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2007 APR -4 PM 5:45

WEST VIRGINIA LEGISLATURE

SEVENTY-EIGHTH LEGISLATURE

REGULAR SESSION, 2007

OFFICE WEST VIRGINIA
SECRETARY OF STATE

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

ENROLLED

Senate Bill No. 442

(SENATORS BOWMAN, JENKINS, PLYMALE, MINARD,
MCKENZIE, WHITE AND HUNTER, *original sponsors*)

[Passed March 7, 2007; in effect from passage.]

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AN ACT to repeal §18-29-1, §18-29-2, §18-29-3, §18-29-4, §18-29-5, §18-29-6, §18-29-7, §18-29-8, §18-29-9, §18-29-10 and §18-29-11 of the Code of West Virginia, 1931, as amended; to repeal §29-6A-1, §29-6A-2, §29-6A-3, §29-6A-4, §29-6A-5, §29-6A-6, §29-6A-7, §29-6A-8, §29-6A-9, §29-6A-10, §29-6A-11 and §29-6A-12 of said code; to amend and reenact §5-5-4 and §5-5-5 of said code; to amend and reenact §5B-2-5 of said code; to amend and reenact §5F-2-1 of said code; to amend said code by adding thereto a new

article, designated §6C-2-1, §6C-2-2, §6C-2-3, §6C-2-4, §6C-2-5, §6C-2-6 and §6C-2-7; to amend said code by adding thereto a new article, designated §6C-3-1, §6C-3-2, §6C-3-3, §6C-3-4, §6C-3-5 and §6C-3-6; to amend and reenact §11-10A-8 of said code; to amend and reenact §18A-2-8 of said code; to amend and reenact §18B-2A-4 of said code; to amend and reenact §18B-7-4 of said code; to amend and reenact §21-5E-4 of said code; to amend and reenact §22C-7-2 of said code; to amend and reenact §31-20-27 of said code; to amend and reenact §33-48-2 of said code; and to amend and reenact §49-5E-5a of said code, all relating to state employees grievance procedures; establishing a new West Virginia public employees grievance procedure; discontinuing the Education and State Employees Grievance Board; creating the West Virginia Public Employees Grievance Board with five members appointed by the Governor; giving the board new powers, duties, rule-making authority and data collection responsibilities; creating a uniform grievance procedure with three levels for certain public employees; clarifying definitions and general grievance procedures; prohibiting supervisors from representing employees they evaluate; clarifying and reorganizing general provisions; increasing time frames in grievance procedure; defining default provisions; eliminating laches and defining back pay; establishing that employees may be represented at conferences, hearings and meetings at any step of the procedure; clarifying the procedure for conferences and hearings; removing hearing examiners from the grievance procedure; and making technical corrections to affected sections of the code.

Be it enacted by the Legislature of West Virginia:

That §18-29-1, §18-29-2, §18-29-3, §18-29-4, §18-29-5, §18-29-6, §18-29-7, §18-29-8, §18-29-9, §18-29-10 and §18-29-11 of the Code of West Virginia, 1931, as amended, be repealed; that §29-6A-1, §29-6A-2, §29-6A-3, §29-6A-4, §29-6A-5, §29-6A-6, §29-6A-7, §29-6A-8, §29-6A-9, §29-6A-10, §29-6A-11 and §29-6A-12 of said code be repealed; that §5-5-4 and §5-5-5 of said code be amended and reenacted; that §5B-2-5 of said code be amended and reenacted; that §5F-2-1 of said code be amended and reenacted; that said code be amended by adding

thereto a new article, designated §6C-2-1, §6C-2-2, §6C-2-3, §6C-2-4, §6C-2-5, §6C-2-6 and §6C-2-7; that said code be amended by adding thereto a new article, designated §6C-3-1, §6C-3-2, §6C-3-3, §6C-3-4, §6C-3-5 and §6C-3-6; that §11-10A-8 of said code be amended and reenacted; that §18A-2-8 of said code be amended and reenacted; that §18B-2A-4 of said code be amended and reenacted; that §18B-7-4 of said code be amended and reenacted; that §21-5E-4 of said code be amended and reenacted; that §22C-7-2 of said code be amended and reenacted; that §31-20-27 of said code be amended and reenacted; that §33-48-2 of said code be amended and reenacted; and that §49-5E-5a of said code be amended and reenacted all to read as follows:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF
THE GOVERNOR, SECRETARY OF STATE AND
ATTORNEY GENERAL; BOARD OF PUBLIC WORKS;
MISCELLANEOUS AGENCIES, COMMISSIONS,
OFFICES, PROGRAMS, ETC.**

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

**§5-5-4. Department of Health and Human Resources pay
equity salary adjustment.**

1 The Legislature hereby directs that a pay equity
2 salary adjustment be provided for employees of the
3 various agencies of the Department of Health and
4 Human Resources. This salary adjustment shall be
5 provided from the funding appropriated to the
6 department in the fiscal year two thousand and may not
7 be construed to require additional appropriations from
8 the Legislature. In the event any provision of this
9 section conflicts with any rule, policy or provision of
10 this code, the provisions of this section control. In
11 determining the pay equity salary adjustments, the
12 department may give consideration to employee tenure,
13 relevant average salaries and such other factors as may
14 be determined relevant by the secretary. Due to the
15 limits of funding, the results of the pay equity salary
16 adjustments shall not be subject to the provisions of
17 article two, chapter six-c of this code. The provisions of
18 this section are rehabilitative in nature and it is the

19 specific intent of the Legislature that no private cause
20 of action, either express or implied, shall arise pursuant
21 to the provisions or implementation of this section.

§5-5-5. Pay equity adjustment.

1 The Legislature hereby directs that a gender-based
2 pay equity salary adjustment be provided to public
3 employees as determined by the Secretary of the
4 Department of Administration, based on
5 recommendations of the equal pay commission, within
6 the limitations provided by this section. This salary
7 adjustment shall be provided from the funding
8 appropriated to the Department of Administration,
9 office of the secretary, for purposes of a "pay equity
10 reserve" in the fiscal year two thousand two and may
11 not be construed to require additional appropriations
12 from the Legislature. If any provision of this section
13 conflicts with any rule, policy or provision of this code,
14 the provisions of this section control. Because the
15 provisions of this section are rehabilitative in nature,
16 the results of the pay equity salary adjustments are not
17 subject to the provisions of article two, chapter six-c of
18 this code. Further, it is the specific intent of the
19 Legislature that no private cause of action, either
20 express or implied, is created by or otherwise arises
21 from the enactment, provisions or implementation of
22 this section.

**CHAPTER 5B. ECONOMIC DEVELOPMENT
ACT OF 1985.**

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-5. Economic development representatives.

1 (a) The director may employ economic development
2 representatives to be paid a base salary within
3 legislative appropriations to the West Virginia
4 Development Office, subject to provisions set forth by
5 the council in its reorganization plan and applicable
6 contract provisions pursuant to section four of this
7 article. Economic development representatives may

8 receive performance-based incentives and expenses
9 paid from private funds from a nonprofit corporation
10 contracting with the West Virginia Development Office
11 pursuant to the provisions of section four of this article.
12 The director shall establish job descriptions and
13 responsibilities of economic development
14 representatives, subject to the provisions of any
15 contract with a nonprofit corporation entered into
16 pursuant to section four of this article.

17 (b) Notwithstanding any provision of this code to the
18 contrary, economic development representatives
19 employed within the West Virginia Development Office
20 are not subject to the procedures and protections
21 provided by articles six and six-a, chapter twenty-nine
22 of this code. Any employee of the West Virginia
23 Development Office on the effective date of this article
24 who applies for employment as an economic
25 development representative is not entitled to the
26 protections of article six, chapter twenty-nine with
27 respect to hiring procedures and qualifications; and
28 upon accepting employment as an economic
29 development representative, the employee relinquishes
30 the protections provided for in article two, chapter six-c
31 and article six, chapter twenty-nine of this code.

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

1 (a) The following agencies and boards, including all of
2 the allied, advisory, affiliated or related entities and
3 funds associated with any agency or board, are
4 incorporated in and administered as a part of the
5 Department of Administration:

6 (1) Building Commission provided in article six,
7 chapter five of this code;

8 (2) Public Employees Insurance Agency and Public
9 Employees Insurance Agency Advisory Board provided
10 in article sixteen, chapter five of this code;

11 (3) Governor's Mansion Advisory Committee provided
12 for in article five, chapter five-a of this code;

13 (4) Commission on Uniform State Laws provided in
14 article one-a, chapter twenty-nine of this code;

15 (5) West Virginia Public Employees Grievance Board
16 provided for in article three, chapter six-c of this code;

17 (6) Board of Risk and Insurance Management
18 provided for in article twelve, chapter twenty-nine of
19 this code;

20 (7) Boundary Commission provided in article twenty-
21 three, chapter twenty-nine of this code;

22 (8) Public Defender Services provided in article
23 twenty-one, chapter twenty-nine of this code;

24 (9) Division of Personnel provided in article six,
25 chapter twenty-nine of this code;

26 (10) The West Virginia Ethics Commission provided in
27 article two, chapter six-b of this code;

28 (11) Consolidated Public Retirement Board provided
29 in article ten-d, chapter five of this code; and

30 (12) Real Estate Division provided in article ten,
31 chapter five-a of this code.

