



WEST VIRGINIA LEGISLATURE
JOINT COMMITTEE ON GOVERNMENT ORGANIZATION
STATE CAPITOL
CHARLESTON, WEST VIRGINIA 25305

2007-2008 Report
of the
Joint Standing Committee on Government Organization
to the
Joint Committee on Government and Finance

During the 2007-2008 Interim Session, the Joint Standing Committee on Government Organization has had under consideration the following topics:

1. Continuation of the Board of Registration for Professional Engineers
2. Continuation of the WV Acupuncture Board
3. Continuation of the WV Board of Examiners in Counseling
4. Termination of the Blennerhassett Island Historical State Park Commission
5. Sunrise Review of the Regulation of Elevator Workers
6. SCR 52, Requesting Joint Committee on Government and Finance study feasibility of constructing covered promenades and handicapped ramps on Capitol second floor outdoor walkways
7. SCR 55, Requesting Joint Committee on Government and Finance study authorizing municipalities means to satisfy liens
8. SCR 63, Requesting Joint Committee on Government and Finance study regulating Professional Employer Organization industry

The Committee and its Subcommittees met throughout the Interims, held discussions and had presentations regarding each topic.

The Committee reports:

As to 1, a Bill to continue the Board of Registration for Professional Engineers to 2013, with the recommendation that it do pass.

As to 2, a Bill to continue the WV Acupuncture Board to 2019, with the recommendation that it do pass.

As to 3, a Bill to continue the WV Board of Examiners in Counseling to 2019, with the recommendation that it do pass.

As to 4, a Bill to terminate the Blennerhassett Historical State Park Commission, with the recommendation that it do pass.

As to 5, a Bill to regulate elevator mechanics and apprentices, with the recommendation that it do pass.

As to 6, no recommendation.

As to 7, a Bill to authorize municipalities to adopt ordinances to file liens against property for delinquent service fees; and,

A study resolution to study the authority of municipalities to recoup the costs of demolition of dilapidated buildings,

With the recommendation that they each do pass.

As to 8, a Bill to regulate Professional Employer Organizations, with no recommendation as to its passage.

A copy of each draft is attached to this report.

Respectfully Submitted,



Senator Edwin Bowman
Senate Co-Chair



Delegate Jim Morgan
House Co-Chair

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H.B. / S.B.

(By Delegates / Senators)
(Introduced)

A BILL to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-13-25 relating to continuing the Board of Registration for Professional Engineers.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §30-13-25, to read as follows:

ARTICLE 13. ENGINEERS.
§30-13-25. Continuation of the Board of Registration for Professional Engineers.

Pursuant to the provisions of article ten, chapter four of this code, the Board of Registration for Professional Engineers shall continue to exist until the first day of July, two thousand thirteen, unless sooner terminated, continued or reestablished.

NOTE: The purpose of this bill is to continue the Board of Registration for Professional Engineers until 2013.

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H.B. / S.B.

(By Delegates / Senators)

(Introduced)

A BILL to amend and reenact §30-36-20, of the Code of West Virginia, 1931, as amended, relating to continuing the West Virginia Acupuncture Board.

Be it enacted by the Legislature of West Virginia:

That §30-36-20, of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 36. ACUPUNCTURISTS.

§30-36-20. Continuation of the West Virginia Acupuncture Board.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Acupuncture Board shall continue to exist until the first day of July, two thousand ~~eight~~ nineteen, unless sooner terminated, continued or reestablished.

NOTE: The purpose of this bill is to continue the West Virginia Acupuncture Board until 2019.

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S.B. / H. B.

(By Senators / Delegates)

A BILL to amend and reenact §30-31-15, of the Code of West Virginia, 1931, as amended, relating to continuing the West Virginia Board of Examiners in Counseling.

Be it enacted by the Legislature of West Virginia:

That §30-31-15, of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 31. LICENSED PROFESSIONAL COUNSELORS.

§30-31-15. Continuation of the West Virginia Board of Examiners in Counseling.

Pursuant to the provisions of article ten, chapter four of this code, the West Virginia Board of Examiners in Counseling shall continue to exist until the first day of July, two thousand ~~eight~~ nineteen, unless sooner terminated, continued or reestablished.

NOTE: the purpose of this bill is to continue the Board of Examiners of Counseling until the first day of July, 2019.

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H.B. / S.B.

(By Senators / Delegates)

[2008 Regular Session]

A BILL to amend and reenact §29-8-2, §29-8-3, §29-8-4 and §29-8-5 of the Code of West Virginia, 1931, as amended, relating to the termination of the Blennerhassett Island Historical State Park Commission; exempting the termination of the commission from the wind down provisions of §4-10-12; and providing for the transfer of all remaining property and authority of the commission to the Department of Commerce.

Be it enacted by the Legislature of West Virginia:

That §29-8-2, §29-8-3, §29-8-4 and §29-8-5 the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 8. BLENNERHASSETT ISLAND HISTORICAL STATE PARK COMMISSION.

§29-8-2. Blennerhassett Island Historical State Park Commission
~~established; members; terms; meeting; quorum;~~
~~compensation; expenses~~ termination.

1 ~~(a) There is within the Division of Natural Resources the~~
2 ~~Blennerhassett Island historical state park commission. All~~
3 ~~assets, real and personal property, debts, liabilities, duties,~~
4 ~~powers and authority are the property of the division of natural~~
5 ~~resources. The Blennerhassett Island historical state park~~
6 ~~commission is maintained as an advisory commission as hereinafter~~
7 ~~provided. The commission is composed of ten members who must be~~
8 ~~citizens and residents of this state, appointed by the Governor for~~
9 ~~terms of four years, by and with the advice and consent of the~~
10 ~~Senate. Provided, That the terms of all members previously~~
11 ~~appointed to the Blennerhassett Island historical state park~~
12 ~~commission prior to any amendment and reenactment of this section~~
13 ~~shall continue for the periods originally specified and no member~~
14 ~~-serving as of the effective date of the amendment and reenactment~~
15 ~~need be reappointed.~~

16 ~~(b) Each member must be qualified to carry out the functions~~
17 ~~of the commission under this article by reason of his or her~~
18 ~~special interest, training, education or experience.~~

19 ~~No person may be eligible to appointment as a member who is an~~
20 ~~officer or member of any political party executive committee; or~~
21 ~~the holder of any other public office or public employment under~~
22 ~~the United States government or the government of this state or a~~
23 ~~political subdivision of this state. Not more than six members may~~
24 ~~belong to the same political party.~~

1 ~~— (c) The commission shall elect a chairman from among its~~
2 ~~members on the second Monday in September of each year.~~

3 ~~— (d) All members are eligible for reappointment once by the~~
4 ~~Governor. A member shall, unless sooner removed, continue to serve~~
5 ~~until his or her term expires and his or her successor has been~~
6 ~~appointed and has qualified. A vacancy caused by the death,~~
7 ~~resignation or removal of a member prior to the expiration of his~~
8 ~~or her term shall be filled only for the remainder of term.~~

