

ACTS
OF THE
LEGISLATURE
OF
WEST VIRGINIA



Regular Session, 2005
First Extraordinary Session, 2005
Second Extraordinary Session, 2005
Third Extraordinary Session, 2005
Third Extraordinary Session, 2004

Volume II
Chapters 180 – 255
Chapters 1 – 4
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CHAPTER 180

(S. B. 737 — By Senators Bowman, Bailey, Chafin, Harrison, Jenkins, Kessler, Lanham, McCabe, Minard, Plymale, Weeks and White)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §30-1-5 and §30-1-8 of the Code of West Virginia, 1931, as amended, all relating to licensing boards; establishing a time limit for licensing boards to issue a status report and a final ruling on complaints; exception; and authorizing licensing boards to suspend and revoke licenses when a licensee cannot be located.

Be it enacted by the Legislature of West Virginia:

That §30-1-5 and §30-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE
BOARDS OF EXAMINATION OR REGISTRATION
REFERRED TO IN CHAPTER.**

§30-1-5. Meetings; quorum; investigatory powers; duties.

§30-1-8. Denial, suspension or revocation of a license or registration; probation; proceedings; effect of suspension or revocation; transcript; report; judicial review.

§30-1-5. Meetings; quorum; investigatory powers; duties.

- 1 (a) Every board referred to in this chapter shall hold at least
- 2 one meeting each year, at such time and place as it may
- 3 prescribe by rule, for the examination of applicants who desire
- 4 to practice their respective professions or occupations in this

5 state and to transact any other business which may legally
6 come before it. The board may hold additional meetings as
7 may be necessary, which shall be called by the secretary at the
8 direction of the president or upon the written request of any
9 three members. A majority of the members of the board
10 constitutes a quorum for the transaction of its business.

11 (b) The board is authorized to compel the attendance of
12 witnesses, to issue subpoenas, to conduct investigations and
13 hire an investigator and to take testimony and other evidence
14 concerning any matter within its jurisdiction. The president
15 and secretary of the board are authorized to administer oaths
16 for these purposes.

17 (c) Every board referred to in this chapter has a duty to
18 investigate and resolve complaints which it receives and shall,
19 within six months of the complaint being filed, send a status
20 report to the party filing the complaint by certified mail with a
21 signed return receipt and within one year of the status report's
22 return receipt date issue a final ruling, unless the party filing
23 the complaint and the board agree in writing to extend the time
24 for the final ruling.

25 (d) Every board shall provide public access to the record of
26 the disposition of the complaints which it receives in accor-
27 dance with the provisions of chapter twenty-nine-b of this
28 code. Every board has a duty to report violations of individual
29 practice acts contained in this chapter to the board by which the
30 individual may be licensed and shall do so in a timely manner
31 upon receiving notice of such violations. Every person
32 licensed or registered by a board has a duty to report to the
33 board which licenses or registers him or her a known or
34 observed violation of the practice act or the board's rules by
35 any other person licensed or registered by the same board and
36 shall do so in a timely manner. Law-enforcement agencies or
37 their personnel and courts shall report in a timely manner to the

38 appropriate board any violations of individual practice acts by
39 any individual.

40 (e) Whenever a board referred to in this chapter obtains
41 information that a person subject to its authority has engaged
42 in, is engaging in or is about to engage in any act which
43 constitutes or will constitute a violation of the provisions of
44 this chapter which are administered and enforced by that board,
45 it may apply to the circuit court for an order enjoining the act.
46 Upon a showing that the person has engaged, is engaging or is
47 about to engage in any such act, the court shall order an
48 injunction, restraining order or other order as the court may
49 deem appropriate.

**§30-1-8. Denial, suspension or revocation of a license or registra-
tion; probation; proceedings; effect of suspension
or revocation; transcript; report; judicial review.**

1 (a) Every board referred to in this chapter may suspend or
2 revoke the license of any person who has been convicted of a
3 felony or who has been found to have engaged in conduct,
4 practices or acts constituting professional negligence or a
5 willful departure from accepted standards of professional
6 conduct. Where any person has been convicted of a felony or
7 has been found to have engaged in such conduct, practices or
8 acts, every board referred to in this chapter may enter into
9 consent decrees, to reprimand, to enter into probation orders,
10 to levy fines not to exceed one thousand dollars per day per
11 violation, or any of these, singly or in combination. Each
12 board may also assess administrative costs. Any costs which
13 are assessed shall be placed in the special account of the board
14 and any fine which is levied shall be deposited in the state
15 treasury's general revenue fund.

16 (b) For purposes of this section, the word "felony" means
17 a felony or crime punishable as a felony under the laws of this
18 state, any other state or the United States.

19 (c) Every board referred to in this chapter may promulgate
20 rules in accordance with the provisions of chapter twenty-nine-
21 a of this code to delineate conduct, practices or acts which, in
22 the judgment of the board, constitute professional negligence,
23 a willful departure from accepted standards of professional
24 conduct or which may render an individual unqualified or unfit
25 for licensure, registration or other authorization to practice.

26 (d) Every board referred to in this chapter may revoke the
27 license or registration of an individual licensed or otherwise
28 lawfully practicing within this state whose license or registra-
29 tion in any other state, territory, jurisdiction or foreign nation
30 has been revoked by the licensing authority thereof.