32 (b) The following agencies and boards, including all of
33 the allied, advisory, affiliated or related entities and
34 funds associated with any agency or board, are
35 incorporated in and administered as a part of the
36 Department of Commerce:

37 (1) Division of Labor provided in article one, chapter
38 twenty-one of this code, which includes:

39 (A) Occupational Safety and Health Review
40 Commission provided in article three-a, chapter twenty-
41 one of this code; and

42 (B) Board of Manufactured Housing Construction and
43 Safety provided in article nine, chapter twenty-one of
44 this code;

45 (2) Office of Miners' Health, Safety and Training
46 provided in article one, chapter twenty-two-a of this
47 code. The following boards are transferred to the Office
48 of Miners' Health, Safety and Training for purposes of
49 administrative support and liaison with the Office of the
50 Governor:

51 (A) Board of Coal Mine Health and Safety and Coal
52 Mine Safety and Technical Review Committee provided
53 in article six, chapter twenty-two-a of this code;

54 (B) Board of Miner Training, Education and
55 Certification provided in article seven, chapter twenty-
56 two-a of this code; and

57 (C) Mine Inspectors' Examining Board provided in
58 article nine, chapter twenty-two-a of this code;

59 (3) The West Virginia Development Office, which
60 includes the Division of Tourism and the Tourism
61 Commission provided in article two, chapter five-b of
62 this code;

63 (4) Division of Natural Resources and Natural
64 Resources Commission provided in article one, chapter
65 twenty of this code;

66 (5) Division of Forestry provided in article one-a,
67 chapter nineteen of this code;

68 (6) Geological and Economic Survey provided in
69 article two, chapter twenty-nine of this code; and

70 (7) Workforce West Virginia provided in chapter
71 twenty-one-a of this code, which includes:

72 (A) Division of Unemployment Compensation;

73 (B) Division of Employment Service;

74 (C) Division of Workforce Development; and

75 (D) Division of Research, Information and Analysis;
76 and

77 (8) Division of Energy provided in article two-f,
78 chapter five-b of this code.

79 (c) The Economic Development Authority provided in
80 article fifteen, chapter thirty-one of this code is
81 continued as an independent agency within the
82 executive branch.

83 (d) The Water Development Authority and Board
84 provided in article one, chapter twenty-two-c of this
85 code is continued as an independent agency within the
86 executive branch.

87 (e) The following agencies and boards, including all of
88 the allied, advisory and affiliated entities, are
89 transferred to the Department of Environmental
90 Protection for purposes of administrative support and
91 liaison with the office of the Governor:

92 (1) Air Quality Board provided in article two, chapter
93 twenty-two-b of this code;

94 (2) Solid Waste Management Board provided in article
95 three, chapter twenty-two-c of this code;

96 (3) Environmental Quality Board, or its successor
97 board, provided in article three, chapter twenty-two-b
98 of this code;

99 (4) Surface Mine Board provided in article four,
100 chapter twenty-two-b of this code;

101 (5) Oil and Gas Inspectors' Examining Board provided
102 in article seven, chapter twenty-two-c of this code;

103 (6) Shallow Gas Well Review Board provided in article
104 eight, chapter twenty-two-c of this code; and

105 (7) Oil and Gas Conservation Commission provided in
106 article nine, chapter twenty-two-c of this code.

107 (f) The following agencies and boards, including all of
108 the allied, advisory, affiliated or related entities and
109 funds associated with any agency or board, are
110 incorporated in and administered as a part of the
111 Department of Education and the Arts:

112 (1) Library Commission provided in article one,
113 chapter ten of this code;

114 (2) Educational Broadcasting Authority provided in
115 article five, chapter ten of this code;

116 (3) Division of Culture and History provided in article
117 one, chapter twenty-nine of this code;

118 (4) Division of Rehabilitation Services provided in
119 section two, article ten-a, chapter eighteen of this code.

120 (g) The following agencies and boards, including all of
121 the allied, advisory, affiliated or related entities and
122 funds associated with any agency or board, are
123 incorporated in and administered as a part of the
124 Department of Health and Human Resources:

125 (1) Human Rights Commission provided in article
126 eleven, chapter five of this code;

127 (2) Division of Human Services provided in article
128 two, chapter nine of this code;

129 (3) Bureau for Public Health provided in article one,
130 chapter sixteen of this code;

131 (4) Office of Emergency Medical Services and
132 Advisory Council provided in article four-c, chapter
133 sixteen of this code;

134 (5) Health Care Authority provided in article twenty-
135 nine-b, chapter sixteen of this code;

136 (6) Commission on Mental Retardation provided in
137 article fifteen, chapter twenty-nine of this code;

138 (7) Women's Commission provided in article twenty,
139 chapter twenty-nine of this code; and

140 (8) The Child Support Enforcement Division provided
141 in chapter forty-eight of this code.

142 (h) The following agencies and boards, including all of
143 the allied, advisory, affiliated or related entities and
144 funds associated with any agency or board, are
145 incorporated in and administered as a part of the
146 Department of Military Affairs and Public Safety:

147 (1) Adjutant General's Department provided in article
148 one-a, chapter fifteen of this code;

149 (2) Armory Board provided in article six, chapter
150 fifteen of this code;

151 (3) Military Awards Board provided in article one-g,
152 chapter fifteen of this code;

153 (4) West Virginia State Police provided in article two,
154 chapter fifteen of this code;

155 (5) Division of Homeland Security and Emergency
156 Management and Disaster Recovery Board provided in
157 article five, chapter fifteen of this code and Emergency
158 Response Commission provided in article five-a of said
159 chapter;

160 (6) Sheriffs' Bureau provided in article eight, chapter
161 fifteen of this code;

162 (7) Division of Corrections provided in chapter
163 twenty-five of this code;

164 (8) Fire Commission provided in article three, chapter

165 twenty-nine of this code;

166 (9) Regional Jail and Correctional Facility Authority
167 provided in article twenty, chapter thirty-one of this
168 code;

169 (10) Board of Probation and Parole provided in article
170 twelve, chapter sixty-two of this code; and

171 (11) Division of Veterans' Affairs and Veterans'
172 Council provided in article one, chapter nine-a of this
173 code.

174 (i) The following agencies and boards, including all of
175 the allied, advisory, affiliated or related entities and
176 funds associated with any agency or board, are
177 incorporated in and administered as a part of the
178 Department of Revenue:

179 (1) Tax Division provided in article one, chapter
180 eleven of this code;

181 (2) Racing Commission provided in article twenty-
182 three, chapter nineteen of this code;

183 (3) Lottery Commission and position of Lottery
184 Director provided in article twenty-two, chapter
185 twenty-nine of this code;

186 (4) Agency of Insurance Commissioner provided in
187 article two, chapter thirty-three of this code;

188 (5) Office of Alcohol Beverage Control Commissioner
189 provided in article sixteen, chapter eleven of this code
190 and article two, chapter sixty of this code;

191 (6) Board of Banking and Financial Institutions
192 provided in article three, chapter thirty-one-a of this
193 code;

194 (7) Lending and Credit Rate Board provided in
195 chapter forty-seven-a of this code;

196 (8) Division of Banking provided in article two,
197 chapter thirty-one-a of this code;

198 (9) The State Budget Office provided in article two of
199 this chapter;

200 (10) The Municipal Bond Commission provided in
201 article three, chapter thirteen of this code;

202 (11) The Office of Tax Appeals provided in article ten-
203 a, chapter eleven of this code; and

204 (12) The State Athletic Commission provided in article
205 five-a, chapter twenty-nine of this code.

206 (j) The following agencies and boards, including all of
207 the allied, advisory, affiliated or related entities and
208 funds associated with any agency or board, are
209 incorporated in and administered as a part of the
210 Department of Transportation:

211 (1) Division of Highways provided in article two-a,
212 chapter seventeen of this code;

213 (2) Parkways, Economic Development and Tourism
214 Authority provided in article sixteen-a, chapter
215 seventeen of this code;

216 (3) Division of Motor Vehicles provided in article two,
217 chapter seventeen-a of this code;

218 (4) Driver's Licensing Advisory Board provided in
219 article two, chapter seventeen-b of this code;

220 (5) Aeronautics Commission provided in article two-a,
221 chapter twenty-nine of this code;

222 (6) State Rail Authority provided in article eighteen,
223 chapter twenty-nine of this code; and

224 (7) Port Authority provided in article sixteen-b,
225 chapter seventeen of this code.

226 (k) Except for powers, authority and duties that have
227 been delegated to the secretaries of the departments by
228 the provisions of section two of this article, the position
229 of administrator and the powers, authority and duties
230 of each administrator and agency are not affected by
231 the enactment of this chapter.

232 (l) Except for powers, authority and duties that have
233 been delegated to the secretaries of the departments by
234 the provisions of section two of this article, the
235 existence, powers, authority and duties of boards and
236 the membership, terms and qualifications of members
237 of the boards are not affected by the enactment of this
238 chapter. All boards that are appellate bodies or are
239 independent decisionmakers shall not have their
240 appellate or independent decision-making status
241 affected by the enactment of this chapter.

242 (m) Any department previously transferred to and
243 incorporated in a department by prior enactment of this
244 section means a division of the appropriate department.
245 Wherever reference is made to any department
246 transferred to and incorporated in a department created
247 in section two, article one of this chapter, the reference
248 means a division of the appropriate department and any
249 reference to a division of a department so transferred
250 and incorporated means a section of the appropriate
251 division of the department.

252 (n) When an agency, board or commission is
253 transferred under a bureau or agency other than a
254 department headed by a secretary pursuant to this
255 section, that transfer is solely for purposes of
256 administrative support and liaison with the Office of the
257 Governor, a department secretary or a bureau. Nothing
258 in this section extends the powers of department
259 secretaries under section two of this article to any
260 person other than a department secretary and nothing
261 limits or abridges the statutory powers and duties of
262 statutory commissioners or officers pursuant to this
263 code.

CHAPTER 6C. PUBLIC EMPLOYEES.

ARTICLE 2. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.

§6C-2-1. Purpose.

1 (a) The purpose of this article is to provide a
2 procedure for the resolution of employment grievances
3 raised by the public employees of the State of West
4 Virginia, except as otherwise excluded in this article.

5 (b) Resolving grievances in a fair, efficient, cost-
6 effective and consistent manner will maintain good
7 employee morale, enhance employee job performance
8 and better serve the citizens of the State of West
9 Virginia.

10 (c) Nothing in this article prohibits the informal
11 disposition of grievances by stipulation or settlement
12 agreed to in writing by the parties, nor the exercise of
13 any hearing right provided in chapter eighteen or
14 eighteen-a of this code.

15 (d) Effective the first day of July, two thousand seven,
16 any reference in this code to the education grievance
17 procedure, the state grievance procedure, article
18 twenty-nine, chapter eighteen of this code or article six-
19 a, chapter twenty-nine of this code, or any subsection
20 thereof, shall be considered to refer to the appropriate
21 grievance procedure pursuant to this article.