9 ~~— (e) For the purpose of carrying out its powers, duties and~~
10 ~~responsibilities under this article, six members of the commission~~
11 ~~constitute a quorum for the transaction of business. Each member~~
12 ~~is entitled to one vote. The commission shall meet at a time and~~
13 ~~place designated by the chairman at least four times each fiscal~~
14 ~~year. Additional meetings may be held when called by the chairman~~
15 ~~or when requested by five members of the commission or by the~~
16 ~~Governor. All meetings shall comply with the provisions of article~~
17 ~~nine-a, chapter six of this code. Each member shall be reimbursed~~
18 ~~for all reasonable and necessary expenses actually incurred in the~~
19 ~~performance of his or her duties under this article.~~

20 ~~— (f) The commission shall advise the Division of Natural~~
21 ~~Resources in all matters relating to the development, establishment~~
22 ~~and maintenance of the Blennerhassett Island historical state park.~~

23 ~~— (g) All employee positions in the former Blennerhassett Island~~
24 ~~historical state park commission transferred to the Division of~~

1 ~~Commerce by a previous amendment and reenactment of this section~~
2 ~~are continued in the classified service of the civil service system~~
3 ~~pursuant to article six of this chapter. Any person included in~~
4 ~~the classified service by the provisions of this section who is~~
5 ~~employed in any of these positions as of the effective date of any~~
6 ~~amendment and reenactment of this section shall not be required to~~
7 ~~take and pass qualifying or competitive examinations upon or as a~~
8 ~~condition to being added to the classified service: *Provided, That*~~
9 ~~no person included in the classified service by the provisions of~~
10 ~~this section who is employed in any of these positions as of the~~
11 ~~effective date of any amendment and reenactment of this section, be~~
12 ~~thereafter severed, removed or terminated from such employment~~
13 ~~prior to his or her entry into the classified service except for~~
14 ~~cause as if the person had been in the classified service when~~
15 ~~severed, removed or terminated.~~

16 ~~—— (h) Notwithstanding any provision of this code to the~~
17 ~~contrary, the Division of Natural Resources is vested with~~
18 ~~exclusive regulatory authority over watercraft transport of~~
19 ~~visitors to the Blennerhassett Island portion of the Blennerhassett~~
20 ~~Island historical state park and the watercraft transport of these~~
21 ~~visitors is not subject to the provisions of article eighteen,~~
22 ~~chapter seventeen of this code.~~

23 ~~—— (i) Notwithstanding the provisions of section fifty-eight,~~
24 ~~article two, chapter twenty of this code, the Natural Resources~~

1 ~~Commission shall promulgate rules pursuant to the provisions of~~
2 ~~section seventeen, article one, chapter twenty and section three,~~
3 ~~article one, chapter twenty-nine a of this code to permit and~~
4 ~~regulate the hunting of white-tailed deer at Blennerhassett Island~~
5 ~~historical state park.~~

6 The Blennerhassett Island Historical State Park Commission
7 shall cease to exist on the first day of July, two thousand eight.
8 The termination of the commission is exempt from the wind down
9 provisions of section twelve, article ten, chapter four of this
10 code. All members of the commission duly appointed and serving
11 shall cease to hold the office or perform the duties that the
12 office may provide. All property, real or tangible, all powers,
13 expressed or implied, and all authority granted to the commission
14 transfers to the Division of Natural Resources effective upon
15 passage of this section.

16 **§29-8-3. General powers of Division of ~~commerce~~ Natural Resources**
17 **with respect to the Blennerhassett Island Historical**
18 **State Park.**

19 The administrator of the Division of ~~Commerce~~ Natural
20 Resources, with respect to developing and maintaining
21 Blennerhassett Island Historical State Park, may exercise all
22 powers and duties granted to ~~him~~ and the administrator and his or
23 her predecessor in respect to the development and operation of
24 other state parks, and in addition, is specifically authorized to:

1 (1) Establish and maintain an office in the county of Wood;

2 (2) Exercise his or her powers in the state of Ohio to the
3 extent permitted by the laws of the state of Ohio;

4 (3) Enter into any agreement with the state of Ohio or any
5 person, firm or corporation therein for the provision of
6 electricity, water, sewer and such similar services to
7 Blennerhassett Island as are necessary;

8 (4) Own or operate, or both, individually or in conjunction
9 with any other public agency or any private person, firm or
10 corporation, such facilities and equipment as he considers
11 necessary or convenient for the implementation of his duties under
12 this article. Without limiting the generality of the foregoing,
13 such facilities and equipment may include boats, docks, an
14 amphitheatre, parking facilities, the reconstructed Blennerhassett
15 mansion and other buildings; and

16 (5) ~~Promulgate rules and regulations~~ Propose rules for
17 legislative approval, in accordance with the provisions of chapter
18 twenty-nine-a of this code, to implement and make effective the
19 powers and duties vested ~~in him by the provisions of~~ provided in
20 this article and take such other steps as may, ~~in his discretion,~~
21 be necessary or expedient for the proper and effective development
22 of Blennerhassett Island and related locations in the county of
23 Wood into a major educational, cultural and recreational
24 attraction.

1 §29-8-4. Duties of Division of ~~commerce~~ Natural Resources with
2 respect to the development of Blennerhassett Island.

3 Within the limit of funds available from this state, the
4 United States and any other source, whether public or private, the
5 administrator shall:

6 (1) Plan and execute a program for the development of
7 educational, cultural and recreational attractions related to
8 events known or believed to have occurred on and near
9 Blennerhassett Island; and

10 (2) Plan and execute a program for the development of
11 Blennerhassett Island and related locations in the county of Wood
12 so as to preserve and enhance the island and related locations as
13 a significant historical, natural and archaeological resource of
14 importance to this state and the nation.

15 ~~In carrying out his duties under subdivisions (1) and (2) of~~
16 ~~this section, he shall, as near as practicable, adhere to the~~
17 ~~recommendations and plans for development contained in the~~
18 ~~documents prepared for the Blennerhassett historical commission,~~
19 ~~submitted to the Blennerhassett historical park commission on the~~
20 ~~eighteenth day of February, one thousand nine hundred seventy five,~~
21 ~~and titled as follows: (a) Summary report for the development of~~
22 ~~Blennerhassett Island, (b) physical master plan, (c) interpretive~~
23 ~~master plan, (d) environmental impact and (e) market and economic~~
24 ~~impact.~~

1 §29-8-5. Cooperation of state agencies and local government with
2 ~~Blennerhasset historical state park commission and the~~
3 ~~Division of commerce~~ Natural Resources; powers of local
4 government with respect to development.

5 (a) All other state and local governmental personnel and
6 agencies shall cooperate to the fullest possible extent with the
7 commission and the division to accomplish the proper and effective
8 development of Blennerhasset Island and related locations in the
9 county of Wood into a major educational, cultural and recreational
10 attraction.

11 (b) The county of Wood, the city of Parkersburg, any other
12 municipality in the county and any board, commission, authority,
13 agency or other ~~office created under authority thereof~~ authorized
14 legal entity may, ~~in its discretion,~~ engage in any activity or
15 undertaking designed to assist ~~the commission and the division~~ in
16 the proper and effective development of Blennerhasset Island and
17 related locations in the county of Wood into a major educational,
18 cultural and recreational attraction.