31 (e) Notwithstanding any other provision of law to the
32 contrary, no certificate, license, registration or authority issued
33 under the provisions of this chapter may be suspended or
34 revoked without a prior hearing before the board or court
35 which issued the certificate, license, registration or authority,
36 except:

37 (1) A board is authorized to suspend or revoke a certificate,
38 license, registration or authority prior to a hearing if the
39 person's continuation in practice constitutes an immediate
40 danger to the public; or

41 (2) After due diligence, if a board cannot locate a person
42 licensed under the provisions of this chapter within sixty days
43 of a complaint being filed against the licensee, then the board
44 may suspend the license, certificate, registration or authority of
45 the person without holding a hearing. After due diligence, if a
46 Board still cannot locate the person licensed under the provi-
47 sions of this chapter thirty days after the suspension of the
48 person's license, certificate, registration or authority, then the
49 board may revoke the license, certificate, registration or
50 authority of the person without holding a hearing.

51 (f) In all proceedings before a board or court for the
52 suspension or revocation of any certificate, license, registration
53 or authority issued under the provisions of this chapter, a
54 statement of the charges against the holder of the certificate,
55 license, registration or authority and a notice of the time and
56 place of hearing shall be served upon the person as a notice is
57 served under section one, article two, chapter fifty-six of this
58 code at least thirty days prior to the hearing and he or she may
59 appear with witnesses and be heard in person, by counsel, or
60 both. The board may take oral or written proof, for or against
61 the accused, as it may consider advisable. If upon hearing the
62 board finds that the charges are true, it may suspend or revoke
63 the certificate, license, registration or authority and suspension
64 or revocation shall take from the person all rights and privi-
65 leges acquired thereby.

66 (g) Pursuant to the provisions of section one, article five,
67 chapter twenty-nine-a of this code, informal disposition may
68 also be made by the board of any contested case by stipulation,
69 agreed settlement, consent order or default. Further, the board
70 may suspend its decision and place a licensee found by the
71 board to be in violation of the applicable practice on probation.

72 (h) Any person denied a license, certificate, registration or
73 authority who believes the denial was in violation of this article
74 or the article under which the license, certificate, registration or
75 authority is authorized shall be entitled to a hearing on the
76 action denying the license, certificate, registration or authority.
77 Hearings under this subsection are in accordance with the
78 provisions for hearings which are set forth in this section.

79 (i) A stenographic report of each proceeding on the denial,
80 suspension or revocation of a certificate, license, registration or
81 authority shall be made at the expense of the board and a
82 transcript of the hearing retained in its files. The board shall

83 make a written report of its findings, which shall constitute part
84 of the record.

85 (j) All proceedings under the provisions of this section are
86 subject to review by the supreme court of appeals.

87 (k) On or before the first day of July, two thousand one,
88 every board referred to in this chapter shall adopt procedural
89 rules in accordance with the provisions of article three, chapter
90 twenty-nine-a of this code, which shall specify a procedure for
91 the investigation and resolution of all complaints against
92 persons licensed under this chapter. The proposed legislative
93 rules relating only to complaint procedures or contested case
94 hearing procedures required by the prior enactment of this
95 subsection shall be redesignated as procedural rules in accor-
96 dance with the provisions of article three, chapter twenty-nine-
97 a of this code. Each board shall file the procedural rules
98 required by this subsection by the thirty-first day of January,
99 two thousand one. The public hearing or public comment
100 period conducted for the proposed legislative rules shall serve
101 as the public hearing or public comment period required by
102 section five, article three, chapter twenty-nine-a of this code.

CHAPTER 181

(Com. Sub. for S. B. 450 — By Senator Bowman)

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §30-1-11 of the Code of West Virginia, 1931, as amended, relating to licensing boards; and

prohibiting a board member from receiving compensation for travel days not on the same day as the official meeting or official duties.

Be it enacted by the Legislature of West Virginia:

That §30-1-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE
BOARDS OF EXAMINATION OR REGISTRATION
CREATED IN CHAPTER.**

§30-1-11. Compensation of members; expenses.

1 (a) Each member of every board in this chapter is entitled
2 to receive compensation for attending official meetings or
3 engaging in official duties not to exceed the amount paid to
4 members of the Legislature for their interim duties as recom-
5 mended by the Citizens Legislative Compensation Commission
6 and authorized by law. A board member may not receive
7 compensation for travel days that are not on the same day as
8 the official meeting or official duties.

9 (b) The limitations contained in this section do not apply
10 if they conflict with provisions of this chapter relating to a
11 particular board and enacted after the first day of January, one
12 thousand nine hundred ninety-five.

13 (c) A board may reimburse actual and necessary expenses
14 incurred for each day or portion of a day engaged in the
15 discharge of official duties in a manner consistent with
16 guidelines of the Travel Management Office of the Department
17 of Administration.

18 (d) No member of any board in this chapter may receive
19 compensation as an employee of the board.

CHAPTER 182

(Com. Sub. for H. B. 2764 — By Delegates Kominar, Amores,
Stalnaker, Long, Hartman, R. Thompson and Stemple)

[Passed March 28, 2005; in effect from passage.]

[Approved by the Governor on April 6, 2005.]

AN ACT to amend and reenact §30-3-14 of the Code of West Virginia, 1931, as amended, relating to allowing the Board of Medicine to issue a license to a physician convicted of certain drug related offenses.