22 (e) Any grievance proceeding which is in process on
23 the effective date of the enactment of this article will be
24 completed as expeditiously as possible, and all
25 outstanding orders for hearings must be completed by
26 the first day of July, two thousand seven. Parties to
27 grievances for which a hearing has not been held may,
28 by agreement, proceed to either level two or level three.

§6C-2-2. Definitions.

1 For the purpose of this article and article three of this

2 chapter:

3 (a) "Board" means the West Virginia Public
4 Employees Grievance Board created in article three of
5 this chapter.

6 (b) "Chief administrator" means, in the appropriate
7 context, the commissioner, chancellor, director,
8 president or head of any state department, board,
9 commission, agency, state institution of higher
10 education, commission or council, the state
11 superintendent, the county superintendent, the
12 executive director of a regional educational service
13 agency or the director of a multicounty vocational
14 center who is vested with the authority to resolve a
15 grievance. A "chief administrator" includes a designee,
16 with the authority delegated by the chief administrator,
17 appointed to handle any aspect of the grievance
18 procedure as established by this article.

19 (c) "Days" means working days exclusive of Saturday,
20 Sunday, official holidays and any day in which the
21 employee's workplace is legally closed under the
22 authority of the chief administrator due to weather or
23 other cause provided for by statute, rule, policy or
24 practice.

25 (d) (1) "Employee" means any person hired for
26 permanent employment by an employer for a
27 probationary, full- or part-time position.

28 (2) A substitute education employee is considered an
29 "employee" only on matters related to days worked or
30 when there is a violation, misapplication or
31 misinterpretation of a statute, policy, rule or written
32 agreement relating to the substitute.

33 (3) "Employee" does not mean a member of the West
34 Virginia State Police employed pursuant to article two
35 chapter fifteen of this code, but does include civilian
36 employees hired by the Superintendent of the State
37 Police. "Employee" does not mean an employee of a
38 constitutional officer unless he or she is covered under

39 the civil service system, an employee of the Legislature,
40 or a patient or inmate employed by a state institution.

41 (e) "Employee organization" means an employee
42 advocacy organization with employee members that has
43 filed with the board the name, address, chief officer and
44 membership criteria of the organization.

45 (f) "Employer" means a state agency, department,
46 board, commission, college, university, institution, state
47 board of education, department of education, county
48 board of education, regional educational service agency
49 or multicounty vocational center, or agent thereof, using
50 the services of an employee as defined in this section.

51 (g) (1) "Grievance" means a claim by an employee
52 alleging a violation, a misapplication or a
53 misinterpretation of the statutes, policies, rules or
54 written agreements applicable to the employee
55 including:

56 (i) Any violation, misapplication or misinterpretation
57 regarding compensation, hours, terms and conditions of
58 employment, employment status or discrimination,
59 unless the discrimination is related to the actual job
60 responsibilities of the employee or agreed to in writing
61 by the employee;

62 (ii) Any discriminatory or otherwise aggrieved
63 application of unwritten policies or practices of his or
64 her employer;

65 (iii) Any specifically identified incident of harassment,
66 including repeated or continual disturbance, irritation
67 or annoyance of an employee that is contrary to the
68 demeanor expected by law, policy and profession, or
69 favoritism, including unfair treatment of an employee
70 as demonstrated by preferential, exceptional or
71 advantageous treatment of another similarly situated
72 employee; or

73 (iv) Any action, policy or practice constituting a
74 substantial detriment to or interference with the

75 effective job performance of the employee, or the health
76 and safety of the employee.

77 (2) "Grievance" does not mean any pension matter or
78 other issue relating to public employees insurance in
79 accordance with article sixteen, chapter five of this
80 code, retirement or any other matter in which the
81 authority to act is not vested with the employer.

82 (h) "Grievant" means an employee or group of
83 similarly situated employees filing a grievance.

84 (i) "Party" and "parties" mean the grievant, employer
85 and the Director of the Division of Personnel for state
86 government employee grievances. The Division of
87 Personnel shall not be a party to grievances involving
88 higher education employees.

89 (j) "Representative" means any employee
90 organization, fellow employee, legal counselor or other
91 person designated by the grievant as the grievant's
92 representative and may not include a supervisor who
93 evaluates the grievant.

§6C-2-3. Grievance procedure generally.

1 (a) *Time limits.* —

2 (1) An employee shall file a grievance within the time
3 limits specified in this article.

4 (2) The specified time limits may be extended to a date
5 certain by mutual written agreement, and shall be
6 extended whenever a grievant is not working because of
7 accident, sickness, death in the immediate family or
8 other cause for which the grievant has approved leave
9 from his or her employment.

10 (b) *Default.* —

11 (1) The grievant prevails by default if a required
12 response is not made by the employer within the time
13 limits established in this article, unless the employer is

14 prevented from doing so directly as a result of injury,
15 illness or a justified delay not caused by negligence or
16 intent to delay the grievance process.

17 (2) Within ten days of the default, the grievant may
18 file with the chief administrator a written notice of
19 intent to proceed directly to the next level or to enforce
20 the default. If the chief administrator objects to the
21 default, then the chief administrator may request a
22 hearing before an administrative law judge for the
23 purpose of stating a defense to the default, as permitted
24 by subdivision one of this subsection, or showing that
25 the remedy requested by the prevailing grievant is
26 contrary to law or contrary to proper and available
27 remedies. In making a determination regarding the
28 remedy, the administrative law judge shall determine
29 whether the remedy is proper, available and not
30 contrary to law.

31 (3) If the administrative law judge finds that the
32 employer has a defense to the default as permitted by
33 subdivision (1) of this subsection, or that the remedy is
34 contrary to law or not proper or available at law, the
35 administrative law judge may deny the default, or
36 modify the remedy to be granted to comply with the law
37 or otherwise make the grievant whole.

38 (c) *Defenses and limitations.* —

39 (1) *Untimeliness.* — Any assertion by the employer
40 that the filing of the grievance at level one was untimely
41 shall be asserted by the employer at or before level two.

42 (2) *Back Pay.* — A one-year statute of limitations
43 applies to the recovery of back pay. In the case of a
44 willful violation by the employer in which it can be
45 shown by a preponderance of the evidence that the
46 employer acted in bad faith in concealing the facts
47 giving rise to the claim for back pay, an eighteen-month
48 statute of limitations applies. Further, a grievant's right
49 to back pay tolls from the time that the grievant has
50 actual or constructive knowledge of his or her right to
51 back pay.

52 (3) *Statutory defense.* — If the employer intends to
53 assert the application of any statute, policy, rule or
54 written agreement as a defense at any level, then a copy
55 of the materials shall be forwarded to the grievant and
56 his or her representative.

57 (d) *Withdrawal and reinstatement of grievance.* — An
58 employee may withdraw a grievance at any time by
59 filing a written notice of withdrawal with the chief
60 administrator or the board. The grievance may not be
61 reinstated by the grievant unless reinstatement is
62 granted by the chief administrator or the board. If more
63 than one employee is named as a grievant, the
64 withdrawal of one employee does not prejudice the
65 rights of any other employee named in the grievance.

66 (e) *Consolidation and Groups of Similarly Situated*
67 *Employees.* —

68 (1) Grievances may be consolidated at any level by
69 agreement of all parties, or at the discretion of the
70 administrative law judge.

71 (2) Class actions are not permitted. However, a
72 grievance may be filed by one or more employees on
73 behalf of a group of similarly situated employees, but
74 any similarly situated employee shall indicate in writing
75 his or her intent to join the group of similarly situated
76 employees. Only one employee filing a grievance on
77 behalf of similarly situated employees shall be required
78 to participate in the level one hearing required in
79 section four of this article.

80 (f) *Intervention.* — Upon a timely request, any
81 employee may intervene and become a party to a
82 grievance at any level when the employee demonstrates
83 that the disposition of the action may substantially and
84 adversely affect his or her rights or property and that
85 his or her interest is not adequately represented by the
86 existing parties.

87 (g) *Representation.* — An employee may designate a
88 representative who may be present at any step of the

89 procedure as well as at any meeting that is held with the
90 employee for the purpose of discussing or considering
91 disciplinary action.

92 (h) *Reprisal*. — No reprisal or retaliation of any kind
93 may be taken by an employer against a grievant or any
94 other participant in the grievance procedure by reason
95 of his or her participation. Reprisal or retaliation
96 constitutes a grievance, and any person held responsible
97 is subject to disciplinary action for insubordination.
98 Further, any supervisor or administrator responsible for
99 a willful act of bad faith toward an employee or who
100 intentionally works an employee out of classification
101 may be subject to disciplinary action, including
102 demotion or discharge.

103 (i) *Forms*. — The board shall create the forms for
104 filing grievances, giving notice, taking appeals, making
105 reports and recommendations, and all other necessary
106 documents and provide them to chief administrators to
107 make available to any employee upon request.

108 (j) *Discovery*. — The parties are entitled to copies of
109 all material submitted to the chief administrator or the
110 administrative law judge by any party. All documents
111 submitted become part of the record.

112 (k) *Conferences and Hearings*. —

113 (1) *Impartiality*. — The administrative law judge shall
114 conduct all level three hearings in an impartial manner
115 and shall ensure that all parties are accorded
116 procedural and substantive due process.

117 (2) *Closed Conferences and Hearings*. — All
118 conferences and hearings shall be conducted in private.
119 Hearings may be public at level three at the discretion
120 of the administrative law judge.

121 (3) *Evidence*. — All parties may present supportive or
122 corroborative evidence and argument with respect to
123 the grievance at a conference or hearing. Formal rules
124 of evidence do not apply, but parties are bound by the

125 rules of privilege recognized by law, and the rules and
126 procedures established by the board.

127 (4) *Witnesses.* — At level one, the chief administrator
128 may call witnesses and may allow parties to call
129 witnesses during a conference or hearing upon request.
130 The parties have the right to call, examine and
131 cross-examine witnesses during any hearing.
132 Administrative law judges may issue subpoenas for
133 witnesses, limit witnesses, administer oaths and may
134 exercise other powers granted by rule or law. No
135 employee may be compelled to testify against himself or
136 herself in a grievance hearing.