NOTE: The purpose of this bill is to terminate the Blennerhasset Island Historical State Park Commission. The termination shall be exempt from the wind down provisions of §4-10-12. This action was recommended by the Legislative Auditor, the members of the Commission, the Department of Commerce and the Blennerhasset Foundation.

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H. B. / S. B.

(By Delegates and Senators)

[Introduced ; referred to the
Committee on .]

A BILL to amend and reenact §21-3C-1, §21-3C-2, §21-3C-7, §21-3C-8,
§21-3C-11 and §21-3C-12 of the Code of West Virginia, 1931, as
amended, and to further amend said code by adding thereto a
new section, designated §21-3C-10a, relating to the Elevator
Safety Act; requiring annual inspections of elevators;
requiring elevator mechanics to be licensed by the Division of
Labor; authorizing legislative rules; providing for fees; and
providing civil and criminal penalties for noncompliance.

Be it enacted by the Legislature of West Virginia:

That §21-3C-1, §21-3C-2, §21-3C-7, §21-3C-8, §21-3C-11 and
§21-3C-12 of the Code of West Virginia, 1931, as amended, be
amended and reenacted; and that said code be further amended by
adding thereto a new section, designated §21-3C-10a, all to read as
follows:

CHAPTER 21. DIVISION OF LABOR.

ARTICLE 3C. ELEVATOR SAFETY.

1 **§21-3C-1. Definitions.**

2 (1) "Certificate of acceptance" means a certificate issued by
3 the Division of Labor certifying that a newly installed elevator
4 has been inspected and was found to be installed in compliance with
5 the safety standards set forth in the American Society of
6 Mechanical Engineers Safety Code for Elevators and Escalators
7 (ASME) A17.1-3, "Safety Code for Elevators" and ASME A18.1, "Safety
8 Code for Platform Lifts and Stairway Chairlifts."

9 (2) "Certificate of competency" means a certificate issued by
10 the Division of Labor certifying that an individual is qualified to
11 inspect elevators.

12 (3) "Certificate of operation" means a certificate issued by
13 the Division of Labor certifying that an elevator has been
14 inspected and is safe for operation.

15 (4) "Commissioner" means the Commissioner of the Division of
16 Labor.

17 ~~(4)~~ (5) "Division" means the Division of Labor.

18 ~~(5)~~ (6) "Division inspector" means an employee or contractor
19 of the division who has been examined and issued a certificate of
20 competency and who only inspects elevators in state owned
21 buildings.

22 ~~(6)~~ (7) "Elevator" means all the machinery, construction,
23 apparatus and equipment used in raising and lowering a car, cage or
24 platform vertically between permanent rails or guides and includes

1 all elevators, power dumbwaiters, escalators, gravity elevators and
2 other lifting or lowering apparatus permanently installed between
3 rails or guides, but does not include hand operated dumbwaiters,
4 manlifts of the platform type with a platform area not exceeding
5 nine hundred square inches, construction hoists or other similar
6 temporary lifting or lowering apparatus.

7 (8) "Elevator apprentice" means a person who meets the
8 requirements set forth in legislative rule promulgated pursuant to
9 this article.

10 (9) "Elevator mechanic" means a person who possesses an
11 elevator mechanic's license in accordance with the provisions of
12 this article and who is engaged in the business of erecting,
13 constructing, installing, altering, servicing, repairing or
14 maintaining elevators or related conveyances covered by this
15 article.

16 ~~(7)~~ (10) "Freight elevator" means an elevator used for
17 carrying freight and on which only the operator, by the permission
18 of the employer, is allowed to ride.

19 ~~(8)~~ (11) "Inspector" means both a division inspector and a
20 private inspector.

21 (12) "License" means a license issued to an elevator mechanic
22 pursuant to this article.

23 ~~(9)~~ (13) "Limited use/limited access elevator" means a
24 passenger elevator of which use is limited by size, capacity, rise

1 and speed, and access is limited by its location, by the
2 requirement of a key for its operation or by other restriction.

3 ~~(10)~~ (14) "Passenger elevator" means an elevator that is
4 designed to carry persons to its contract capacity.

5 ~~(11)~~ (15) "Private inspector" means a person who has been
6 examined and issued a certificate of competency to inspect
7 elevators within this state.

8 **§21-3C-2. Inspectors; application; ~~examination; certificates of~~**
9 **~~competency. reexamination.~~**

10 (a) No person may serve as an inspector unless he or she
11 successfully completes the examination ~~required by this section~~
12 for Qualified Elevator Inspector (OEI) from an examination
13 organization approved by the Commissioner and holds a certificate
14 of competency for elevator inspections issued by the division.

15 (b) The application ~~for examination~~ for elevator inspector
16 shall be in writing, accompanied by a fee of ten dollars, upon a
17 form furnished by the division. The applicant shall state his or
18 her ~~social security number,~~ level of education, previous employers,
19 the period of employment, the position held with each employer,
20 and other information required by the division. The applicant
21 shall also submit a copy of his or her OEI card, and a letter from
22 one of his or her previous employers concerning his or her
23 character and experience.

24 (c) Applications which contain any willfully submitted false

1 or untrue information shall be rejected.

2 ~~(d) The division shall administer an examination to a~~
3 ~~qualified applicant testing the applicant's knowledge of the~~
4 ~~construction, installation, operation, maintenance and repair of~~
5 ~~elevators and accessories.~~

6 ~~(e)~~ (d) The division shall issue a certificate of competency
7 for elevator inspections to an applicant who successfully completes
8 the examination and who complies with the requirements of this
9 article and legislative rules promulgated by the division.

10 ~~(f) An applicant who fails to successfully complete an initial~~
11 ~~examination may submit an application for a second examination~~
12 ~~ninety days or more after the initial examination. The second~~
13 ~~application must be accompanied by the ten dollar examination fee.~~
14 ~~Should an applicant fail to successfully complete the prescribed~~
15 ~~examination on the second trial, he or she is not permitted to~~
16 ~~submit an application for another examination for a period of one~~
17 ~~year after the second failure.~~

18 ~~(g)~~ (e) Any person hired as a private inspector by a county or
19 municipality shall possess a certificate of competency issued by
20 the division.

21 ~~(h)~~ (f) The division may hire division inspectors or enter
22 into a contract for the services of a division inspector so long as
23 the inspector has been certified competent by the division. The
24 division may hire an inspector supervisor who shall supervise the

1 inspection activities under this article.

2 **§21-3C-7. Safety equipment.**

3 Every passenger elevator, ~~whether not such elevator has been~~
4 ~~in use for five years or longer,~~ shall be equipped, maintained and
5 operated in a safe manner in accordance with legislative rules
6 promulgated by the division as authorized by this article.