Be it enacted by the Legislature of West Virginia:

That §30-3-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-14. Professional discipline of physicians and podiatrists; reporting of information to Board pertaining to medical professional liability and professional incompetence required; penalties; grounds for license denial and discipline of physicians and podiatrists; investigations; physical and mental examinations; hearings; sanctions; summary sanctions; reporting by the Board; reapplication; civil and criminal immunity; voluntary limitation of license; probable cause determinations.

- 1 (a) The Board may independently initiate disciplinary
- 2 proceedings as well as initiate disciplinary proceedings based

3 on information received from medical peer review committees,
4 physicians, podiatrists, hospital administrators, professional
5 societies and others.

6 The Board may initiate investigations as to professional
7 incompetence or other reasons for which a licensed physician
8 or podiatrist may be adjudged unqualified based upon criminal
9 convictions; complaints by citizens, pharmacists, physicians,
10 podiatrists, peer review committees, hospital administrators,
11 professional societies or others; or unfavorable outcomes
12 arising out of medical professional liability. The Board shall
13 initiate an investigation if it receives notice that three or more
14 judgments, or any combination of judgments and settlements
15 resulting in five or more unfavorable outcomes arising from
16 medical professional liability have been rendered or made
17 against the physician or podiatrist within a five-year period. The
18 Board may not consider any judgments or settlements as
19 conclusive evidence of professional incompetence or conclusive
20 lack of qualification to practice.

21 (b) Upon request of the Board, any medical peer review
22 committee in this state shall report any information that may
23 relate to the practice or performance of any physician or
24 podiatrist known to that medical peer review committee. Copies
25 of the requests for information from a medical peer review
26 committee may be provided to the subject physician or podia-
27 trist if, in the discretion of the Board, the provision of such
28 copies will not jeopardize the Board's investigation. In the
29 event that copies are provided, the subject physician or podia-
30 trist is allowed fifteen days to comment on the requested
31 information and such comments must be considered by the
32 Board.

33 The chief executive officer of every hospital shall, within
34 sixty days after the completion of the hospital's formal disci-
35 plinary procedure and also within sixty days after the com-

36 mencement of and again after the conclusion of any resulting
37 legal action, report in writing to the Board the name of any
38 member of the medical staff or any other physician or podiatrist
39 practicing in the hospital whose hospital privileges have been
40 revoked, restricted, reduced or terminated for any cause,
41 including resignation, together with all pertinent information
42 relating to such action. The chief executive officer shall also
43 report any other formal disciplinary action taken against any
44 physician or podiatrist by the hospital upon the recommenda-
45 tion of its medical staff relating to professional ethics, medical
46 incompetence, medical professional liability, moral turpitude or
47 drug or alcohol abuse. Temporary suspension for failure to
48 maintain records on a timely basis or failure to attend staff or
49 section meetings need not be reported. Voluntary cessation of
50 hospital privileges for reasons unrelated to professional
51 competence or ethics need not be reported.

52 Any managed care organization operating in this state
53 which provides a formal peer review process shall report in
54 writing to the Board, within sixty days after the completion of
55 any formal peer review process and also within sixty days after
56 the commencement of and again after the conclusion of any
57 resulting legal action, the name of any physician or podiatrist
58 whose credentialing has been revoked or not renewed by the
59 managed care organization. The managed care organization
60 shall also report in writing to the Board any other disciplinary
61 action taken against a physician or podiatrist relating to
62 professional ethics, professional liability, moral turpitude or
63 drug or alcohol abuse within sixty days after completion of a
64 formal peer review process which results in the action taken by
65 the managed care organization. For purposes of this subsection,
66 "managed care organization" means a plan that establishes,
67 operates or maintains a network of health care providers who
68 have entered into agreements with and been credentialed by the
69 plan to provide health care services to enrollees or insureds to
70 whom the plan has the ultimate obligation to arrange for the

71 provision of or payment for health care services through
72 organizational arrangements for ongoing quality assurance,
73 utilization review programs or dispute resolutions.

74 Any professional society in this state comprised primarily
75 of physicians or podiatrists which takes formal disciplinary
76 action against a member relating to professional ethics, profes-
77 sional incompetence, medical professional liability, moral
78 turpitude or drug or alcohol abuse shall report in writing to the
79 Board within sixty days of a final decision the name of the
80 member, together with all pertinent information relating to the
81 action.

82 Every person, partnership, corporation, association,
83 insurance company, professional society or other organization
84 providing professional liability insurance to a physician or
85 podiatrist in this state, including the State Board of Risk and
86 Insurance Management, shall submit to the Board the following
87 information within thirty days from any judgment or settlement
88 of a civil or medical professional liability action excepting
89 product liability actions: The name of the insured; the date of
90 any judgment or settlement; whether any appeal has been taken
91 on the judgment and, if so, by which party; the amount of any
92 settlement or judgment against the insured; and other informa-
93 tion required by the Board.

94 Within thirty days from the entry of an order by a court in
95 a medical professional liability action or other civil action in
96 which a physician or podiatrist licensed by the Board is
97 determined to have rendered health care services below the
98 applicable standard of care, the clerk of the court in which the
99 order was entered shall forward a certified copy of the order to
100 the Board.

101 Within thirty days after a person known to be a physician
102 or podiatrist licensed or otherwise lawfully practicing medicine

103 and surgery or podiatry in this state or applying to be licensed
104 is convicted of a felony under the laws of this state or of any
105 crime under the laws of this state involving alcohol or drugs in
106 any way, including any controlled substance under state or
107 federal law, the clerk of the court of record in which the
108 conviction was entered shall forward to the Board a certified
109 true and correct abstract of record of the convicting court. The
110 abstract shall include the name and address of the physician or
111 podiatrist or applicant, the nature of the offense committed and
112 the final judgment and sentence of the court.