137 (5) *Notice.* — Reasonable notice of a conference or
138 hearing shall be sent at least five days prior to the
139 hearing to all parties and their representatives and shall
140 include the date, time and place of the hearing. If an
141 employer causes a conference or hearing to be
142 postponed without adequate notice to employees who
143 are scheduled to appear during their normal work day,
144 the employees may not suffer any loss in pay for work
145 time lost.

146 (6) *Location.* — All proceedings shall be at a
147 convenient place accessible to all parties and the
148 location of the level three hearing shall be set by the
149 administrative law judge.

150 (7) *Date and Time.* — Conferences and hearings shall
151 be scheduled within the time frames established at a
152 reasonable time of day in accommodation to the parties'
153 work schedules. Disagreements shall be decided by the
154 board or the administrative law judge.

155 (8) *Record.* — Conferences are not required to be
156 recorded, but all evidence submitted and the decision
157 become part of the record. All the testimony and
158 evidence at a hearing shall be recorded by mechanical
159 means, and a copy of the recording provided to any
160 party upon request. The board is responsible for paying
161 for and promptly providing a certified transcript of a
162 hearing to a requesting party or the court for a

163 mandamus or appellate proceeding.

164 (l) *Grievance decisions.* —

165 (1) Prior to a decision, any party may propose findings
166 of fact and conclusions of law.

167 (2) Decisions rendered at all levels of the grievance
168 procedure shall be dated, in writing, setting forth the
169 decision or decisions and the reasons for the decision,
170 and transmitted to the board, the employer and the
171 grievant within the time limits prescribed. If the
172 grievant is denied the relief sought, the decision shall
173 include the procedure for the next level of appeal for
174 the grievant.

175 (m) *Preparation time.* —

176 (1) The grievance shall be processed during regular
177 working hours with minimal interference with the
178 normal operations of the employer and schedule of the
179 employee.

180 (2) The grievant, witnesses and an employee
181 representative shall be granted reasonable and
182 necessary time off during working hours for grievance
183 proceedings without loss of pay and without charge to
184 annual or compensatory leave credits.

185 (3) In addition to actual time spent in grievance
186 conferences and hearings, the grievant and an employee
187 representative shall be granted time off during working
188 hours, not to exceed four hours per grievance, for the
189 preparation of the grievance without loss of pay and
190 without charge to annual or compensatory leave credits.
191 However, the first responsibility of any employee is the
192 work assigned to the employee. An employee may not
193 allow grievance preparation and representation
194 activities to seriously affect the overall productivity of
195 the employee.

196 (4) The grievant and an employee representative shall
197 have access to the employer's equipment for purposes of

198 preparing grievance documents subject to the
199 reasonable rules of the employer governing the use of
200 the equipment for non-work purposes.

201 (5) Disagreements regarding preparation time shall be
202 decided by the board or the presiding administrative
203 law judge.

204 (n) *Grievance files.* —

205 (1) All grievance forms and reports shall be kept in a
206 file separate from the personnel file of the employee and
207 may not become a part of the personnel file, but shall
208 remain confidential except by mutual written
209 agreement of the parties.

210 (2) The grievant may file a written request to have the
211 grievant's identity removed from any files kept by the
212 employer one year following the conclusion of the
213 grievance.

214 (o) *Number of Grievances.* — The number of
215 grievances filed against an employer by an employee is
216 not, per se, an indication of the employer's or the
217 employee's job performance.

218 (p) *Procedures and Rules.* — The board shall prescribe
219 rules and procedures in compliance with this article,
220 article three of this chapter and the State
221 Administrative Procedures Act under chapter twenty-
222 nine-a of this code for all matters relating to the
223 grievance procedure.

§6C-2-4. Grievance procedural levels.

1 (a) *Level one: Chief Administrator.* —

2 (1) Within fifteen days following the occurrence of the
3 event upon which the grievance is based, or within
4 fifteen days of the date upon which the event became
5 known to the employee, or within fifteen days of the
6 most recent occurrence of a continuing practice giving
7 rise to a grievance, an employee may file a written

8 grievance with the chief administrator stating the
9 nature of the grievance and the relief requested and
10 request either a conference or a hearing. The employee
11 shall also file a copy of the grievance with the board.
12 State government employees shall further file a copy of
13 the grievance with the Director of the Division of
14 Personnel, who may participate at any level in person or
15 by a designee.

16 (2) The chief administrator shall hold the conference
17 or hearing, as requested by the grievant, within ten days
18 of receiving the grievance and issue a written decision
19 within fifteen days of the conference or hearing.

20 (3) An employee may proceed directly to level three
21 upon the agreement of the employee and the chief
22 administrator or when discharged, suspended without
23 pay or demoted or reclassified resulting in a loss of
24 compensation or benefits.

25 (b) *Level two: Alternative dispute resolution.* —

26 (1) Within ten days of receiving an adverse written
27 decision at level one, the grievant shall file a written
28 request for mediation, private mediation or mediation-
29 arbitration with the board if the grievant desires to
30 continue the grievance process.

31 (A) *Mediation.* — The board shall schedule the
32 mediation between the parties within twenty days of the
33 request. Mediation shall be conducted by an
34 administrative law judge pursuant to standard
35 mediation practices and board procedures at no cost to
36 the parties. Parties may be represented and shall have
37 the authority to resolve the dispute. Agreements
38 reached through mediation shall be documented in
39 writing within fifteen days. Agreements are binding
40 and enforceable in this state by a writ of mandamus.

41 (B) *Private Mediation.* — The parties may agree in
42 writing to retain their choice of a private mediator and
43 share the cost. The mediator shall schedule the
44 mediation within twenty days of the written request

45 and shall follow standard mediation practices and any
46 applicable board procedures. Parties may be
47 represented and shall have the authority to resolve the
48 dispute. Agreements reached through mediation shall
49 be documented in writing within fifteen days.
50 Agreements are binding and enforceable in this state by
51 a writ of mandamus.

52 (C) *Mediation-arbitration.* — The parties may agree in
53 writing to participate in mediation-arbitration. The
54 board shall schedule the mediation-arbitration between
55 the parties within twenty days of the request.
56 Mediation-arbitration shall be conducted by an
57 administrative law judge pursuant to standard
58 mediation and arbitration practices and board
59 procedures, at no cost to the parties. In the event the
60 mediation does not result in a resolution, the mediator
61 may become an arbitrator and proceed to decide the
62 matter. The parties may be represented and may
63 resolve the dispute. Agreements reached through
64 mediation and decisions issued through arbitration are
65 to be documented in writing within fifteen days, and are
66 binding and enforceable in this state by a writ of
67 mandamus.

68 (2) *Neutral Evaluation.* — Within fifteen days of the
69 conclusion of an unsuccessful mediation or mediation-
70 arbitration, the administrative law judge serving as the
71 mediator or mediator-arbitrator may provide a written
72 summary to the parties as a neutral evaluator stating
73 the issues presented, and issue a scheduling and
74 discovery order that is binding upon the parties in
75 preparation for level three.

76 (c) *Level three: Adjudication.* —

77 (1) Within ten days of receiving a written report
78 stating that alternative dispute resolution at level two
79 was unsuccessful, the grievant may file a written appeal
80 with the employer and the board requesting a hearing
81 and adjudication on the grievance. The administrative
82 law judge shall schedule the hearing, and any other
83 proceedings or deadlines, within a reasonable time in

84 consultation with the parties. State government
85 employees shall also serve a copy of the appeal upon the
86 Director of the Division of Personnel, or his or her
87 designee, who may appear at the hearing and submit
88 oral or written evidence upon matters at issue.

89 (2) Both the employer and the employee shall at all
90 times act in good faith and make every possible effort to
91 resolve disputes at the lowest level of the grievance
92 procedure. The administrative law judge may make a
93 determination of bad faith and in extreme instances
94 allocate the cost of the hearing to the party found to be
95 acting in bad faith. The allocation of costs shall be
96 based on the relative ability of the party to pay the
97 costs.

98 (3) Within thirty days following the hearing, the
99 administrative law judge shall render a decision in
100 writing to all parties setting forth findings of fact and
101 conclusions of law on the issues submitted.

§6C-2-5. Enforcement and appeal.

1 (a) The decision of the administrative law judge is
2 final upon the parties and is enforceable in the circuit
3 court of Kanawha County.

4 (b) A party may appeal the decision of the
5 administrative law judge on the grounds that the
6 decision:

7 (1) Is contrary to law or a lawfully adopted rule or
8 written policy of the employer;

9 (2) Exceeds the administrative law judge's statutory
10 authority;

11 (3) Is the result of fraud or deceit;

12 (4) Is clearly wrong in view of the reliable, probative
13 and substantial evidence on the whole record; or

14 (5) Is arbitrary or capricious or characterized by abuse

15 of discretion or clearly unwarranted exercise of
16 discretion.

17 (c) A party shall file the appeal in the circuit court of
18 Kanawha County within thirty days of receipt of the
19 administrative law judge's decision. The decision of the
20 administrative law judge is not automatically stayed
21 upon the filing of an appeal, but a stay may be granted
22 by the circuit court upon a separate motion for a stay.

23 (d) The court shall review the entire record that was
24 before the administrative law judge, and the court may
25 hear oral arguments and require written briefs. The
26 court may reverse, vacate or modify the decision of the
27 administrative law judge, or may remand the grievance
28 to the administrative law judge or the chief
29 administrator for further proceedings.

§6C-2-6. Allocation of expenses and attorney's fees.

1 (a) Any expenses incurred relative to the grievance
2 procedure at levels one, two or three shall be borne by
3 the party incurring the expenses.

4 (b) In the event a grievant or employer appeals an
5 adverse level three decision to the circuit court of
6 Kanawha County, or an adverse circuit court decision
7 to the Supreme Court of Appeals of West Virginia, and
8 the grievant substantially prevails upon the appeal, the
9 grievant may recover from the employer court costs and
10 reasonable attorney's fees for the appeal to be set by the
11 court.

§6C-2-7. Mandamus proceeding.