7 **§21-3C-8. Certificate of operation; renewal.**

8 A certificate of operation for any elevator may not be issued
9 until the elevator has been inspected for safety and the inspection
10 report filed with the division. ~~With the exception of the~~
11 ~~acceptance inspection, only elevators which have been installed for~~
12 ~~five years or more shall be required to be inspected.~~ The
13 certificate of operation shall list the date of inspection and
14 shall expire one year after the date of inspection. The
15 certificate of operation shall be conspicuously posted in the
16 elevator at all times. An expired certificate of operation shall
17 be renewed in the manner that the prior certificate was obtained.

18 **§21-3C-10a. License requirements for elevator mechanics;**
19 **contractors license required; supervision of elevator**
20 **apprentices required.**

21 (a) On and after the first day of January, two thousand ten,
22 no person may engage or offer to engage in the business of
23 erecting, constructing, installing, altering, servicing, repairing
24 or maintaining elevators or related conveyances covered by this

1 article in this state, unless he or she has a license issued by the
2 Commissioner of Labor in accordance with the provisions of this
3 article.

4 (b) A person licensed under this article must:

5 (1) Have in his or her possession a copy of the license issued
6 pursuant to this article on any job on which he or she is
7 performing elevator mechanic work; and

8 (2) Be, or be employed by, a contractor licensed pursuant to
9 the provisions of article eleven, chapter twenty-one of this code.

10 (c) An elevator apprentice may work only under the direct
11 supervision of a licensed elevator mechanic, as set forth in
12 legislative rules promulgated pursuant to this article.

13 **§21-3C-11. Disposition of fees; legislative rules.**

14 (a) The Division shall propose ~~for promulgation legislative~~
15 ~~rules pursuant to~~ rules for legislative approval in accordance with
16 the provisions of article three, chapter twenty-nine-a of this
17 code, in order to implement for the implementation and enforcement
18 of the provisions of this article, which shall provide:

19 (1) Standards, qualifications and procedures for submitting
20 applications, taking examinations, and issuing and renewing
21 licenses, certificates of competency and certificates of operation;

22 (2) Qualifications and supervision requirements for elevator
23 apprentices;

24 (3) Provisions for the granting of licenses without

1 examination, to applicants who present satisfactory evidence of
2 having the expertise required to perform work as defined in this
3 article and who apply for licensure on or before the first day of
4 July, two thousand ten: *Provided*, That if a license issued under
5 the authority of this subsection subsequently lapses, the applicant
6 may, at the discretion of the Commissioner, be subject to all
7 licensure requirements, including the examination;

8 (4) Provisions for the granting of emergency licenses in the
9 event of an emergency due to disaster, act of God or work stoppage
10 when the number of persons in the state holding licenses issued
11 pursuant to this article is insufficient to cope with the
12 emergency;

13 (5) Provisions for the granting of temporary licenses in the
14 event that there are no elevator mechanics available to engage in
15 the work of an elevator mechanic as defined by this article;

16 (6) Continuing education requirements;

17 (7) Reciprocity provisions;

18 (8) Procedures for investigating complaints and revoking or
19 suspending licenses, certificates of competency and certificates of
20 operation, including appeal procedures;

21 (9) Fees for testing, issuance and renewal of licenses,
22 certificates of competency and certificates of operation, and other
23 costs necessary to administer the provisions of this article;

24 (10) Enforcement procedures; and

1 (11) Any other rules necessary to effectuate the purposes of
2 this article.

3 (b) The rules proposed for promulgation pursuant to subsection
4 (a) of this section shall establish the amount of any fee
5 authorized pursuant to the provisions of this article: *Provided,*
6 That in no event may the fees established for the issuance of
7 permits certificates of operation exceed fifty dollars.

8 (c) All fees collected pursuant to the provisions of this
9 article shall be deposited in an appropriated special revenue
10 account hereby created in the State Treasury known as the "Elevator
11 Safety Fund" and expended for the implementation and enforcement of
12 this article: *Provided,* That amounts collected which are found
13 from time to time to exceed funds needed for the purposes set forth
14 in this article may be transferred to other accounts or funds and
15 redesignated for other purposes by appropriation of the
16 Legislature.

17 (d) The Division may enter into agreements with counties and
18 municipalities whereby such counties and municipalities be
19 permitted to retain the inspection fees collected to support the
20 enforcement activities at the local level.

21 (e) The Commissioner and his or her Deputy Commissioner or any
22 compliance officer of the Division as authorized by the
23 Commissioner may consult with engineering authorities and
24 organizations concerned with standard safety codes, rules and

1 regulations governing the operation, maintenance, servicing,
2 construction, alteration, installation and the qualifications which
3 are adequate, reasonable and necessary for the elevator mechanic
4 and inspector.

5 **§21-3C-12. Penalties.**

6 ~~Any person who violates any provision of this article or any~~
7 ~~directive or order issued pursuant thereto is guilty of a~~
8 ~~misdemeanor and, upon conviction thereof, shall be fined not less~~
9 ~~than fifty dollars nor more than one thousand dollars per day.~~
10 ~~Each day the violation continues constitutes a separate offense.~~

11 (a) On and after the first day of January, two thousand ten,
12 the Commissioner may issue a cease and desist order to any person
13 engaging in the business of erecting, constructing, installing,
14 altering, servicing, repairing or maintaining elevators or related
15 conveyances covered by this article in this state without a
16 license, or inspecting elevators or related conveyances covered by
17 this article without a certificate of competency, or operating an
18 elevator or related conveyance covered by this article without a
19 certificate of operation.

20 (b) Any person who violates a cease and desist order is guilty
21 of a misdemeanor and, upon conviction thereof, is subject to the
22 following penalties:

23 (1) For the first offense, a fine of not less than two hundred
24 dollars nor more than one thousand dollars;

1 (2) For the second offense, a fine of not less than five
2 hundred dollars nor more than two thousand dollars, or confinement
3 in jail for not more than six months, or both;

4 (3) For the third and subsequent offenses, a fine of not less
5 than one thousand dollars nor more than five thousand dollars, and
6 confinement in jail for not less than thirty days nor more than one
7 year.

8 (c) Each day that a person violates a cease and desist order
9 or is otherwise not in compliance with the provisions of this
10 article constitutes a separate offense.

11 (d) The Commissioner of Labor may institute proceedings in the
12 circuit court of the county where the alleged violation of the
13 provisions of this article occurred or are occurring to enjoin any
14 violation of any provision of this article. A circuit court by
15 injunction may compel compliance with the provisions of this
16 article, with the lawful orders of the Commissioner of Labor and
17 with any final decision of the Commissioner of Labor. The
18 Commissioner of Labor shall be represented in all such proceedings
19 by the Attorney General or his or her assistants.

H. B. / S. B.

(By Delegates and Senators)

[Introduced ; referred to .]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-46A-1, §33-46A-2, §33-46A-3, §33-46A-4, §33-46A-5, §33-46A-6, §33-46A-7, §33-46A-8, §33-46A-9, §33-46A-10 and §33-46A-11, all relating to Professional Employer Organizations; providing declaration of purpose and intent; providing definitions; clarifying rights, duties and obligations unaffected by the article; requiring license from the Insurance Commissioner to engage in the business of a Professional Employer Organization; setting forth licensure requirements; providing for legislative and emergency rules; authorizing the Insurance Commissioner to establish licensure and other fees; setting forth requirements for Professional Employer Agreements; allocating tax credits, status, incentives and liability; providing requirements for workers' compensation coverage; providing requirements for

1 unemployment compensation coverage; providing enforcement
2 measures including penalties; requiring study of health plans;
3 and prohibiting self-funded health plans.

