitutional immu-
32 nity of the State of West Virginia against claims or suits:
33 *Provided*, That nothing herein shall bar a state agency or
34 state instrumentality from relying on the constitutional
35 immunity granted the State of West Virginia against
36 claims or suits arising from or out of any state property,
37 activity or responsibility not covered by a policy or
38 policies of insurance: *Provided, however*, That nothing
39 herein shall bar the insurer of political subdivisions from
40 relying upon any statutory immunity granted such politi-
41 cal subdivisions against claims or suits.

42 (5) The board shall make a complete survey of all
43 presently owned and subsequently acquired state property
44 subject to insurance coverage by any form of insurance,
45 which survey shall include and reflect inspections, ap-
46 praisals, exposures, fire hazards, construction and any
47 other objectives or factors affecting or which might affect
48 the insurance protection and coverage required.

49 (6) The board shall keep itself currently informed on new
50 and continuing state activities and responsibilities within
51 the insurance coverage herein contemplated. The board
52 shall work closely in cooperation with the State Fire
53 Marshal's office in applying the rules of that office insofar
54 as the appropriations and other factors peculiar to state
55 property will permit.

56 (7) The board may negotiate and effect settlement of any
57 and all insurance claims arising on or incident to losses of
58 and damages to covered state properties, activities and
59 responsibilities hereunder and shall have authority to
60 execute and deliver proper releases of all such claims when
61 settled. The board may adopt rules and procedures for
62 handling, negotiating and settlement of all such claims.
63 Any discussion or consideration of the financial or per-
64 sonal information of an insured may be held by the board
65 in executive session closed to the public, notwithstanding
66 the provisions of article nine-a, chapter six of this code.

67 (8) The board may employ an executive director and
68 such other employees, including legal counsel, as may be
69 necessary to carry out its duties. The executive director
70 shall receive an annual salary as provided in section two-a,
71 article seven, chapter six of this code. The legal counsel
72 may represent the board before any judicial or administra-
73 tive tribunal and perform such other duties as may be
74 requested by the board.

75 (9) The board may enter into any contracts necessary to
76 the execution of the powers granted to it by this article or
77 to further the intent of this article.

78 (10) The board may make rules governing its functions
79 and operations and the procurement of state insurance.
80 Except where otherwise provided by statute, rules of the
81 board are subject to the provisions of article three, chapter
82 twenty-nine-a of this code.

83 (11) The funds received by the board, including, but not
84 limited to, state agency premiums, mine subsidence
85 premiums and political subdivision premiums, shall be
86 deposited with the West Virginia Investment Management
87 Board with the interest income and returns on investment
88 a proper credit to such property insurance trust fund or
89 liability insurance trust fund as applicable.

90 (b) (1) *Definitions.* – The following words and phrases
91 when used in this subsection, for the purposes of this
92 subsection, have the meanings respectively ascribed to
93 them in this subsection;

94 (A) “Political subdivision” has the same meaning as in
95 section three, article twelve-a of this chapter;

96 (B) “Charitable” or “public service organization” means
97 any hospital in this state which has been certified as a
98 critical access hospital by the federal Centers for Medicare
99 and Medicaid upon the designation of the state Office of
100 Rural Health Policy, the Office of Community and Rural
101 Health Services, the Bureau for Public Health or the
102 Department of Health and Human Resources and any bona
103 fide, not-for-profit, tax-exempt, benevolent, educational,
104 philanthropic, humane, patriotic, civic, religious, eleemo-
105 synary, incorporated or unincorporated association or
106 organization or a rescue unit or other similar volunteer
107 community service organization or association, but does
108 not include any nonprofit association or organization,
109 whether incorporated or not, which is organized primarily
110 for the purposes of influencing legislation or supporting or
111 promoting the campaign of any candidate for public office;
112 and,

113 (C) "Emergency medical service agency" has the same
114 meaning as in section three, article four-c, chapter sixteen
115 of this code.