1 Any employer failing to comply with the provisions of
2 this article may be compelled to do so by a mandamus
3 proceeding and may be liable to a prevailing party for
4 court costs and reasonable attorney's fees to be set by
5 the court.

ARTICLE 3. WEST VIRGINIA PUBLIC EMPLOYEES GRIEVANCE BOARD.

§6C-3-1. West Virginia Public Employees Grievance Board.

1 (a) Effective the thirtieth day of June, two thousand
2 seven, the Education and State Employees Grievance
3 Board, and the employment of the hearing examiners
4 and administrative law judges under the board,
5 terminate.

6 (b) Effective the first day of July, two thousand seven,
7 the West Virginia Public Employees Grievance Board is
8 created as an independent entity under the Department
9 of Administration and all references to the Education
10 and State Employees Grievance Board in the code shall
11 be considered to refer to the West Virginia Public
12 Employees Grievance Board.

13 (c) On or before the first day of July, two thousand
14 seven, the Governor, by and with the advice and consent
15 of the Senate, shall appoint the following five members
16 to the board for the following terms:

17 (1) One person representing the largest labor
18 organization in the state for a term of three years;

19 (2) One person representing an education employee
20 organization in the state for a term of two years;

21 (3) One employer representative from the executive
22 branch for a term of two years;

23 (4) One employer representative from secondary or
24 higher education for a term of three years; and

25 (5) One citizen member, who is not a current
26 employee, employer or a representative of employees in
27 a workplace in the public, educational or higher
28 educational sector of this state, for a term of one year.

29 (d) After the initial appointment, the board term shall
30 be three years.

31 (e) No member may serve more than two consecutive
32 full terms and any member having served two

33 consecutive full terms may not be appointed for one
34 year after completion of his or her second full term. A
35 member shall continue to serve until his or her
36 successor has been appointed and qualified.

37 (f) A vacancy on the board shall be filled by the
38 Governor by appointment of a like member for the
39 unexpired term of the member whose office is vacant.

40 (g) The membership of the board shall represent each
41 congressional district, with no more than two members
42 from any one district and no more than three members
43 may be from the same political party.

44 (h) Each member of the board, at the time of his or her
45 appointment, must have been a resident of this state for
46 a period of not less than one year immediately
47 preceding the appointment and each member of the
48 board shall remain a resident of this state during the
49 appointment term.

50 (i) The Governor may remove any member from the
51 board for neglect of duty, incompetency, criminal
52 convictions or official misconduct.

53 (j) Any member of the board immediately and
54 automatically forfeits his or her membership if he or she
55 is convicted of a felony under the laws of any state or
56 the United States, or becomes a nonresident of this
57 state.

58 (k) The board shall hold at least four meetings per
59 year. Other meetings shall be held at the call of the
60 chairperson or upon the written request of two
61 members, at such time and place as designated in the
62 call or request.

63 (l) The board shall designate one of its members as
64 chairperson and one member as secretary-treasurer who
65 shall serve at the will of the board.

66 (m) A majority of the members of the board constitute
67 a quorum.

68 (n) Each member of the board is entitled to receive
69 compensation and expense reimbursement as is
70 accorded legislators in the performance of their duties.

§6C-3-2. Powers and duties of the board.

1 The board shall:

2 (1) Maintain jurisdiction over procedural matters in
3 the grievance process;

4 (2) Employ competent administrative law judges and
5 a chief administrative law judge and pay them
6 commensurately with other administrative law judges
7 in the state, who shall be:

8 (A) Residents of the State of West Virginia;

9 (B) Members in good standing of the West Virginia
10 State Bar; and

11 (C) Persons who have knowledge and legal experience
12 regarding public and education employment law and
13 alternative dispute resolution;

14 (3) Provide suitable office space for the board and the
15 administrative law judges separate from any workplace
16 in the public, educational and higher educational
17 sectors, so that the administrative law judges are
18 accessible statewide;

19 (4) Hire, discharge, set the job requirements for and
20 fix the compensation of the director, employees and
21 administrative law judges, who serve at the will and
22 pleasure of the board, necessary to enforce the
23 provisions of this article and article two of this chapter;

24 (5) Prepare and submit an annual budget;

25 (6) Establish and provide all forms necessary for the
26 grievance process and make them easily accessible;

27 (7) Establish procedures to obtain and maintain

28 records, outcomes and costs at each level of the
29 grievance process;

30 (8) Keep accurate and complete records of its
31 proceedings and hearings and certify the records as may
32 be appropriate;

33 (9) Evaluate, on an annual basis, the grievance
34 process, including written comment from employers,
35 employees and employee organizations that participate
36 in the process;

37 (10) Submit an annual report to the Joint Committee
38 on Government and Finance, the Legislature and the
39 Governor that includes a compilation of all data
40 received regarding outcomes and costs at each level of
41 the grievance process;

42 (11) File a mandamus proceeding against any
43 employer failing to comply with the reporting
44 requirements of this article; and

45 (12) Take all other actions necessary and proper to
46 effectuate the purposes of this article.

§6C-3-3. Data collection and reporting requirements.

1 (a) Each employer involved in a grievance matter shall
2 maintain the forms and all records created in the
3 grievance process, and shall provide this information to
4 the board in the form and manner prescribed by the
5 board.

6 (b) The board shall obtain and maintain all records of
7 grievance matters.

8 (c) The board shall annually report to the Joint
9 Committee on Government and Finance, the Legislature
10 and the Governor. The report shall contain the
11 following:

12 (1) An overview of grievance-related issues;

13 (2) The number of grievances against each employer;

14 (3) Identification of each grievance by type of
15 grievance, level of resolution and cost of the grievance,
16 including the estimated cost of employee time to handle
17 the grievance and actual cost of any legal time or
18 damages paid in the resolution of the grievance;

19 (4) The number and type of grievances granted, denied
20 or resolved by other means, including informal
21 resolutions and alternative dispute resolution, and the
22 actual or estimated cost of handling the grievance at
23 each level of the grievance process;

24 (5) Any legislative recommendations for changes to
25 the grievance process as a result of the data collected;
26 and

27 (6) The caseload of each administrative law judge, the
28 type of grievance, the number of grievances resolved
29 and the number of decisions issued.

30 (d) Nothing contained in the annual report may
31 breach the confidentiality of a party to the dispute, nor
32 may any matter be disclosed if the disclosure may
33 violate any provision of law.

§6C-3-4. Rule-making authority.

1 (a) The rules established by the Education and State
2 Employees Grievance Board in effect on the effective
3 date of this article that are consistent with the
4 provisions of this article and article two of this chapter
5 remain in effect until they are amended, modified or
6 repealed.

7 (b) The board may adopt, modify, amend and repeal
8 procedural rules promulgated in accordance with article
9 three, chapter twenty-nine-a of this code, necessary to
10 effectuate the provisions of this article and article two
11 of this chapter including, but not limited to, procedures
12 to create and distribute forms, obtain and maintain
13 records and collect and report data.

14 (c) The board shall adopt, modify, amend, repeal and
15 enforce rules for legislative approval necessary to
16 effectuate the provisions of this article and article two
17 of this chapter, including any emergency rules, pursuant
18 to article three, chapter twenty-nine-a of this code.

**§6C-3-5. Continuation of the West Virginia Public Employees
Grievance Board.**

1 Pursuant to the provisions of article ten, chapter four
2 of this code, the West Virginia Public Employees
3 Grievance Board shall continue to exist until the first
4 day of July, two thousand ten, unless sooner terminated,
5 continued or reestablished.

§6C-3-6. Review of the grievance procedure.

1 On or before the first day of January, two thousand
2 ten, the Joint Committee on Government and Finance
3 shall review the grievance procedure and the board,
4 evaluate its usefulness and make recommendations
5 concerning its continuation or termination.

CHAPTER 11. TAXATION.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-8. Jurisdiction of Office of Tax Appeals.

1 The Office of Tax Appeals has exclusive and original
2 jurisdiction to hear and determine all:

3 (1) Appeals from tax assessments issued by the Tax
4 Commissioner pursuant to article ten of this chapter;

5 (2) Appeals from decisions or orders of the Tax
6 Commissioner denying refunds or credits for all taxes
7 administered in accordance with the provisions of
8 article ten of this chapter;

9 (3) Appeals from orders of the Tax Commissioner
10 denying, suspending, revoking, refusing to renew any
11 license or imposing any civil money penalty for

12 violating the provisions of any licensing law
13 administered by the Tax Commissioner;

14 (4) Questions presented when a hearing is requested
15 pursuant to the provisions of any article of this chapter
16 which is administered by the provisions of article ten of
17 this chapter;

18 (5) Matters which the Tax Division is required by
19 statute or legislatively approved rules to hear, except
20 employee grievances filed pursuant to article two,
21 chapter six-c of this code; and

22 (6) Other matters which may be conferred on the
23 office of tax appeals by statute or legislatively approved
24 rules.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

1 (a) Notwithstanding any other provisions of law, a
2 board may suspend or dismiss any person in its
3 employment at any time for: Immorality, incompetency,
4 cruelty, insubordination, intemperance, willful neglect
5 of duty, unsatisfactory performance, the conviction of
6 a felony or a guilty plea or a plea of nolo contendere to
7 a felony charge.

8 (b) A charge of unsatisfactory performance shall not
9 be made except as the result of an employee
10 performance evaluation pursuant to section twelve of
11 this article. The charges shall be stated in writing
12 served upon the employee within two days of
13 presentation of the charges to the board.

14 (c) The affected employee shall be given an
15 opportunity, within five days of receiving the written
16 notice, to request, in writing, a level three hearing and
17 appeals pursuant to the provisions of article two,

18 chapter six-c of this code, except that dismissal for the
19 conviction of a felony or guilty plea or plea of nolo
20 contendere to a felony charge is not by itself a grounds
21 for a grievance proceeding. An employee charged with
22 the commission of a felony may be reassigned to duties
23 which do not involve direct interaction with pupils
24 pending final disposition of the charges.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.

§18B-2A-4. Powers and duties of governing boards generally.