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

5 That the Code of West Virginia, 1931, as amended, be amended
6 by adding thereto a new article, designated §33-46A-1, §33-46A-2,
7 §33-46A-3, §33-46A-4, §33-46A-5, §33-46A-6, §33-46A-7, §33-46A-8,
8 §33-46A-9, §33-46A-10 and §33-46A-11, all to read as follows:

9 **CHAPTER 33. INSURANCE.**

10 **ARTICLE 46A. PROFESSIONAL EMPLOYER ORGANIZATIONS.**

11 **§33-46A-1. Purpose and intent.**

12 The Legislature hereby finds that:

13 (1) Professional employer organizations (hereinafter "PEOs")
14 provide a valuable service to commerce and the citizens of this
15 state by increasing the opportunities of employers to develop cost-
16 effective methods of satisfying their personnel requirements and
17 providing employees with access to certain employment benefits
18 which might otherwise not be available to them;

19 (2) PEOs operating in this state should be properly
20 recognized and regulated by the Insurance Commissioner; and

21 (3) Any allocation of employer duties and responsibilities
22 between a PEO and a client-employer pursuant to this article should
23 preserve all rights to which covered employees would be entitled
24 under a traditional employment relationship.

1 §33-46A-2. Definitions.

2 (a) "Administrative fee" means the amount charged to a
3 client-employer by a PEO for professional employer services. It
4 does not include amounts paid by a client-employer to the PEO for
5 wages and salaries, benefits, payroll taxes, withholding, or
6 assessments paid by the PEO to or on behalf of covered employees
7 under the professional employer agreement.

8 (b) "Client-employer" means an employer who enters into a
9 professional employer agreement with a PEO.

10 (c) "Commissioner" means the Insurance Commissioner of West
11 Virginia.

12 (d) "Covered employee" means a person employed by a client-
13 employer pursuant to the terms of a PEO agreement or by operation
14 of law. Persons who are officers, directors, shareholders,
15 partners, and managers of the client-employer and who perform day-
16 to-day operational services for the client-employer will be covered
17 employees to the extent expressly set forth in the professional
18 employer agreement.

19 (e) "PEO group" means two or more PEOs that are majority
20 owned or commonly controlled by the same entity, parent, or
21 controlling persons.

22 (f) "Person" means a natural person or a legal entity,
23 including, without limitation, a sole proprietorship, firm,
24 partnership, limited liability company, association, trust or

1 corporation.

2 (g) "Professional employer agreement" means a written
3 contract by and between a client-employer and a PEO under which a
4 PEO contracts to provide professional employer services for an
5 administrative fee.

6 (h) "Professional employer organization" or "PEO" means a
7 person engaged in the business of providing professional employer
8 services, regardless of its use of the term, or conducting business
9 as a "staff leasing company," "registered staff leasing company,"
10 "employee leasing company," "administrative employer," or any other
11 name. For purposes of this article, the following is not a PEO:

12 (1) A person who shares employees with a commonly-owned
13 company within the meaning of section 414(b) and (c) of the
14 Internal Revenue Code of 1986, as amended, but neither holds itself
15 out as a PEO nor enters into professional employer agreements as
16 its principal business activity;

17 (2) An independent contractor who assumes responsibility for
18 the product produced or service performed by a person or his or her
19 agents and who retains and exercises primary direction and control
20 over the work performed; or

21 (3) A person who provides temporary help services.

22 (i) "Professional employer services" means functions which
23 are customarily exercised by an employer with respect to its
24 employees, including but not limited to hiring, firing and

1 disciplining employees, paying wages, withholding and paying
2 payroll taxes and maintaining employee benefit plans other than
3 health insurance plans, as allocated to a PEO in a PEO agreement.

4 (j) "Worksite employees" means persons employed by a PEO and
5 not by a client-employer.

6 §33-46A-3. Rights, duties and obligations unaffected by this
7 article.

8 (a) Nothing in this article or in any professional employer
9 agreement affects, modifies or amends any collective bargaining
10 agreement, or the rights or obligations of a client-employer, PEO,
11 or covered employee under the Federal National Labor Relations
12 Article, the Federal Railway Labor Article or article one-a,
13 chapter twenty-one of this code.

14 (b) Nothing in this article or in any professional employer
15 agreement:

16 (1) Diminishes, abolishes or removes rights of covered
17 employees as to a client-employer or obligations of a client-
18 employer to covered employees existing prior to the effective date
19 of the professional employer agreement;

20 (2) Affects, modifies, or amends any contractual relationship
21 or restrictive covenant between a covered employee and a client-
22 employer in effect at the time a professional employer agreement
23 becomes effective;

24 (3) Prohibits or amends or any contractual relationship or

1 restrictive covenant that is entered into subsequent to the
2 effective date of a professional employer agreement between a
3 client-employer and a covered employee; or

4 (4) Diminishes, abolishes or removes the legal obligations of
5 an employer to its employees.

6 (c) A PEO has no responsibility or liability in connection
7 with, or arising out of, any existing or new contractual
8 relationship or restrictive covenant between a covered employee and
9 a client-employer unless the PEO has specifically agreed otherwise
10 in writing.

11 (d) This article does not create any new or additional
12 enforceable right of a covered employee against a PEO that is not
13 specifically provided by the professional employer agreement, this
14 article or by operation of law.

15 (e) A PEO is entitled to enforce only those employer rights
16 and is subject to only those obligations specifically allocated to
17 the PEO by the professional employer agreement or this article;

18 (f) The client-employer is entitled to enforce those rights
19 and obligated to perform those obligations allocated by the
20 professional employer agreement and this article, as well as any
21 rights and obligations of an employer not specifically allocated to
22 the PEO by the professional employer agreement, this article or by
23 operation of law.

24 (f) Nothing in this article or any professional employer

1 agreement affects, modifies or amends any state, local or federal
2 licensing, registration or certification requirement applicable to
3 a client-employer or covered employee.

4 **§33-46A-4. Licensing requirements.**

5 (a) Except as otherwise provided in this article, no person
6 may provide, advertise, or otherwise hold himself, herself or
7 itself out as providing professional employer services to client-
8 employers in this state, unless licensed under this article.

9 (b) Every PEO operating within this state as of the effective
10 date of this article must obtain a license under this article no
11 later than the thirtieth day of September, two thousand eight.