113 Upon a determination of the Board that there is probable
114 cause to believe that any person, partnership, corporation,
115 association, insurance company, professional society or other
116 organization has failed or refused to make a report required by
117 this subsection, the Board shall provide written notice to the
118 alleged violator stating the nature of the alleged violation and
119 the time and place at which the alleged violator shall appear to
120 show good cause why a civil penalty should not be imposed.
121 The hearing shall be conducted in accordance with the provi-
122 sions of article five, chapter twenty-nine-a of this code. After
123 reviewing the record of the hearing, if the Board determines
124 that a violation of this subsection has occurred, the Board shall
125 assess a civil penalty of not less than one thousand dollars nor
126 more than ten thousand dollars against the violator. The Board
127 shall notify any person so assessed of the assessment in writing
128 and the notice shall specify the reasons for the assessment. If
129 the violator fails to pay the amount of the assessment to the
130 Board within thirty days, the Attorney General may institute a
131 civil action in the circuit court of Kanawha County to recover
132 the amount of the assessment. In any civil action, the court's
133 review of the Board's action shall be conducted in accordance
134 with the provisions of section four, article five, chapter twenty-
135 nine-a of this code. Notwithstanding any other provision of this
136 article to the contrary, when there are conflicting views by
137 recognized experts as to whether any alleged conduct breaches

138 an applicable standard of care, the evidence must be clear and
139 convincing before the Board may find that the physician or
140 podiatrist has demonstrated a lack of professional competence
141 to practice with a reasonable degree of skill and safety for
142 patients.

143 Any person may report to the Board relevant facts about the
144 conduct of any physician or podiatrist in this state which in the
145 opinion of that person amounts to medical professional liability
146 or professional incompetence.

147 The Board shall provide forms for filing reports pursuant to
148 this section. Reports submitted in other forms shall be accepted
149 by the Board.

150 The filing of a report with the Board pursuant to any
151 provision of this article, any investigation by the Board or any
152 disposition of a case by the Board does not preclude any action
153 by a hospital, other health care facility or professional society
154 comprised primarily of physicians or podiatrists to suspend,
155 restrict or revoke the privileges or membership of the physician
156 or podiatrist.

157 (c) The Board may deny an application for license or other
158 authorization to practice medicine and surgery or podiatry in
159 this state and may discipline a physician or podiatrist licensed
160 or otherwise lawfully practicing in this state who, after a
161 hearing, has been adjudged by the Board as unqualified due to
162 any of the following reasons:

163 (1) Attempting to obtain, obtaining, renewing or attempting
164 to renew a license to practice medicine and surgery or podiatry
165 by bribery, fraudulent misrepresentation or through known error
166 of the Board;

167 (2) Being found guilty of a crime in any jurisdiction, which
168 offense is a felony, involves moral turpitude or directly relates

169 to the practice of medicine. Any plea of nolo contendere is a
170 conviction for the purposes of this subdivision;

171 (3) False or deceptive advertising;

172 (4) Aiding, assisting, procuring or advising any unautho-
173 rized person to practice medicine and surgery or podiatry
174 contrary to law;

175 (5) Making or filing a report that the person knows to be
176 false; intentionally or negligently failing to file a report or
177 record required by state or federal law; willfully impeding or
178 obstructing the filing of a report or record required by state or
179 federal law; or inducing another person to do any of the
180 foregoing. The reports and records covered in this subdivision
181 mean only those that are signed in the capacity as a licensed
182 physician or podiatrist;

183 (6) Requesting, receiving or paying directly or indirectly a
184 payment, rebate, refund, commission, credit or other form of
185 profit or valuable consideration for the referral of patients to
186 any person or entity in connection with providing medical or
187 other health care services or clinical laboratory services,
188 supplies of any kind, drugs, medication or any other medical
189 goods, services or devices used in connection with medical or
190 other health care services;

191 (7) Unprofessional conduct by any physician or podiatrist
192 in referring a patient to any clinical laboratory or pharmacy in
193 which the physician or podiatrist has a proprietary interest
194 unless the physician or podiatrist discloses in writing such
195 interest to the patient. The written disclosure shall indicate that
196 the patient may choose any clinical laboratory for purposes of
197 having any laboratory work or assignment performed or any
198 pharmacy for purposes of purchasing any prescribed drug or
199 any other medical goods or devices used in connection with
200 medical or other health care services;

201 As used in this subdivision, "proprietary interest" does not
202 include an ownership interest in a building in which space is
203 leased to a clinical laboratory or pharmacy at the prevailing rate
204 under a lease arrangement that is not conditional upon the
205 income or gross receipts of the clinical laboratory or pharmacy;

206 (8) Exercising influence within a patient-physician relation-
207 ship for the purpose of engaging a patient in sexual activity;

208 (9) Making a deceptive, untrue or fraudulent representation
209 in the practice of medicine and surgery or podiatry;

210 (10) Soliciting patients, either personally or by an agent,
211 through the use of fraud, intimidation or undue influence;

212 (11) Failing to keep written records justifying the course of
213 treatment of a patient, including, but not limited to, patient
214 histories, examination and test results and treatment rendered,
215 if any;