116 (2) If requested by a political subdivision, a charitable or
117 public service organization or an emergency medical
118 services agency, the board may, but is not required to,
119 provide property and liability insurance to insure the
120 property, activities and responsibilities of the political
121 subdivision, charitable or public service organization or
122 emergency medical services agency. The board may enter
123 into any contract necessary to the execution of the powers
124 granted by this article or to further the intent of this
125 article.

126 (A) Property insurance provided by the board pursuant
127 to this subsection may also include insurance on property
128 leased to or loaned to the political subdivision, a charita-
129 ble or public service organization or an emergency medical
130 services agency which is required to be insured under a
131 written agreement.

132 (B) The cost of insurance, as determined by the board,
133 shall be paid by the political subdivision, the charitable or
134 public service organization or the emergency medical
135 services agency and may include administrative expenses.
136 For purposes of this section, if an emergency medical
137 services agency is a for-profit entity, its claims history
138 may not adversely affect other participants' rates in the
139 same class.

140 (c)(1) The board has general supervision and control over
141 the optional medical liability insurance programs provid-
142 ing coverage to health care providers as authorized by the
143 provisions of article twelve-b of this chapter. The board
144 is hereby granted and may exercise all powers necessary or
145 appropriate to carry out and effectuate the purposes of
146 this article.

147 (2) The board shall:

148 (A) Administer the preferred medical liability program
149 and the high risk medical liability program and exercise
150 and perform other powers, duties and functions specified
151 in this article;

152 (B) Obtain and implement, at least annually, from an
153 independent outside source, such as a medical liability
154 actuary or a rating organization experienced with the
155 medical liability line of insurance, written rating plans for
156 the preferred medical liability program and high-risk
157 medical liability program on which premiums shall be
158 based;

159 (C) Prepare and annually review written underwriting
160 criteria for the preferred medical liability program and the
161 high-risk medical liability program. The board may utilize
162 review panels, including, but not limited to, the same
163 specialty review panels to assist in establishing criteria;

164 (D) Prepare and publish, before each regular session of
165 the Legislature, separate summaries for the preferred
166 medical liability program and high-risk medical liability
167 program activity during the preceding fiscal year, each
168 summary to be included in the Board of Risk and Insur-
169 ance Management audited financial statements as "other
170 financial information" and which shall include a balance
171 sheet, income statement and cash flow statement, an
172 actuarial opinion addressing adequacy of reserves, the
173 highest and lowest premiums assessed, the number of
174 claims filed with the program by provider type, the
175 number of judgments and amounts paid from the program,
176 the number of settlements and amounts paid from the
177 program and the number of dismissals without payment;

178 (E) Determine and annually review the claims history
179 debit or surcharge for the high-risk medical liability
180 program;

181 (F) Determine and annually review the criteria for
182 transfer from the preferred medical liability program to
183 the high-risk medical liability program;

184 (G) Determine and annually review the role of independ-
185 ent agents, the amount of commission, if any, to be paid
186 therefor and agent appointment criteria;

187 (H) Study and annually evaluate the operation of the
188 preferred medical liability program and the high-risk
189 medical liability program and make recommendations to
190 the Legislature, as may be appropriate, to ensure their
191 viability, including, but not limited to, recommendations
192 for civil justice reform with an associated cost-benefit
193 analysis, recommendations on the feasibility and desirabil-
194 ity of a plan which would require all health care providers
195 in the state to participate with an associated cost-benefit
196 analysis, recommendations on additional funding of other
197 state run insurance plans with an associated cost-benefit
198 analysis and recommendations on the desirability of
199 ceasing to offer a state plan with an associated analysis of
200 a potential transfer to the private sector with a cost-
201 benefit analysis, including impact on premiums;

202 (I) Establish a five-year financial plan to ensure an
203 adequate premium base to cover the long-tail nature of the
204 claims-made coverage provided by the preferred medical
205 liability program and the high risk medical liability
206 program. The plan shall be designed to meet the pro-
207 gram's estimated total financial requirements, taking into
208 account all revenues projected to be made available to the
209 program and apportioning necessary costs equitably
210 among participating classes of health care providers. For
211 these purposes, the board shall:

212 (i) Retain the services of an impartial, professional
213 actuary, with demonstrated experience in analysis of large
214 group malpractice plans, to estimate the total financial
215 requirements of the program for each fiscal year and to
216 review and render written professional opinions as to
217 financial plans proposed by the board. The actuary shall
218 also assist in the development of alternative financing
219 options and perform any other services requested by the
220 board or the executive director. All reasonable fees and

221 expenses for actuarial services shall be paid by the board.
222 Any financial plan or modifications to a financial plan
223 approved or proposed by the board pursuant to this
224 section shall be submitted to and reviewed by the actuary
225 and may not be finally approved and submitted to the
226 Governor and to the Legislature without the actuary's
227 written professional opinion that the plan may be reason-
228 ably expected to generate sufficient revenues to meet all
229 estimated program and administrative costs, including
230 incurred but not reported claims, for the fiscal year for
231 which the plan is proposed. The actuary's opinion for any
232 fiscal year shall include a requirement for establishment
233 of a reserve fund;

234 (ii) Submit its final, approved five-year financial plan,
235 after obtaining the necessary actuary's opinion, to the
236 Governor and to the Legislature no later than the first day
237 of January preceding the fiscal year. The financial plan
238 for a fiscal year becomes effective and shall be imple-
239 mented by the executive director on the first day of July of
240 the fiscal year. In addition to each final, approved finan-
241 cial plan required under this section, the board shall also
242 simultaneously submit an audited financial statement
243 based on generally accepted accounting practices (GAAP)
244 and which shall include allowances for incurred but not
245 reported claims: *Provided*, That the financial statement
246 and the accrual-based financial plan restatement shall not
247 affect the approved financial plan. The provisions of
248 chapter twenty-nine-a of this code shall not apply to the
249 preparation, approval and implementation of the financial
250 plans required by this section;

251 (iii) Submit to the Governor and the Legislature a
252 prospective five-year financial plan beginning on the first
253 day of January, two thousand three, and every year
254 thereafter, for the programs established by the provisions
255 of article twelve-b of this chapter. Factors that the board
256 shall consider include, but shall not be limited to, the
257 trends for the program and the industry; claims history,

258 number and category of participants in each program;
259 settlements and claims payments; and judicial results;

260 (iv) Obtain annually, certification from participants that
261 they have made a diligent search for comparable coverage
262 in the voluntary insurance market and have been unable
263 to obtain the same;

264 (J) Meet on at least a quarterly basis to review imple-
265 mentation of its current financial plan in light of the
266 actual experience of the medical liability programs
267 established in article twelve-b of this chapter. The board
268 shall review actual costs incurred, any revised cost esti-
269 mates provided by the actuary, expenditures and any other
270 factors affecting the fiscal stability of the plan and may
271 make any additional modifications to the plan necessary
272 to ensure that the total financial requirements of these
273 programs for the current fiscal year are met;

274 (K) To analyze the benefit of and necessity for excess
275 verdict liability coverage;

276 (L) Consider purchasing reinsurance, in the amounts as
277 it may, from time to time, determine is appropriate, and
278 the cost thereof shall be considered to be an operating
279 expense of the board;

280 (M) Make available to participants, optional extended
281 reporting coverage or tail coverage: *Provided*, That, at
282 least five working days prior to offering such coverage to
283 a participant or participants, the board shall notify the
284 President of the Senate and the Speaker of the House of
285 Delegates in writing of its intention to do so and such
286 notice shall include the terms and conditions of the
287 coverage proposed;

288 (N) Review and approve, reject or modify rules that are
289 proposed by the executive director to implement, clarify or
290 explain administration of the preferred medical liability
291 program and the high risk medical liability program.
292 Notwithstanding any provisions in this code to the con-

