

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 3163**

4  
5 (By Delegate Perry)

6 (By Request of the Insurance Commissioner)

7 (Originating in the Committee on the Judiciary)

8 [February 25, 2011]

9  
10 A BILL to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section, designated §33-2-21a, relating  
12 to establishing a program to provide workers' compensation  
13 coverage of state government entities and their employees;  
14 defining participants and exceptions thereto; designating the  
15 insurance commissioner to manage workers' compensation risks  
16 of state entities; creating a purchasing exemption for the  
17 program; authorizing commissioner to assess fees, surcharges  
18 and premiums; creating fund in state treasury; authorizing  
19 investment of funds; permitting the insurance commissioner to  
20 borrow funds from the insurance commissioner fund for the  
21 initial operation of the program; authorizing insurance  
22 commissioner to propose legislative rules and to adopt  
23 emergency rules; requiring reports to the Joint Committee on  
24 Government and Finance on the status of the program; and  
25 requiring consultation by the insurance commissioner with the  
26 State Board of Risk and Insurance Management.

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

2 That the Code of West Virginia, 1931, as amended, be amended by  
3 adding thereto a new section, designated §33-2-21a, to read as  
4 follows:

5 **§33-2-21a. State agency workers' compensation programs.**

6 (a) The intent of this section is to provide a means of  
7 managing workers' compensation coverage for persons directly  
8 employed by the State of West Virginia. For the purposes of this  
9 section:

10 (1) "Discretionary participant" means the Parkways Authority,  
11 offices of the State Auditor, the State Treasurer, the Secretary of  
12 State, the Attorney General, the Department of Agriculture, the  
13 State Senate and House of Delegates or their related entities, the  
14 Supreme Court of Appeals, the State Police and any other spending  
15 unit of the state that is required by section twelve, article two,  
16 chapter eleven-b of this code to provide a detailed expenditure  
17 schedule to the Secretary of Revenue in his or her capacity as  
18 Director of the Budget: Provided, That the term "discretionary  
19 participant" does not include any executive state entity other than  
20 the State Police and the Parkways Authority, any county board of  
21 education, any other county entity or its instrumentality or any  
22 municipality or its instrumentality.

23 (2) "Executive state entity" means the Governor's Office and  
24 its affiliated entities, Bureau of Senior Services, or any state  
25 department, division, fund, office, position, system, survey or

1 other entity of state government, however designated, transferred  
2 to and incorporated in one of the executive departments created in  
3 section two, article one, chapter five-f of this code, except the  
4 State Police, and that is required by section twelve, article two,  
5 chapter eleven-b of this code to provide a detailed expenditure  
6 schedule to the Secretary of Revenue in his or her capacity as  
7 Director of the Budget.

8 (b) Notwithstanding any provision of this code to the  
9 contrary, the commissioner has sole responsibility for managing the  
10 workers' compensation risks of all executive state entities and for  
11 supervising and controlling the workers' compensation programs for  
12 such entities: Provided, That any discretionary participant may  
13 participate in the program upon application to the commissioner  
14 under the same terms and conditions as are applicable to executive  
15 state entities: Provided further, That a discretionary participant  
16 is, in accordance with rules governing the program, permitted to  
17 withdraw from continued participation in the program.

18 (c) The commissioner may assess such fees or surcharges on  
19 participants in the program necessary to manage the workers'  
20 compensation risks of those participants. All premiums, fees and  
21 surcharges shall be established in accordance with generally  
22 acceptable actuarial standards applicable to workers compensation  
23 coverage as to each participant and as to all participants in the  
24 aggregate. The commissioner shall establish criteria for  
25 assessments of premiums, fees and surcharges designed to provide  
26 the most cost efficient coverage for all participants.

1       (d) The provisions of article three, chapter five-a of this  
2 code relating to the Purchasing Division of the Department of  
3 Administration do not apply to any contract entered into by the  
4 commissioner in furtherance of the requirements of this section:  
5 Provided, That those contracts shall be awarded on a competitive  
6 basis.

7       (e) (1) There is hereby established the "State Entities  
8 Workers' Compensation Program Fund." All premiums, surcharges,  
9 assessments, deposits or any other moneys or funds deposited or  
10 otherwise designated or accruing to the fund as well as all  
11 earnings payable to it, shall be deposited in the State Treasury to  
12 the credit of the fund. Expenditures from the fund shall be for  
13 the purposes set forth in this section, are authorized from  
14 collections, and shall not revert to the General Fund. The fund  
15 shall be a separate and distinct fund upon the books and records of  
16 the Auditor and Treasurer, and disbursements therefrom shall be  
17 made upon requisitions signed by the Insurance Commissioner.

18       (2) Any premiums, assessments or deposits or any other moneys  
19 or funds received for the purposes of this section shall be  
20 invested by the State Treasurer at the request of the commissioner.

21       (3) The Insurance Commissioner may borrow funds as is  
22 determined necessary from the Insurance Commission Fund, created in  
23 section thirteen-b, article three, chapter thirty-three of this  
24 code, for the initial operations of the workers' compensation  
25 program for state entities: Provided, That any borrowed funds  
26 shall be deposited to the credit of the State Entities Workers'

1   Compensation Program Fund:  *Provided, however,* That these borrowed  
2   funds shall be repaid, without interest, and redeposited to the  
3   credit of the Insurance Commission Fund as  determined by the  
4   Insurance Commissioner.

5       (f) The commissioner may promulgate emergency rules and shall  
6   propose for legislative approval legislative rules, in accordance  
7   with the provisions of article three, chapter twenty-nine-a of this  
8   code, as  are  necessary  to  provide  for  implementation  and  
9   enforcement of the provisions of this section.

10       (g) The commissioner shall submit reports on the status and  
11   progress of the program established in this section to the joint  
12   committee on government and finance upon request, together with any  
13   other specific information on the program requested by the  
14   committee.

15       (h) The commissioner shall consult with the State Board of  
16   Risk and Insurance Management to solicit any applicable experience  
17   and expertise in establishing and managing a program to provide  
18   insurance coverage to state agencies.