216 (12) Exercising influence on a patient in such a way as to
217 exploit the patient for financial gain of the physician or
218 podiatrist or of a third party. Any influence includes, but is not
219 limited to, the promotion or sale of services, goods, appliances
220 or drugs;

221 (13) Prescribing, dispensing, administering, mixing or
222 otherwise preparing a prescription drug, including any con-
223 trolled substance under state or federal law, other than in good
224 faith and in a therapeutic manner in accordance with accepted
225 medical standards and in the course of the physician's or
226 podiatrist's professional practice: *Provided*, That a physician
227 who discharges his or her professional obligation to relieve the
228 pain and suffering and promote the dignity and autonomy of
229 dying patients in his or her care and, in so doing, exceeds the
230 average dosage of a pain relieving controlled substance, as

231 defined in Schedules II and III of the Uniform Controlled
232 Substance Act, does not violate this article;

233 (14) Performing any procedure or prescribing any therapy
234 that, by the accepted standards of medical practice in the
235 community, would constitute experimentation on human
236 subjects without first obtaining full, informed and written
237 consent;

238 (15) Practicing or offering to practice beyond the scope
239 permitted by law or accepting and performing professional
240 responsibilities that the person knows or has reason to know he
241 or she is not competent to perform;

242 (16) Delegating professional responsibilities to a person
243 when the physician or podiatrist delegating the responsibilities
244 knows or has reason to know that the person is not qualified by
245 training, experience or licensure to perform them;

246 (17) Violating any provision of this article or a rule or order
247 of the Board or failing to comply with a subpoena or subpoena
248 duces tecum issued by the Board;

249 (18) Conspiring with any other person to commit an act or
250 committing an act that would tend to coerce, intimidate or
251 preclude another physician or podiatrist from lawfully advertis-
252 ing his or her services;

253 (19) Gross negligence in the use and control of prescription
254 forms;

255 (20) Professional incompetence; or

256 (21) The inability to practice medicine and surgery or
257 podiatry with reasonable skill and safety due to physical or
258 mental impairment, including deterioration through the aging
259 process, loss of motor skill or abuse of drugs or alcohol. A

260 physician or podiatrist adversely affected under this subdivision
261 shall be afforded an opportunity at reasonable intervals to
262 demonstrate that he or she may resume the competent practice
263 of medicine and surgery or podiatry with reasonable skill and
264 safety to patients. In any proceeding under this subdivision,
265 neither the record of proceedings nor any orders entered by the
266 Board shall be used against the physician or podiatrist in any
267 other proceeding.

268 (d) The Board shall deny any application for a license or
269 other authorization to practice medicine and surgery or podiatry
270 in this state to any applicant who, and shall revoke the license
271 of any physician or podiatrist licensed or otherwise lawfully
272 practicing within this state who, is found guilty by any court of
273 competent jurisdiction of any felony involving prescribing,
274 selling, administering, dispensing, mixing or otherwise prepar-
275 ing any prescription drug, including any controlled substance
276 under state or federal law, for other than generally accepted
277 therapeutic purposes. Presentation to the Board of a certified
278 copy of the guilty verdict or plea rendered in the court is
279 sufficient proof thereof for the purposes of this article. A plea
280 of nolo contendere has the same effect as a verdict or plea of
281 guilt. Upon application of a physician that has had his or her
282 license revoked because of a drug related felony conviction,
283 upon completion of any sentence of confinement, parole,
284 probation or other court-ordered supervision and full satisfac-
285 tion of any fines, judgments or other fees imposed by the
286 sentencing court, the Board may issue the applicant a new
287 license upon a finding that the physician is, except for the
288 underlying conviction, otherwise qualified to practice medicine:
289 *Provided*, That the Board may place whatever terms, conditions
290 or limitations it deems appropriate upon a physician licensed
291 pursuant to this subsection.

292 (e) The Board may refer any cases coming to its attention
293 to an appropriate committee of an appropriate professional

294 organization for investigation and report. Except for complaints
295 related to obtaining initial licensure to practice medicine and
296 surgery or podiatry in this state by bribery or fraudulent
297 misrepresentation, any complaint filed more than two years
298 after the complainant knew, or in the exercise of reasonable
299 diligence should have known, of the existence of grounds for
300 the complaint shall be dismissed: *Provided*, That in cases of
301 conduct alleged to be part of a pattern of similar misconduct or
302 professional incapacity that, if continued, would pose risks of
303 a serious or substantial nature to the physician's or podiatrist's
304 current patients, the investigating body may conduct a limited
305 investigation related to the physician's or podiatrist's current
306 capacity and qualification to practice and may recommend
307 conditions, restrictions or limitations on the physician's or
308 podiatrist's license to practice that it considers necessary for the
309 protection of the public. Any report shall contain recommenda-
310 tions for any necessary disciplinary measures and shall be filed
311 with the Board within ninety days of any referral. The recom-
312 mendations shall be considered by the Board and the case may
313 be further investigated by the Board. The Board after full
314 investigation shall take whatever action it considers appropri-
315 ate, as provided in this section.