12 (c) Each applicant for licensure under this article shall
13 provide the commissioner with the following information:

14 (1) The name or names under which the PEO conducts business;

15 (2) The address of the principal place of business of the PEO
16 and the address of each office it maintains in this state;

17 (3) The PEO's taxpayer or employer identification number;

18 (4) A list by jurisdiction of each name under which the PEO
19 has operated in the preceding five years, including any alternative
20 names, names of predecessors and, if known, successor business
21 entities;

22 (5) A statement of ownership, which shall include the name
23 and evidence of the business experience of any person who,
24 individually or acting in concert with one or more other persons,

1 owns or controls, directly or indirectly, twenty-five percent or
2 more of the equity interests of the PEO;

3 (6) A statement of management, which shall include the name
4 and evidence of the business experience of any person who serves as
5 president, chief executive officer, or otherwise has the authority
6 to act as senior executive officer of the PEO; and

7 (7) The PEO's most recent audited financial statement setting
8 forth the financial condition of the PEO or PEO Group, which may
9 not be older than thirteen months. The financial statement shall
10 be prepared in accordance with generally accepted accounting
11 principles, and audited by an independent certified public
12 accountant licensed to practice in the jurisdiction in which the
13 accountant is located, and shall be without qualification as to the
14 going concern status of the PEO.

15 (d) An applicant may apply to the commissioner for an
16 extension of time for filing its financial statement. A request
17 for an extension must be accompanied by a letter from an
18 independent certified public accountant licensed to practice in the
19 jurisdiction in which the accountant is located, stating the
20 reasons for the delay and the anticipated completion date of the
21 financial statement.

22 (e) A PEO who has not had sufficient operating history to
23 have an audited financial statement based upon at least twelve
24 months of operating history must meet the financial capacity

1 requirements set forth in subsection (h) of this section, and
2 present financial statements reviewed by an independent certified
3 public accountant licensed to practice in the jurisdiction in which
4 the accountant is located.

5 (f) PEOs in a PEO group may satisfy the reporting and
6 financial requirements of this licensing law on a combined or
7 consolidated basis provided that each member of the PEO Group
8 guarantees the obligations under this article of each other member
9 of the PEO Group. In the case of a PEO Group that submits a
10 combined or consolidated audited financial statement including
11 entities that are not PEOs or that are not in the PEO Group, the
12 controlling entity of the PEO Group under the consolidated or
13 combined statement must guarantee the obligations of the PEOs in
14 the PEO Group.

15 (g) Within one hundred eighty days after the end of a
16 licensee's fiscal year, the licensee shall apply for renewal of its
17 license by submitting its most recent audited financial statement
18 meeting the same requirements as for initial licensure, together
19 with any changes in the information required for initial licensure,
20 all as set forth by subsection (c) of this section.

21 (h) Except for limited licenses granted in accordance with
22 the provisions of subsection (i) of this section, each PEO shall
23 maintain a minimum of one hundred thousand dollars in working
24 capital, as defined by generally accepted accounting principles and

1 as reflected in the financial statements submitted to the
2 commissioner with the application for initial or renewal license.

3 (i) The commissioner may grant a PEO domiciled outside this
4 state a limited license for such time periods as he or she
5 determines is appropriate, subject to the following requirements:

6 (1) The applicant for a limited license must submit a request
7 on a form provided by the commissioner;

8 (2) The applicant must demonstrate that it:

9 (A) Is domiciled outside this state;

10 (B) Is licensed or registered as a professional employer
11 organization in another state under terms that are substantially
12 similar to the requirements of this article;

13 (C) Does not maintain an office in this state or directly
14 solicit client-employers located or domiciled within this state;
15 and

16 (D) Does not have more than fifty covered employees employed
17 or domiciled in this state on any given day.

18 (j) All records, reports and other information obtained from
19 a PEO under this article, except for the information required by
20 subsection (c) of this section, and except to the extent necessary
21 for the proper administration of this article by the commissioner
22 or his or her agents, is confidential and may not be published or
23 open to public inspection other than to public employees in the
24 performance of their public duties.

1 §33-46A-5. Rulemaking authority; fees.

2 (a) Except as provided in section eight of this article, the
3 commissioner may propose rules for legislative approval in
4 accordance with the provisions of article three, chapter twenty-
5 nine-a of this code, to implement the provisions of this article,
6 including:

7 (1) Procedures for the issuance and renewal of licenses;

8 (2) Procedures for denying, suspending, revoking, reinstating
9 or limiting the practice of a licensee;

10 (3) Requirements for activating inactive or revoked licenses;

11 (4) Special financial requirements for small, start-up PEOs;

12 (5) A schedule of fees; and

13 (6) Any other rules necessary to implement the provisions of
14 this article.

15 (b) The commissioner may promulgate emergency rules pursuant
16 to the provisions of section fifteen, article three, chapter
17 twenty-nine-a of this code, for any purposes set forth for
18 legislative rules in subsection (a) of this section.

19 (c) All rules in effect on the effective date of this
20 article, including legislative exempt rules, remain in effect until
21 amended or repealed.

22 §33-46A-6. Requirements for provisions of PEO agreements; general
23 requirements and provisions.

24 (a) Each professional employer agreement shall allocate the

1 responsibility to:

2 (1) Pay wages to covered employees;

3 (2) Withhold, collect, report and remit payroll-related and
4 unemployment taxes; and,

5 (3) Make payments for employee benefits on behalf of covered
6 employees.

7 (b) Each professional employer agreement shall provide that
8 the client-employer shall retain the right to hire, discipline, and
9 terminate a covered employee: *Provided*, That the PEO shall have the
10 right to terminate a professional employer agreement if a client-
11 employer refuses without good cause a request from the PEO that the
12 client-employer discipline or terminate a covered employee as may
13 be necessary to fulfill the PEO's responsibilities under this
14 article and the professional employer agreement.

15 (c) Except to the extent otherwise expressly provided by the
16 applicable professional employer agreement:

17 (1) A client-employer is solely responsible for the quality,
18 adequacy or safety of the goods or services produced or sold in
19 client-employer's business;

20 (2) A client-employer is solely responsible for directing,
21 supervising, training and controlling the work of a covered
22 employee, and is solely responsible for the acts, errors or
23 omissions of a covered employee, when the covered employee is
24 engaged in the business activities of the client-employer;

1 (3) A client-employer is not liable for the acts, errors or
2 omissions of a PEO, or of a covered employee of the client-employer
3 when the covered employee is acting under the express direction and
4 control of the PEO; and

5 (4) A PEO is not liable for the acts, errors or omissions of
6 a client-employer or of a covered employee of the client-employer
7 when the covered employee is acting under the express direction and
8 control of the client-employer.

9 (d) A covered employee is not, solely as the result of being
10 a covered employee of a PEO, an employee of the PEO for purposes of
11 general liability insurance, fidelity bonds, surety bonds, or
12 liquor liability insurance carried by the PEO, unless the covered
13 employee is included by specific reference in the professional
14 employer agreement and applicable prearranged employment contract,
15 insurance contract or bond.

16 **§33-46A-7. Tax credits, status, incentives and liability.**

17 (a) A client-employer is entitled to the benefit of any tax
18 credit, economic incentive or other benefit arising as the result
19 of the employment of covered employees. Each PEO shall provide,
20 upon request by a client-employer or an agency of this state,
21 employment information reasonably required by the agency
22 responsible for administration of any the tax credit or economic
23 incentive and necessary to support any request, claim, application,
24 or other action by a client-employer seeking the tax credit or

1 economic incentive.