293 trary, rules promulgated pursuant to this paragraph are
294 not subject to the provisions of sections nine through
295 sixteen, inclusive, article three, chapter twenty-nine-a of
296 this code. The board shall comply with the remaining
297 provisions of article three and shall hold hearings or
298 receive public comments before promulgating any pro-
299 posed rule filed with the Secretary of State: *Provided,*
300 That the initial rules proposed by the executive director
301 and promulgated by the board shall become effective upon
302 approval by the board notwithstanding any provision of
303 this code;

304 (O) Enter into settlements and structured settlement
305 agreements whenever appropriate. The policy may not
306 require as a condition precedent to settlement or compro-
307 mise of any claim the consent or acquiescence of the policy
308 holder. The board may own or assign any annuity pur-
309 chased by the board to a company licensed to do business
310 in the state;

311 (P) Refuse to provide insurance coverage for individual
312 physicians whose prior loss experience or current profes-
313 sional training and capability are such that the physician
314 represents an unacceptable risk of loss if coverage is
315 provided;

316 (Q) Terminate coverage for nonpayment of premiums
317 upon written notice of the termination forwarded to the
318 health care provider not less than thirty days prior to
319 termination of coverage;

320 (R) Assign coverage or transfer insurance obligations
321 and/or risks of existing or in-force contracts of insurance
322 to a third-party medical professional liability insurance
323 carrier with the comparable coverage conditions as
324 determined by the board. Any transfer of obligation or
325 risk shall effect a novation of the transferred contract of
326 insurance and if the terms of the assumption reinsurance
327 agreement extinguish all liability of the board and the

328 State of West Virginia such extinguishment shall be
329 absolute as to any and all parties; and

330 (S) Meet and consult with and consider recommenda-
331 tions from the Medical Malpractice Advisory Panel
332 established by the provisions of article twelve-b of this
333 chapter.

334 (d) If, after the first day of September, two thousand
335 two, the board has assigned coverages or transferred all
336 insurance obligations and/or risks of existing or in-force
337 contracts of insurance to a third-party medical profes-
338 sional liability insurance carrier, and the board otherwise
339 has no covered participants, then the board shall not
340 thereafter offer or provide professional liability insurance
341 to any health care provider pursuant to the provisions of
342 subsection (c) of this section or the provisions of article
343 twelve-b of this chapter unless the Legislature adopts a
344 concurrent resolution authorizing the board to reestablish
345 medical liability insurance programs.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-2. Compensation and expenses of commissioner and employees; location of office.

1 The commissioner shall receive an annual salary as
2 provided in section two-a, article seven, chapter six of this
3 code and actual expenses incurred in the performance of
4 official business, which compensation shall be in full for
5 all services. The office of the commissioner shall be
6 maintained in the capitol or other suitable place in
7 Charleston. The commissioner may employ such persons
8 and incur such expenses as may be necessary in the
9 discharge of his duties and shall fix the compensation of
10 such employees, but such compensation shall not exceed
11 the appropriation therefor. The commissioner may
12 reimburse employees for reasonable expenses incurred for
13 job-related training and educational seminars and courses.

14 All compensation for salaries and expenses of the commis-
15 sioner and his employees shall be paid monthly out of the
16 state treasury by requisition upon the auditor, properly
17 certified by the commissioner.

**CHAPTER 60. STATE CONTROL
OF ALCOHOLIC LIQUORS.**

ARTICLE 2. ALCOHOLIC BEVERAGE CONTROL COMMISSIONER.

§60-2-9. Salary and expenses.

1 The commissioner shall receive an annual salary as
2 provided in section two-a, article seven, chapter six of this
3 code, and shall be paid actual and necessary traveling
4 expenses incurred in performance of the official duties of
5 the office.

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

Candy White
.....
Chairman Senate Committee

R. Ben
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2006.

Russell Johnson
.....
Clerk of the Senate

Bryce D. Sawyer
.....
Clerk of the House of Delegates

Carl By Tompkins
.....
President of the Senate

Robert
.....
Speaker House of Delegates

The within *is approved* this the *5th*
Day of *April*, 2006.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 03 2006

Time 2:15 pm