316 (f) The investigating body, as provided in subsection (e) of
317 this section, may request and the Board under any circum-
318 stances may require a physician or podiatrist or person applying
319 for licensure or other authorization to practice medicine and
320 surgery or podiatry in this state to submit to a physical or
321 mental examination by a physician or physicians approved by
322 the Board. A physician or podiatrist submitting to an examina-
323 tion has the right, at his or her expense, to designate another
324 physician to be present at the examination and make an
325 independent report to the investigating body or the Board. The
326 expense of the examination shall be paid by the Board. Any
327 individual who applies for or accepts the privilege of practicing
328 medicine and surgery or podiatry in this state is considered to

329 have given his or her consent to submit to all examinations
330 when requested to do so in writing by the Board and to have
331 waived all objections to the admissibility of the testimony or
332 examination report of any examining physician on the ground
333 that the testimony or report is privileged communication. If a
334 person fails or refuses to submit to an examination under
335 circumstances which the Board finds are not beyond his or her
336 control, failure or refusal is prima facie evidence of his or her
337 inability to practice medicine and surgery or podiatry compe-
338 tently and in compliance with the standards of acceptable and
339 prevailing medical practice.

340 (g) In addition to any other investigators it employs, the
341 Board may appoint one or more licensed physicians to act for
342 it in investigating the conduct or competence of a physician.

343 (h) In every disciplinary or licensure denial action, the
344 Board shall furnish the physician or podiatrist or applicant with
345 written notice setting out with particularity the reasons for its
346 action. Disciplinary and licensure denial hearings shall be
347 conducted in accordance with the provisions of article five,
348 chapter twenty-nine-a of this code. However, hearings shall be
349 heard upon sworn testimony and the rules of evidence for trial
350 courts of record in this state shall apply to all hearings. A
351 transcript of all hearings under this section shall be made, and
352 the respondent may obtain a copy of the transcript at his or her
353 expense. The physician or podiatrist has the right to defend
354 against any charge by the introduction of evidence, the right to
355 be represented by counsel, the right to present and cross-
356 examine witnesses and the right to have subpoenas and subpoe-
357 nas duces tecum issued on his or her behalf for the attendance
358 of witnesses and the production of documents. The Board shall
359 make all its final actions public. The order shall contain the
360 terms of all action taken by the Board.

361 (i) In disciplinary actions in which probable cause has been
362 found by the Board, the Board shall, within twenty days of the

363 date of service of the written notice of charges or sixty days
364 prior to the date of the scheduled hearing, whichever is sooner,
365 provide the respondent with the complete identity, address and
366 telephone number of any person known to the Board with
367 knowledge about the facts of any of the charges; provide a copy
368 of any statements in the possession of or under the control of
369 the Board; provide a list of proposed witnesses with addresses
370 and telephone numbers, with a brief summary of his or her
371 anticipated testimony; provide disclosure of any trial expert
372 pursuant to the requirements of Rule 26(b)(4) of the West
373 Virginia Rules of Civil Procedure; provide inspection and
374 copying of the results of any reports of physical and mental
375 examinations or scientific tests or experiments; and provide a
376 list and copy of any proposed exhibit to be used at the hearing:
377 *Provided*, That the Board shall not be required to furnish or
378 produce any materials which contain opinion work product
379 information or would be a violation of the attorney-client
380 privilege. Within twenty days of the date of service of the
381 written notice of charges, the Board shall disclose any exculpa-
382 tory evidence with a continuing duty to do so throughout the
383 disciplinary process. Within thirty days of receipt of the
384 Board's mandatory discovery, the respondent shall provide the
385 Board with the complete identity, address and telephone
386 number of any person known to the respondent with knowledge
387 about the facts of any of the charges; provide a list of proposed
388 witnesses with addresses and telephone numbers, to be called
389 at hearing, with a brief summary of his or her anticipated
390 testimony; provide disclosure of any trial expert pursuant to the
391 requirements of Rule 26(b)(4) of the West Virginia Rules of
392 Civil Procedure; provide inspection and copying of the results
393 of any reports of physical and mental examinations or scientific
394 tests or experiments; and provide a list and copy of any
395 proposed exhibit to be used at the hearing.

396 (j) Whenever it finds any person unqualified because of any
397 of the grounds set forth in subsection (c) of this section, the

398 Board may enter an order imposing one or more of the follow-
399 ing:

400 (1) Deny his or her application for a license or other
401 authorization to practice medicine and surgery or podiatry;

402 (2) Administer a public reprimand;

403 (3) Suspend, limit or restrict his or her license or other
404 authorization to practice medicine and surgery or podiatry for
405 not more than five years, including limiting the practice of that
406 person to, or by the exclusion of, one or more areas of practice,
407 including limitations on practice privileges;

408 (4) Revoke his or her license or other authorization to
409 practice medicine and surgery or podiatry or to prescribe or
410 dispense controlled substances for a period not to exceed ten
411 years;

412 (5) Require him or her to submit to care, counseling or
413 treatment designated by the Board as a condition for initial or
414 continued licensure or renewal of licensure or other authoriza-
415 tion to practice medicine and surgery or podiatry;

416 (6) Require him or her to participate in a program of
417 education prescribed by the Board;

418 (7) Require him or her to practice under the direction of a
419 physician or podiatrist designated by the Board for a specified
420 period of time; and

421 (8) Assess a civil fine of not less than one thousand dollars
422 nor more than ten thousand dollars.

423 (k) Notwithstanding the provisions of section eight, article
424 one, chapter thirty of this code, if the Board determines the
425 evidence in its possession indicates that a physician's or
426 podiatrist's continuation in practice or unrestricted practice

427 constitutes an immediate danger to the public, the Board may
428 take any of the actions provided in subsection (j) of this section
429 on a temporary basis and without a hearing if institution of
430 proceedings for a hearing before the Board are initiated
431 simultaneously with the temporary action and begin within
432 fifteen days of the action. The Board shall render its decision
433 within five days of the conclusion of a hearing under this
434 subsection.