2 (b) With respect to a bid, contract, purchase order, or
3 agreement entered into with the state or a political subdivision of
4 the state, a client-employer company's status or certification as
5 a small, minority-owned, disadvantaged, or woman-owned business
6 enterprise or as a historically underutilized business is not
7 affected because the client-employer company has entered into an
8 agreement with a PEO or uses the services of a PEO.

9 (c) This article does not relieve a client-employer of any
10 sales tax liability with respect to its goods or to the services of
11 its covered employees.

12 (d) Any tax upon professional employer services or any
13 business license or other fee which is based upon gross receipts is
14 limited to the administrative fee of the PEO.

15 (e) Any tax assessed on a per capita or per employee basis
16 shall be assessed against the client-employer for covered employees
17 and against the professional employer organization for its worksite
18 employees.

19 (f) In the case of tax imposed or calculated upon the basis
20 of total payroll, the professional employer organization is
21 eligible to apply any small business allowance or exemption
22 available to the client-employer for the covered employees for the
23 purpose of computing the tax.

24 §33-46A-8. Workers' compensation.

1 (a) The responsibility to obtain workers' compensation
2 coverage for covered employees in compliance with all applicable
3 law shall be specifically allocated in the professional employer
4 agreement to either the client-employer or the PEO.

5 (b) If the responsibility is allocated to the PEO under the
6 agreement:

7 (1) The agreement shall require that the PEO maintain and
8 provide workers' compensation coverage for the covered employees
9 from a carrier authorized to do business in this state: *Provided,*
10 That the provisions of section seven, article two, chapter twenty-
11 three of this chapter may not be abrogated by a PEO agreement and
12 the client-employer shall at all times remain ultimately liable
13 under chapter twenty-three of this code to provide workers'
14 compensation coverage for its covered employees;

15 (2) The insurer shall report:

16 (A) Payroll and claims data for each client-employer to the
17 commissioner or his or her designated advisory organization in a
18 manner that identifies both the client-employer and PEO; and

19 (B) Coverage status with respect to each client-employer in
20 accordance with the proof of coverage requirements provided for in
21 statute and rules.

22 (c) Workers' compensation coverage may be provided:

23 (1) On a master policy basis, under which a single policy
24 issued to the PEO provides coverage for more than one client-

1 employer, and may also provide coverage to the PEO with respect to
2 its worksite employees;

3 (2) On a multiple coordinated policy basis, under which a
4 separate policy is issued to or on behalf of each client-employer
5 or group of affiliated client-employers with certain payment
6 obligations and policy communications coordinated through the PEO;
7 or

8 (3) On any other basis approved by the commissioner.

9 (d) This article does not prohibit grouping together the
10 client-employers of a PEO for the purposes of offering dividend
11 eligibility, applying a discount to the premium charged, applying
12 a retrospective rating option arrangement or the use of any other
13 loss sensitive rating options or large deductible policies as
14 allowed under state law.

15 (e) The protection of the exclusive remedy provision of
16 section six, article two, chapter twenty-three of this code, shall
17 apply to the PEO, the client-employer, and to all covered employees
18 and other employees of the client-employer irrespective of whether
19 the PEO or the client-employer obtains the workers' compensation
20 coverage.

21 (f) The commissioner shall propose rules in accordance with
22 the provisions of subsection (c), section five, article two-c,
23 chapter twenty-three of this code, for adoption by the Industrial
24 Council, to effectuate the purposes of this section, including the

1 manner in which notice of default of a master policy must be given
2 to client-employers.

3 **§33-46A-9. Unemployment compensation insurance.**

4 (a) For purposes of article one-a, chapter twenty one-a of
5 this code, covered employees of a registered PEO are considered the
6 employees of the PEO, which shall be responsible for the payment of
7 contributions, penalties, and interest on wages paid by the PEO to
8 its covered employees during the term of the applicable
9 professional employer agreement.

10 (b) The PEO shall report and pay all required contributions
11 to the unemployment compensation fund using the state employer
12 account number and the contribution rate of the PEO.

13 **§33-46A-10. Enforcement; penalties.**

14 (a) No person may offer or provide professional employer
15 services or use the names PEO, professional employer organization,
16 staff leasing, employee leasing, administrative employer or other
17 title representing professional employer services without holding
18 a license issued under the provisions of this article.

19 (b) The commissioner shall deny, suspend or revoke the license
20 of a PEO if he or she finds that the PEO:

21 (1) Is in an unsound financial condition;

22 (2) Is using methods or practices in the conduct of its
23 business that render its transaction of business in this state
24 hazardous or injurious to its client-employers or the public; or

1 (3) Has failed to pay a judgment rendered against it in this
2 state within sixty days after the judgment has become final.

3 (c) The commissioner may, after notice and opportunity for a
4 hearing in accordance with the provisions of article two, chapter
5 thirty-three of this code, deny, suspend or revoke the license of
6 a PEO if the commissioner finds that the PEO:

7 (1) Has violated any lawful rule or order of the commissioner
8 or any provision of the insurance laws of this state;

9 (2) Has refused to be examined or to produce its accounts,
10 records and files for examination, or if any person responsible for
11 the conduct of affairs of the PEO has refused to give information
12 with respect to its affairs, or has refused to perform any other
13 legal obligation as to an examination, when required by the
14 commissioner. For purposes of this section, persons responsible
15 for the conduct of affairs of the PEO include but are not limited
16 to members of the board of directors, board of trustees, executive
17 committee or other governing board or committee; the principal
18 officers in the case of a corporation or the partners or members in
19 the case of a partnership, association or limited liability
20 company; any shareholder or member holding directly or indirectly
21 ten percent or more of the voting stock, voting securities or
22 voting interest of the administrator; and any other person who
23 exercises control or influence over the affairs of the PEO;

24 (3) Has, without just cause, refused to pay proper claims or

1 perform services arising under its contracts or has, without just
2 cause, caused covered employees to accept less than the amount due
3 them or caused covered employees to employ attorneys or bring suit
4 against the PEO to secure full payment or settlement of their
5 claims;

6 (4) At any time fails to meet any qualification for which
7 issuance of the license could have been refused;

8 (5) Has been convicted of, or has entered a plea of guilty or
9 no contest to, a felony without regard to whether the adjudication
10 was withheld; or

11 (6) Is under suspension or revocation in another state.

12 (c) The commissioner may, in his or her discretion and without
13 advance notice or hearing, immediately suspend the license of an
14 PEO if the commissioner finds that one or more of the following
15 circumstances exist:

16 (1) The PEO is insolvent or impaired;

17 (2) A proceeding for receivership, conservatorship,
18 rehabilitation or other delinquency proceeding regarding the PEO
19 has been commenced in any state; or

20 (3) The financial condition or business practices of the PEO
21 otherwise pose an imminent threat to the public health, safety or
22 welfare of the residents of this state.

23 (d) If the commissioner finds that one or more grounds exist
24 for the suspension or revocation of a license issued under this

1 article, the commissioner may, in lieu of suspension or revocation,
2 order the PEO to pay to the state of West Virginia a penalty in a
3 sum not exceeding ten thousand dollars and upon the failure of the
4 PEO to pay the penalty within thirty days after notice of the
5 penalty, the commissioner may revoke or suspend the license of the
6 PEO.