1 Each governing board separately has the power and
2 duty to:

3 (a) Determine, control, supervise and manage the
4 financial, business and education policies and affairs of
5 the state institutions of higher education under its
6 jurisdiction;

7 (b) Develop a master plan for the institutions under its
8 jurisdiction, except the administratively linked
9 community and technical colleges which retain an
10 institutional board of advisors shall develop their
11 master plans subject to the provisions of section one,
12 article six of this chapter.

13 (1) The ultimate responsibility for developing and
14 updating the master plans at the institutional level
15 resides with the board of governors, or board of
16 advisors, as applicable, but the ultimate responsibility
17 for approving the final version of the institutional
18 master plans, including periodic updates, resides with
19 the commission or council, as appropriate.

20 (2) Each master plan shall include, but not be limited
21 to, the following:

22 (A) A detailed demonstration of how the master plan
23 will be used to meet the goals and objectives of the
24 institutional compact;

25 (B) A well-developed set of goals outlining missions,
26 degree offerings, resource requirements, physical plant
27 needs, personnel needs, enrollment levels and other
28 planning determinates and projections necessary in a
29 plan to assure that the needs of the institution's area of
30 responsibility for a quality system of higher education
31 are addressed;

32 (C) Document the involvement of the commission or
33 council, as appropriate, institutional constituency
34 groups, clientele of the institution and the general
35 public in the development of all segments of the
36 institutional master plan.

37 (3) The plan shall be established for periods of not less
38 than three nor more than six years and shall be revised
39 periodically as necessary, including the addition or
40 deletion of degree programs as, in the discretion of the
41 appropriate governing board, may be necessary;

42 (c) Prescribe for the institutions under its jurisdiction,
43 in accordance with its master plan and the compact for
44 each institution, specific functions and responsibilities
45 to meet the higher education needs of its area of
46 responsibility and to avoid unnecessary duplication;

47 (d) Direct the preparation of a budget request for the
48 institutions under its jurisdiction, which relates directly
49 to missions, goals and projections as found in the
50 institutional master plans and the institutional
51 compacts;

52 (e) Consider, revise and submit to the commission or
53 council, as appropriate, a budget request on behalf of
54 the institutions under its jurisdiction;

55 (f) Review, at least every five years, all academic
56 programs offered at the institutions under its
57 jurisdiction. The review shall address the viability,
58 adequacy and necessity of the programs in relation to
59 its institutional master plan, the institutional compact
60 and the education and workforce needs of its
61 responsibility district. As a part of the review, each

62 governing board shall require the institutions under its
63 jurisdiction to conduct periodic studies of its graduates
64 and their employers to determine placement patterns
65 and the effectiveness of the education experience.
66 Where appropriate, these studies should coincide with
67 the studies required of many academic disciplines by
68 their accrediting bodies;

69 (g) Ensure that the sequence and availability of
70 academic programs and courses offered by the
71 institutions under their jurisdiction is such that
72 students have the maximum opportunity to complete
73 programs in the time frame normally associated with
74 program completion. Each governing board is
75 responsible to see that the needs of nontraditional
76 college-age students are appropriately addressed and,
77 to the extent it is possible for the individual governing
78 board to control, to assure core course work completed
79 at institutions under its jurisdiction is transferable to
80 any other state institution of higher education for credit
81 with the grade earned;

82 (h) Subject to the provisions of article one-b of this
83 chapter, approve the teacher education programs
84 offered in the institution under its control. In order to
85 permit graduates of teacher education programs to
86 receive a degree from a nationally accredited program
87 and in order to prevent expensive duplication of
88 program accreditation, the Commission may select and
89 use one nationally recognized teacher education
90 program accreditation standard as the appropriate
91 standard for program evaluation;

92 (i) Use faculty, students and classified employees in
93 institutional-level planning and decisionmaking when
94 those groups are affected;

95 (j) Subject to the provisions of federal law and
96 pursuant to the provisions of article nine of this chapter
97 and to rules adopted by the commission and the council,
98 administer a system for the management of personnel
99 matters, including, but not limited to, personnel
100 classification, compensation and discipline for

101 employees at the institutions under their jurisdiction;

102 (k) Administer a system for hearing employee
103 grievances and appeals. Notwithstanding any other
104 provision of this code to the contrary, the procedure
105 established in article two, chapter six-c of this code is
106 the exclusive mechanism for hearing prospective
107 employee grievances and appeals;

108 (l) Solicit and use or expend voluntary support,
109 including financial contributions and support services,
110 for the institutions under its jurisdiction;

111 (m) Appoint a president for the institutions under its
112 jurisdiction subject to the provisions of section six,
113 article one-b of this chapter;

114 (n) Conduct written performance evaluations of the
115 president pursuant to section six, article one-b of this
116 chapter;

117 (o) Employ all faculty and staff at the institution
118 under its jurisdiction. The employees operate under the
119 supervision of the president, but are employees of the
120 governing board;

121 (p) Submit to the commission or council, as
122 appropriate, no later than the first day of November of
123 each year an annual report of the performance of the
124 institution under its jurisdiction during the previous
125 fiscal year as compared to stated goals in its master plan
126 and institutional compact;

127 (q) Enter into contracts or consortium agreements
128 with the public schools, private schools or private
129 industry to provide technical, vocational, college
130 preparatory, remedial and customized training courses
131 at locations either on campuses of the public institution
132 of higher education or at off-campus locations in the
133 institution's responsibility district. To accomplish this
134 goal, the boards may share resources among the various
135 groups in the community;

136 (r) Provide and transfer funding and property to
137 certain corporations pursuant to section ten, article
138 twelve of this chapter;

139 (s) Delegate, with prescribed standards and
140 limitations, the part of its power and control over the
141 business affairs of the institution to the president in any
142 case where it considers the delegation necessary and
143 prudent in order to enable the institution to function in
144 a proper and expeditious manner and to meet the
145 requirements of its institutional compact. If a
146 governing board elects to delegate any of its power and
147 control under the provisions of this subsection, it shall
148 enter the delegation in the minutes of the meeting when
149 the decision was made and shall notify the commission
150 or council, as appropriate. Any delegation of power and
151 control may be rescinded by the appropriate governing
152 board, the commission or council, as appropriate, at any
153 time, in whole or in part, except that the commission
154 may not revoke delegations of authority made by the
155 governing boards of Marshall University or West
156 Virginia University as they relate to the state
157 institutions of higher education known as Marshall
158 University and West Virginia University;

159 (t) Unless changed by the commission or the council,
160 as appropriate, continue to abide by existing rules
161 setting forth standards for acceptance of advanced
162 placement credit for their respective institutions.
163 Individual departments at institutions of higher
164 education may, upon approval of the institutional
165 faculty senate, require higher scores on the advanced
166 placement test than scores designated by the
167 appropriate governing board when the credit is to be
168 used toward meeting a requirement of the core
169 curriculum for a major in that department;

170 (u) Consult, cooperate and work with the State
171 Treasurer and the State Auditor to update as necessary
172 and maintain an efficient and cost-effective system for
173 the financial management and expenditure of special
174 revenue and appropriated state funds at the institutions
175 under its jurisdiction that ensures that properly

176 submitted requests for payment be paid on or before
177 due date but, in any event, within fifteen days of receipt
178 in the State Auditor's office;

179 (v) In consultation with the appropriate chancellor
180 and the Secretary of the Department of Administration,
181 develop, update as necessary and maintain a plan to
182 administer a consistent method of conducting personnel
183 transactions, including, but not limited to, hiring,
184 dismissal, promotions and transfers at the institutions
185 under their jurisdiction. Each personnel transaction
186 shall be accompanied by the appropriate standardized
187 system or forms which shall be submitted to the
188 respective governing board and the Department of
189 Finance and Administration;

190 (w) Notwithstanding any other provision of this code
191 to the contrary, transfer funds from any account
192 specifically appropriated for their use to any
193 corresponding line item in a general revenue account at
194 any agency or institution under their jurisdiction as
195 long as such transferred funds are used for the purposes
196 appropriated.

197 (x) Transfer funds from appropriated special revenue
198 accounts for capital improvements under their
199 jurisdiction to special revenue accounts at agencies or
200 institutions under their jurisdiction as long as such
201 transferred funds are used for the purposes
202 appropriated;

203 (y) Notwithstanding any other provision of this code
204 to the contrary, acquire legal services that are
205 necessary, including representation of the governing
206 boards, their institutions, employees and officers before
207 any court or administrative body. The counsel may be
208 employed either on a salaried basis or on a reasonable
209 fee basis. In addition, the governing boards may, but
210 are not required to, call upon the Attorney General for
211 legal assistance and representation as provided by law;

212 (z) For each governing board which has under its
213 jurisdiction an administratively linked community and

214 technical college or a regional campus offering
215 community and technical college education programs,
216 create within the administrative structure of its
217 governing board a subcommittee for community and
218 technical college education. The subcommittee shall
219 have at least four members, one of whom is the
220 chairperson of the board of advisors of the community
221 and technical college or, in the case of the Governing
222 Board of West Virginia University, both the member
223 representing the community and technical college and
224 the member representing the regional campus; and

225 (aa) Contract and pay for disability insurance for a
226 class or classes of employees at a state institution of
227 higher education under its jurisdiction.

ARTICLE 7. PERSONNEL GENERALLY.

§18B-7-4. Notice to probationary faculty members of retention or nonretention; hearing.

1 (a) For any probationary faculty the president or other
2 administrative head of each institution shall give
3 written notice concerning retention or nonretention for
4 the ensuing academic year not later than the first day of
5 March.

6 (b) If a request is made by the probationary faculty
7 member not retained, the president or other
8 administrative head of the institution shall inform the
9 probationary faculty member by certified mail within
10 ten days of the reasons for nonretention. Any
11 probationary faculty member who desires to appeal the
12 decision may proceed to level three of the grievance
13 procedure established in article two, chapter six-c of
14 this code. If the administrative law judge decides that
15 the reasons for nonretention are arbitrary or capricious
16 or without a factual basis, the faculty member shall be
17 retained for the ensuing academic year.

18 (c) The term "probationary faculty member" shall be
19 defined according to rules promulgated by the
20 governing boards. The rights provided to probationary

21 faculty members by this section are in addition to, and
22 not in lieu of, other rights afforded them by other rules
23 and other provisions of law.