435 (l) Any person against whom disciplinary action is taken
436 pursuant to the provisions of this article has the right to judicial
437 review as provided in articles five and six, chapter twenty-nine-
438 a of this code: *Provided*, That a circuit judge may also remand
439 the matter to the Board if it appears from competent evidence
440 presented to it in support of a motion for remand that there is
441 newly discovered evidence of such a character as ought to
442 produce an opposite result at a second hearing on the merits
443 before the Board and:

444 (1) The evidence appears to have been discovered since the
445 Board hearing; and

446 (2) The physician or podiatrist exercised due diligence in
447 asserting his or her evidence and that due diligence would not
448 have secured the newly discovered evidence prior to the appeal.

449 A person may not practice medicine and surgery or podiatry
450 or deliver health care services in violation of any disciplinary
451 order revoking, suspending or limiting his or her license while
452 any appeal is pending. Within sixty days, the Board shall report
453 its final action regarding restriction, limitation, suspension or
454 revocation of the license of a physician or podiatrist, limitation
455 on practice privileges or other disciplinary action against any
456 physician or podiatrist to all appropriate state agencies, appro-
457 priate licensed health facilities and hospitals, insurance compa-
458 nies or associations writing medical malpractice insurance in
459 this state, the American Medical Association, the American

460 Podiatry Association, professional societies of physicians or
461 podiatrists in the state and any entity responsible for the fiscal
462 administration of medicare and medicaid.

463 (m) Any person against whom disciplinary action has been
464 taken under the provisions of this article shall, at reasonable
465 intervals, be afforded an opportunity to demonstrate that he or
466 she can resume the practice of medicine and surgery or podiatry
467 on a general or limited basis. At the conclusion of a suspension,
468 limitation or restriction period the physician or podiatrist may
469 resume practice if the Board has so ordered.

470 (n) Any entity, organization or person, including the Board,
471 any member of the Board, its agents or employees and any
472 entity or organization or its members referred to in this article,
473 any insurer, its agents or employees, a medical peer review
474 committee and a hospital governing board, its members or any
475 committee appointed by it acting without malice and without
476 gross negligence in making any report or other information
477 available to the Board or a medical peer review committee
478 pursuant to law and any person acting without malice and
479 without gross negligence who assists in the organization,
480 investigation or preparation of any such report or information
481 or assists the Board or a hospital governing body or any
482 committee in carrying out any of its duties or functions pro-
483 vided by law is immune from civil or criminal liability, except
484 that the unlawful disclosure of confidential information
485 possessed by the Board is a misdemeanor as provided in this
486 article.

487 (o) A physician or podiatrist may request in writing to the
488 Board a limitation on or the surrendering of his or her license
489 to practice medicine and surgery or podiatry or other appropri-
490 ate sanction as provided in this section. The Board may grant
491 the request and, if it considers it appropriate, may waive the
492 commencement or continuation of other proceedings under this
493 section. A physician or podiatrist whose license is limited or

494 surrendered or against whom other action is taken under this
495 subsection may, at reasonable intervals, petition for removal of
496 any restriction or limitation on or for reinstatement of his or her
497 license to practice medicine and surgery or podiatry.

498 (p) In every case considered by the Board under this article
499 regarding discipline or licensure, whether initiated by the Board
500 or upon complaint or information from any person or organiza-
501 tion, the Board shall make a preliminary determination as to
502 whether probable cause exists to substantiate charges of
503 disqualification due to any reason set forth in subsection (c) of
504 this section. If probable cause is found to exist, all proceedings
505 on the charges shall be open to the public who are entitled to all
506 reports, records and nondeliberative materials introduced at the
507 hearing, including the record of the final action taken: *Pro-*
508 *vided*, That any medical records, which were introduced at the
509 hearing and which pertain to a person who has not expressly
510 waived his or her right to the confidentiality of the records, may
511 not be open to the public nor is the public entitled to the
512 records.

513 (q) If the Board receives notice that a physician or podia-
514 trist has been subjected to disciplinary action or has had his or
515 her credentials suspended or revoked by the Board, a hospital
516 or a professional society, as defined in subsection (b) of this
517 section, for three or more incidents during a five-year period,
518 the Board shall require the physician or podiatrist to practice
519 under the direction of a physician or podiatrist designated by
520 the Board for a specified period of time to be established by the
521 Board.

522 (r) Notwithstanding any other provisions of this article, the
523 Board may, at any time, on its own motion, or upon motion by
524 the complainant, or upon motion by the physician or podiatrist,
525 or by stipulation of the parties, refer the matter to mediation.
526 The Board shall obtain a list from the West Virginia State Bar's
527 mediator referral service of certified mediators with expertise

528 in professional disciplinary matters. The Board and the physi-
529 cian or podiatrist may choose a mediator from that list. If the
530 Board and the physician or podiatrist are unable to agree on a
531 mediator, the Board shall designate a mediator from the list by
532 neutral rotation. The mediation shall not be considered a
533 proceeding open to the public and any reports and records
534 introduced at the mediation shall not become part of the public
535 record. The mediator and all participants in the mediation shall
536 maintain and preserve the confidentiality of all mediation
537 proceedings and records. The mediator may not be subpoenaed
538 or called to testify or otherwise be subject to process requiring
539 disclosure of confidential information in any proceeding
540 relating to or arising out of the disciplinary or licensure matter
541 mediated: *Provided*, That any confidentiality agreement and
542 any written agreement made and signed by the parties as a
543 result of mediation may be used in any proceedings subse-
544 quently instituted to enforce the written agreement. The
545 agreements may be used in other proceedings if the parties
546 agree in writing.