7 (e) When a license has been revoked or suspended or renewal of
8 the license refused, the commissioner may reissue, terminate the
9 suspension or renew the license when he or she is satisfied that
10 the conditions causing the revocation, suspension or refusal to
11 renew have ceased to exist and are unlikely to recur.

12 **§33-46A-11. Study of health plans; self-funded plans prohibited.**

13 (a) The Joint Committee on Government and Finance shall, in
14 consultation with the Insurance Commissioner, study PEO health
15 plans and their effect on the health insurance market, including
16 their role in insuring the uninsured and underinsured and their
17 impact on the small group market, and report back to the
18 Legislature during the regular session of 2009, on its findings,
19 conclusions and recommendations, together with drafts of any
20 legislation necessary to effectuate its recommendations.

21 (b) PEOs are prohibited from self-funding health plans for
22 covered employees of its client-employers.

SB/HB

(By Senators/Delegates)

[Introduced 2008]

A BILL to amend and reenact §8-13-13 of the Code of West Virginia, 1931, as amended, relating to authorizing municipalities to file liens for delinquent service fees; and requiring municipal ordinances to have assessment and collection procedures for the service fees.

Be it enacted by the Legislature of West Virginia:

That §8-13-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 13. TAXATION AND FINANCE.

PART III. SPECIAL CHARGES FOR MUNICIPAL SERVICES.

§8-13-13. Special charges for municipal services.

(a) Notwithstanding any charter provisions to the contrary, every municipality which furnishes any essential or special municipal service, including, but not limited to, police and fire protection, parking facilities on the streets or otherwise, parks and recreational facilities, street cleaning, street lighting, street maintenance and improvement, sewerage and sewage disposal, and the collection and disposal of garbage, refuse, waste, ashes,

1 trash and any other similar matter, shall have plenary power and
2 authority to provide by ordinance for the installation,
3 continuance, maintenance or improvement of ~~such~~ the service, to
4 make reasonable regulations ~~with respect thereto~~ of the service,
5 and to impose by ordinance upon the users of ~~such~~ the service
6 reasonable rates, fees and charges to be collected in the manner
7 specified in the ordinance: *Provided*, That any sewerage and sewage
8 disposal service and any service incident to the collection and
9 disposal of garbage, refuse, waste, ashes, trash and any other
10 similar matter shall be subject to the provisions of chapter
11 twenty-four of this code.

12 (b) The municipality ~~shall not, however, have~~ may file a lien
13 on any property as security for payments due under ~~such~~ the
14 ordinance authorizing the service set out in this section. The
15 ordinance of the municipality authorizing the service set out in
16 this section, shall provide administrative procedures for
17 assessment and collection of the fees at the municipal level with
18 a right of appeal to the circuit court.

19 (c) Notwithstanding the provisions of section four, article
20 eleven of this chapter, any ordinance enacted or substantially
21 amended under the provisions of this section shall be published as
22 a Class II legal advertisement in compliance with the provisions of
23 article three, chapter fifty-nine of this code, and the publication
24 area for such publication shall be such municipality.

25 (d) In the event thirty percent of the qualified voters of the
26 municipality, by petition duly signed by them in their own

1 handwriting and filed with the recorder of the municipality within
2 fifteen days after the expiration of such publication, protest
3 against ~~such~~ the ordinance as enacted or amended, the ordinance
4 shall not become effective until it ~~shall be~~ is ratified by a
5 majority of the legal votes cast ~~thereon~~ by the qualified voters of
6 ~~such~~ the municipality at a regular municipal election or special
7 municipal election, as the governing body shall direct. Voting
8 ~~thereon~~ shall not take place until after notice of ~~such~~ the
9 submission ~~shall have been~~ is given by publication as ~~above~~
10 provided in subsection (c) of this section, for the publication of
11 the ordinance after it is adopted or substantially amended.

12 (e) The powers and authority hereby granted to municipalities
13 and to the governing bodies thereof are in addition and
14 supplemental to the powers and authority named in any charters
15 thereof.

16 (f) Notwithstanding any other provisions of this section, in
17 the event rates, fees and charges ~~herein provided for shall be~~ in
18 this section, are imposed by the governing body of any municipality
19 for the purpose of replacing and in amounts approximately
20 sufficient to replace in its general fund such amounts as shall be
21 appropriated to be paid out of ad valorem taxes upon property
22 within the municipality pursuant to an election duly called and
23 held under the constitution and laws of the state to authorize the
24 issuance and sale of general obligation bonds of the municipality
25 for public improvement purposes, in the call for ~~which~~ the election
26 it shall be stated that the governing body of the municipality

1 proposes to impose rates, fees and charges in specified amounts
2 under this section for the use of one or more of the services ~~above~~
3 specified in subsection (a) of this section, which shall be related
4 to the public improvement proposed to be made with the proceeds of
5 the bonds, no notice, publication of notice, or referendum or
6 election or other condition or prerequisite to the imposition of
7 ~~such~~ the rates, fees and charges shall be required or necessary
8 other than the legal requirements for issuance and sale of ~~such~~ the
9 general obligation bonds.

10

1 **Municipality uninhabitable or abandoned structures Draft (2)**

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5 **HOUSE/SENATE CONCURRENT RESOLUTION NO.**

6 (By Delegates/Senators)

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10 Requesting the Joint Committee on Government and Finance study
11 means for municipalities to deal with uninhabitable and/or
12 abandoned structures and properties in municipalities and
13 develop workable procedures.

14 Whereas, Uninhabited and abandoned properties not only have
15 negative aesthetic qualities, but they may be hazardous to the
16 surrounding community; and

17 Whereas, The municipality may condemn and demolish the
18 property, but it cannot obtain reimbursement for the demolition
19 costs; and

20 Whereas, Allowing a municipality to sell the property to
21 satisfy the lien and retain some of the money from the sale may be
22 a means to help the municipality recover its costs; and

23 Whereas, Developing means for municipalities to deal with
24 uninhabitable and abandoned structures and properties is in the

1 best interest of the citizens of that municipality; and

2 Whereas, Rehabilitating abandoned or uninhabitable structures
3 and properties will increase property values; and

4 Whereas, Increasing property value will help the state through
5 increasing property taxes; therefore, be it

6 *Resolved by the Legislature of West Virginia:*

7 That the Joint Committee on Government and Finance is hereby
8 requested to study means for municipalities to deal with
9 uninhabitable and/or abandoned structures and properties in
10 municipalities and develop workable procedures; and, be it

11 *Further Resolved,* That the Joint Committee on Government and
12 Finance report to the Regular Session of the Legislature, 2009, on
13 its findings, conclusions and recommendations, together with drafts
14 of any legislation necessary to effectuate its recommendations;
15 and, be it

16 *Further Resolved,* That the expenses necessary to conduct the
17 study, to prepare a report and to draft necessary legislation be
18 paid from legislative appropriations to the Joint Committee on
19 Government and Finance.