CHAPTER 21. LABOR.

ARTICLE 5E. EQUAL PAY FOR EQUAL WORK FOR STATE EMPLOYEES.

§21-5E-4. Employee's right of action against employer.

1 (a) Any employee whose compensation is at a rate that
2 is in violation of section three of this article has the
3 right to file a grievance pursuant to the provisions of
4 article two, chapter six-c of this code.

5 (b) No agreement for compensation at a rate of less
6 than the rate to which the employee is entitled under
7 this article is a defense to any action under this article.

8 (c) The rights and procedures provided under this
9 section are subject to the provisions of the rules
10 promulgated by the Equal Pay Commission in
11 accordance with section six of this article.

12 (d) Except as otherwise provided in subsection (d),
13 section six of this article, the provisions of this section
14 shall not become effective until the Legislature
15 approves for promulgation the rules proposed by the
16 Equal Pay Commission under the provisions of
17 subsection (c) of said section.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS.

ARTICLE 7. ENVIRONMENTAL RESOURCES.

§22C-7-2. Oil and gas inspectors; eligibility for appointment; qualifications; salary; expenses; removal.

1 (a) No person is eligible for appointment as an oil and
2 gas inspector or supervising inspector unless, at the
3 time of his or her probationary appointment, the person:
4 (1) Is a citizen of West Virginia, in good health and of

5 good character, reputation and temperate habits; (2) has
6 had at least six years' actual relevant experience in the
7 oil and gas industry: *Provided*, That not exceeding three
8 years of the experience shall be satisfied by any
9 combination of: (i) A bachelor of science degree in
10 science or engineering which shall be considered the
11 equivalent of three years' actual relevant experience in
12 the oil and gas industry; (ii) an associate degree in
13 petroleum technology which shall be considered the
14 equivalent of two years actual relevant experience in
15 the oil and gas industry; and (iii) actual relevant
16 environmental experience including, without limitation,
17 experience in wastewater, solid waste or reclamation
18 each full year of which shall be considered as a year of
19 actual relevant experience in the oil and gas industry;
20 and (3) has good theoretical and practical knowledge of
21 oil and gas drilling and production methods, practices
22 and techniques, sound safety practices and applicable
23 mining laws.

24 (b) In order to qualify for appointment as an oil and
25 gas inspector or supervising inspector, an eligible
26 applicant shall submit to a written and oral
27 examination by the Oil and Gas Inspectors' Examining
28 Board and shall furnish any evidence of good health,
29 character and other facts establishing eligibility
30 required by the board. If the board finds after
31 investigation and examination that an applicant: (1) Is
32 eligible for appointment; and (2) has passed all written
33 and oral examinations, the board shall add the
34 applicant's name and grade to the register of qualified
35 eligible candidates and certify its action to the director
36 of the Division of Environmental Protection. No
37 candidate's name may remain on the register for more
38 than three years without requalifying.

39 (c) Within the limits provided by law, the salary of
40 each inspector and of the supervising inspector shall be
41 fixed by the director and the Oil and Gas Inspectors'
42 Examining Board may make recommendations for
43 salary determinations. In fixing salaries of the oil and
44 gas inspectors and of the supervising inspector, the
45 director shall consider ability, performance of duty and

46 experience. Inspectors and supervising inspectors are
47 entitled to mileage expense reimbursement at the rate
48 established for in-state travel of public employees, in
49 the Governor's travel rules, as administered by the
50 Department of Administration. No reimbursement for
51 traveling expenses may be made except upon an
52 itemized account of the expenses submitted by the
53 inspector or supervising inspector, as the case may be,
54 who shall verify, upon oath, that the expenses were
55 actually incurred in the discharge of official duties.

56 (d) (1) For grievances concerning matters other than
57 suspension or dismissal, inspectors may file written
58 grievances in accordance with the procedures set forth
59 in article two, chapter six-c of this code. For a level one
60 grievance, the inspector shall file the grievance with the
61 supervising inspector. For a level two grievance, the
62 inspector shall file the grievance with the chief of the
63 Office of Oil and Gas.

64 (2) An inspector or the supervising inspector, after
65 having received a permanent appointment, shall be
66 suspended or dismissed by the chief of the Office of Oil
67 and Gas only for physical or mental impairment,
68 incompetency, neglect of duty, drunkenness,
69 malfeasance in office or other good cause.

70 (3) Not less than twenty reputable citizens engaged in
71 oil and gas drilling and production operations in the
72 state may petition the chief of the office of oil and gas
73 for the dismissal of an inspector or the supervising
74 inspector. If the petition is verified by at least one of
75 the petitioners, based on actual knowledge of the
76 affiant, and alleges facts which, if true, warrant the
77 removal of the inspector or supervising inspector, the
78 chief shall cause an investigation of the facts to be
79 made. If, after investigation, the chief finds that there
80 is substantial evidence which, if true, warrants
81 dismissal of the inspector or supervising inspector, the
82 chief shall bring the petition before the Oil and Gas
83 Inspectors' Examining Board requesting dismissal of
84 the inspector or supervising inspector.

85 (4) A level three grievance is a hearing before the
86 board to consider the appeal of a level two grievance,
87 the appeal of suspension or dismissal by the chief or a
88 citizens' petition seeking dismissal of an inspector or
89 supervising inspector. For any level three grievance, the
90 chief may not preside over the hearing and may not
91 vote. The remaining members of the board shall select
92 a member of the board to serve as acting chair, who may
93 not vote.

94 (5) An appeal of an inspector from a suspension or
95 dismissal by the chief may be filed by the end of the
96 tenth day following the suspension or dismissal
97 notwithstanding the time limits and requirements set
98 forth in article two, chapter six-c of this code.

99 (6) On receipt of an appeal of a level two grievance, an
100 appeal of suspension or dismissal by the chief or a
101 citizens' petition seeking dismissal of an inspector or the
102 supervising inspector, the Oil and Gas Inspectors'
103 Examining Board shall promptly notify the inspector or
104 supervising inspector, as the case may be, to appear
105 before it at a time and place designated in the notice,
106 which time shall be not less than fifteen days nor more
107 than thirty days thereafter notwithstanding the time
108 limits and requirements set forth in article two, chapter
109 six-c of this code. There shall be attached to the copy of
110 the notice served upon the inspector or supervising
111 inspector a copy of the appeal or petition filed with the
112 board.

113 (7) At the time and place designated in the notice, the
114 Oil and Gas Inspectors' Examining Board shall conduct
115 a level three grievance proceeding in which the
116 testimony shall be recorded to enable a transcript to be
117 prepared for any further appeal. The board shall hear
118 all evidence offered in support of the appeal or petition
119 and on behalf of the inspector or supervising inspector.
120 Each witness shall be sworn and a transcript shall be
121 made of all evidence taken and proceedings had at any
122 hearing. No continuance may be granted except for
123 good cause shown.

124 (8) The acting chair of the board may administer oaths
125 and subpoena witnesses.

126 (9) An inspector or supervising inspector who willfully
127 refuses or fails to appear before the board, or having
128 appeared, refuses to answer under oath any relevant
129 question on the ground that the inspector's testimony or
130 answer might incriminate the inspector, or refuses to
131 accept a grant of immunity from prosecution on account
132 of any relevant matter about which the inspector may
133 be asked to testify at the hearing before the board,
134 forfeits the inspector's position notwithstanding any
135 provisions to the contrary in article two, chapter six-c
136 of this code.

137 (10) If, after hearing, the Oil and Gas Inspectors'
138 Examining Board finds that the inspector or supervising
139 inspector should be suspended, dismissed or otherwise
140 disciplined, it shall enter an order to that effect. An
141 appeal of the decision of the board shall proceed as a
142 level three proceeding under the provisions of article
143 two, chapter six-c of this code.

CHAPTER 31. CORPORATIONS.

ARTICLE 20. WEST VIRGINIA REGIONAL JAIL AND CORRECTIONAL FACILITY AUTHORITY.

§31-20-27. Correctional officers; regional jails; priority of hiring.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the authority, when employing correctional
3 officers to complete the approved staffing plan of a
4 regional jail completed after the effective date of this
5 section, shall employ any correctional officer applying
6 for a position as a correctional officer at a regional jail
7 who was employed in good standing at a county jail
8 facility in the region at the time of its closing or at a
9 prison facility operated by the Division of Corrections:
10 *Provided*, That the regional jail is located within the
11 same region as the prison facility that was closed due to
12 relocation of the prison facility to a site outside the

13 region. Only those correctional officers who are
14 employees in good standing at the time the prison
15 facility is closed are eligible for transfer under the
16 provisions of this subsection. Correctional officers,
17 employed under the provisions of this subsection, shall
18 be employed at a salary and with benefits consistent
19 with the approved plan of compensation of the Division
20 of Personnel, created under section five, article six,
21 chapter twenty-nine of this code. All correctional
22 officers employed under this subsection shall also be
23 covered by the policies and procedures of the West
24 Virginia Public Employees Grievance Board, created
25 under article two, chapter six-c of this code and the
26 classified-exempt service protection policies of the
27 Division of Personnel.

28 (b) The authority shall, when employing correctional
29 officers to fill positions within the approved staffing
30 plan of any regional jail, employ any correctional officer
31 applying for a position as a correctional officer at a
32 regional jail who was previously employed as a
33 correctional officer in good standing at any local jail
34 facility: *Provided*, That the local jail facility is located
35 within the same region as the regional jail at the time of
36 the local jail facility's closing or reduction in size and
37 was reduced in size or closed prior to or due to the
38 completion of the regional jail within the region.
39 Correctional officers, employed under the provisions of
40 this subsection, shall be employed at a salary and with
41 benefits consistent with the approved plan of
42 compensation of the Division of Personnel, created
43 under section five, article six, chapter twenty-nine of
44 this code. Only those county correctional officers who
45 are employees in good standing at the time the local jail
46 facility is closed are eligible for transfer under the
47 provisions of this subsection. All correctional officers
48 employed under this subsection shall also be covered by
49 the policies and procedures of the West Virginia Public
50 Employees Grievance Board created under article two,
51 chapter five-c of this code and the classified-exempt
52 service protection of the Division of Personnel.

CHAPTER 33. INSURANCE.

ARTICLE 48. MODEL HEALTH PLAN FOR UNINSURABLE INDIVIDUALS ACT.

§33-48-2. Operation of the plan.

1 (a) There is continued within the department a body
2 corporate and politic to be known as the West Virginia
3 Health Insurance Plan which shall be considered to be
4 an instrumentality of the state and a public corporation.
5 The plan shall have perpetual existence and any change
6 in the name or composition of the plan shall in no way
7 impair the obligations of any contracts existing under
8 this article.

9 (b) The plan shall operate subject to the supervision
10 and control of the board. The board shall consist of the
11 commissioner or his or her designated representative,
12 who shall serve as an ex officio member of the board
13 and shall be its chairperson, and six members appointed
14 by the Governor. At least two board members shall be
15 individuals, or the parent, spouse or child of
16 individuals, reasonably expected to qualify for coverage
17 by the plan. At least two board members shall be
18 representatives of insurers. At least one board member
19 shall be a hospital administrator. A majority of the
20 board shall be composed of individuals who are not
21 representatives of insurers or health care providers.

22 (c) Board members shall serve for a term of three
23 years. A board member's term shall continue until his
24 or her successor is appointed.

25 (d) Vacancies in the board shall be filled by the
26 Governor. Board members may be removed by the
27 Governor for cause.

28 (e) Board members shall not be compensated in their
29 capacity as board members but shall be reimbursed for
30 reasonable expenses incurred in the necessary
31 performance of their duties.

32 (f) The board shall submit to the commissioner a plan
33 of operation for the plan and any amendments to the
34 plan necessary or suitable to assure the fair, reasonable
35 and equitable administration of the plan. The plan of
36 operation shall become effective upon approval in
37 writing by the commissioner consistent with the date on
38 which the coverage under this article must be made
39 available. If the board fails to submit a suitable plan of
40 operation within one hundred eighty days after the
41 appointment of the board of directors, or at any time
42 thereafter fails to submit suitable amendments to the
43 plan of operation, the commissioner shall adopt and
44 promulgate any rules necessary or advisable to
45 effectuate the provisions of this section. The rules shall
46 continue in force until modified by the commissioner or
47 superseded by a plan of operation submitted by the
48 board and approved by the commissioner.

49 (g) The plan of operation shall:

50 (1) Establish procedures for operation of the plan:
51 *Provided*, That the plan shall be operated so as to
52 qualify as an acceptable alternative mechanism under
53 the federal Health Insurance Portability and
54 Accountability Act and as an option to provide health
55 insurance coverage for individuals eligible for the
56 federal health care tax credit established by the federal
57 Trade Adjustment Assistance Reform Act of 2002
58 (Section 35 of the Internal Revenue Code of 1986);

59 (2) Establish procedures for selecting an administrator
60 in accordance with section six of this article;

61 (3) Establish procedures for the handling, accounting
62 and auditing of assets, moneys and claims of the plan
63 and the plan administrator;

64 (4) Develop and implement a program to publicize the
65 existence of the plan, the eligibility requirements and
66 procedures for enrollment;

67 (5) Establish procedures under which applicants and
68 participants may have grievances reviewed by a

69 grievance committee appointed by the board. The
70 grievances shall be reported to the board after
71 completion of the review. The board shall retain all
72 written complaints regarding the plan for at least three
73 years; and

74 (6) Provide for other matters that are necessary and
75 proper for the execution of the board's powers, duties
76 and obligations under this article.

77 (h) The plan shall have the general powers and
78 authority granted under the laws of this state to health
79 insurers and, in addition thereto, the specific authority
80 to:

81 (1) Enter into contracts that are necessary or proper to
82 carry out the provisions and purposes of this article,
83 including the authority, with the approval of the
84 commissioner, to enter into contracts with similar plans
85 of other states for the joint performance of common
86 administrative functions or with persons or other
87 organizations for the performance of administrative
88 functions: *Provided*, That the provisions of article three,
89 chapter five-a of this code relating to the Division of
90 Purchasing of the Department of Administration do not
91 apply to any contracts executed by or on behalf of the
92 plan under this article;

93 (2) Sue or be sued, including taking any legal actions
94 necessary or proper to recover or collect assessments
95 due the plan;

96 (3) Take any necessary legal action:

97 (A) To avoid the payment of improper claims against
98 the plan or the coverage provided by or through the
99 plan;

100 (B) To recover any amounts erroneously or improperly
101 paid by the plan;

102 (C) To recover any amounts paid by the plan as a
103 result of mistake of fact or law; or

104 (D) To recover other amounts due the plan;

105 (4) Establish and modify, from time to time, as
106 appropriate, rates, rate schedules, rate adjustments,
107 expense allowances, agents' referral fees, claim reserve
108 formulas and any other actuarial function appropriate
109 to the operation of the plan. Rates and rate schedules
110 may be adjusted for appropriate factors such as age, sex
111 and geographic variation in claim cost and shall take
112 into consideration appropriate factors in accordance
113 with established actuarial and underwriting practices;

114 (5) Issue policies of insurance in accordance with the
115 requirements of this article;

116 (6) Appoint appropriate legal, actuarial and other
117 committees as necessary to provide technical assistance
118 in the operation of the plan, policy and other contract
119 design and any other function within the authority of
120 the pool;

121 (7) Borrow money to effect the purposes of the plan.
122 Any notes or other evidence of indebtedness of the plan
123 not in default shall be legal investments for insurers and
124 may be carried as admitted assets;

125 (8) Establish rules, conditions and procedures for
126 reinsuring risks of participating insurers desiring to
127 issue plan coverages in their own name. Provision of
128 reinsurance shall not subject the plan to any of the
129 capital or surplus requirements, if any, otherwise
130 applicable to reinsurers;

131 (9) Employ and fix the compensation of employees,
132 including an executive director of the plan. The
133 executive director shall have overall management
134 responsibility for the plan and is exempt from the
135 classified service and not subject to the procedures and
136 protections provided by article two, chapter six-c of this
137 code and article six, chapter twenty-nine of this code;

138 (10) Prepare and distribute certificate of eligibility
139 forms and enrollment instruction forms to insurance

140 producers and to the general public;

141 (11) Provide for reinsurance of risks incurred by the
142 plan;

143 (12) Issue additional types of health insurance policies
144 to provide optional coverages, including medicare
145 supplemental insurance;

146 (13) Provide for and employ cost containment
147 measures and requirements, including, but not limited
148 to, preadmission screening, second surgical opinion,
149 concurrent utilization review and individual case
150 management for the purpose of making the benefit plan
151 more cost effective;

152 (14) Design, use, contract or otherwise arrange for the
153 delivery of cost-effective health care services, including
154 establishing or contracting with preferred provider
155 organizations, health maintenance organizations and
156 other limited network provider arrangements: *Provided*,
157 That all contracts with preferred provider
158 organizations, health maintenance organizations, other
159 network providers or other health care providers shall
160 provide that plan participants are not personally liable
161 for the cost of services covered by the plan other than
162 applicable deductibles or copayments, including any
163 balance claimed by the provider to be owed as being the
164 difference between that provider's charge or charges
165 and the amount payable by the plan; and

166 (15) Adopt bylaws, policies and procedures that are
167 necessary or convenient for the implementation of this
168 article and the operation of the plan.

169 (i) The board shall make an annual report to the
170 Governor which shall also be filed with the Legislature.
171 The report shall summarize the activities of the plan in
172 the preceding calendar year, including the net written
173 and earned premiums, plan enrollment, the expense of
174 administration and the paid and incurred losses.

175 (j) Neither the board nor its employees are liable for
176 any obligations of the plan. No member or employee of

177 the board shall be liable and no cause of action of any
178 nature may arise against them for any act or omission
179 related to the performance of their powers and duties
180 under this article unless the act or omission constitutes
181 willful or wanton misconduct. The board may provide
182 in its bylaws or rules for indemnification of, and legal
183 representation for, its members and employees.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5E. DIVISION OF JUVENILE SERVICES.

§49-5E-5a. Juvenile detention and corrections facilities; employees; priority of hiring.


1 (a) Notwithstanding any provision of this code to the
2 contrary, the division, when employing any persons to
3 complete the approved staffing plan of any of its
4 juvenile detention or corrections facilities, shall employ
5 any person otherwise qualified who applies for a
6 position at the juvenile detention or corrections facility
7 who was also employed in good standing at a county or
8 local jail facility, at the time of its closing, that was
9 closed due to the completion of a regional jail.

10 (b) All persons employed at a juvenile detention or
11 corrections facility shall be employed at a salary and
12 with benefits consistent with the approved plan of
13 compensation of the Division of Personnel, created
14 under section five, article six, chapter twenty-nine of
15 this code; all employees shall also be covered by the
16 policies and procedures of the West Virginia Public
17 Employees Grievance Board, created under article two,
18 chapter six-c of this code and the classified service
19 protection policies of the Division of Personnel.

Enr. Com. Sub. for Com. Sub. for S. B. No. 442] 54


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


.....
Chairman Senate Committee


.....
Chairman House Committee

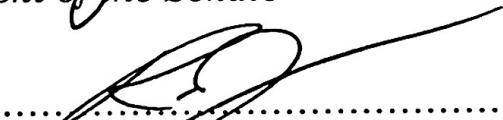
Originated in the Senate.

In effect from passage.

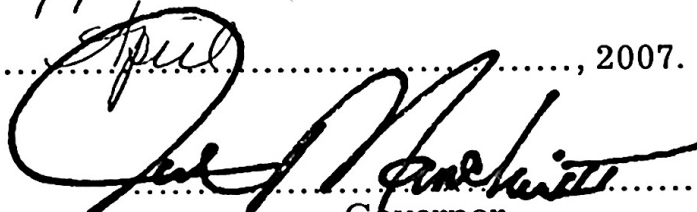

.....
Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


.....
Speaker House of Delegates

The within *is approved* this
the *4th* Day of *April*, 2007.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 20 2007

Time 4:00 p.m.