CHAPTER 183

(Com. Sub. for H. B. 2929 — By Mr. Speaker, Mr. Kiss (By Request))

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §30-4A-1, §30-4A-2, §30-4A-3, §30-4A-4, §30-4A-5, §30-4A-6, §30-4A-7, §30-4A-8, §30-4A-9, §30-4A-10, §30-4A-11, §30-4A-12, §30-4A-13, §30-4A-14, §30-4A-15, §30-4A-16 and §30-4A-17 of the Code of West Virginia, 1931, as amended; and that said code be amended by

adding thereto a new section, designated §30-4A-18, all relating to the administration of anesthesia by dentists.

Be it enacted by the Legislature of West Virginia:

That §30-4A-1, §30-4A-2, §30-4A-3, §30-4A-4, §30-4A-5, §30-4A-6, §30-4A-7, §30-4A-8, §30-4A-9, §30-4A-10, §30-4A-11, §30-4A-12, §30-4A-13, §30-4A-14, §30-4A-15, §30-4A-16 and §30-4A-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-4A-18, all to read as follows:

ARTICLE 4A. ADMINISTRATION OF ANESTHESIA BY DENTISTS.

- §30-4A-1. Legislative findings and declaration of purpose.
- §30-4A-2. Definitions.
- §30-4A-3. Presumption of Degree of Central Nervous System Depression.
- §30-4A-4. Requirement for Anesthesia Certificate or Permit.
- §30-4A-5. Classes of Anesthesia Certificates and Permits.
- §30-4A-6. Qualifications, Standards Applicable, and Continuing Education Requirements for Anesthesia Certificate or Permit.
- §30-4A-7. Authority of the West Virginia Board of Dental Examiners to review, inspect and reinspect dentists for issuance of permits. On-site inspection by West Virginia Board of Dental Examiners.
- §30-4A-8. Office Evaluations.
- §30-4A-9. Reporting of Death, Serious Complications or Injury.
- §30-4A-10. Immunity from liability.
- §30-4A-11. Effect on practicing dentists who are currently administering or supervising general anesthesia or parenteral conscious sedation.
- §30-4A-12. New applicants.
- §30-4A-13. Issuance of regular annual permits.
- §30-4A-14. Waiting period for reapplication or reinspection of facilities.
- §30-4A-15. Application and Annual renewal of regular permits; fees.
- §30-4A-16. Violations of article; penalties for practicing anesthesia without a permit.
- §30-4A-17. Appointment of Subcommittee by the West Virginia Board of Dental Examiners; credentials review; and on-site inspections.
- §30-4A-18. Rule-making authority.

§30-4A-1. Legislative findings and declaration of purpose.

1 The Legislature hereby finds and declares that dentists are
2 increasingly administering anesthesia in their offices on an
3 out-patient basis; that the administration of anesthesia carries
4 with it an inherent risk and danger to the patient; that, however,
5 the administration of anesthesia on an out-patient basis by
6 dentists is necessary and for the good of the public; but that
7 because of the inherent dangers in the administration of, it is
8 necessary to insure that the persons administering and supervising
9 such anesthesia are competent and trained in the techniques;
10 that it is in the best interests of the public and the dentists of
11 West Virginia to prohibit dentists from administering or
12 supervising the administration of anesthesia unless those
13 dentists meet certain minimal training and competency standards
14 in the administration and supervision of anesthesia; and
15 that requiring a dentist to obtain a special certificate or permit
16 before he or she can administer or supervise anesthesia is the
17 best method to preserve the use of anesthesia by dentists on
18 out-patients and, at the same time, ensure that such administration
19 and supervision is performed by competent dentists trained
20 in the use of such techniques.

§30-4A-2. Definitions.

1 (a) "General anesthesia" means an induced controlled state
2 of unconsciousness in which the patient experiences complete
3 loss of protective reflexes, as evidenced by the inability to
4 independently maintain an airway, the inability to respond
5 purposefully to physical stimulation, or the inability to respond
6 purposefully to verbal command. "Deep conscious sedation/general
7 anesthesia" includes partial loss of protective
8 reflexes and the patient retains the ability to independently and
9 continuously maintain an airway.

10 (b) "Relative Analgesia" means an induced controlled state
11 of minimally depressed consciousness, produced solely by the
12 inhalation of a combination of nitrous oxide and oxygen, or

13 single oral premedication without the addition of nitrous oxide
14 and oxygen in which the patient retains the ability to independ-
15 ently and continuously maintain an airway and to respond
16 purposefully to physical stimulation and to verbal command.
17 Dosage of oral premedication is not to exceed the recom-
18 mended dosage limits set by the manufacturer for the treatment
19 of anxiety, insomnia or pain.

20 (c) “Conscious Sedation” means an induced controlled state
21 of depressed consciousness, produced through the administra-
22 tion of nitrous oxide and oxygen and/or the administration of
23 other agents whether enteral or parenteral, in which the patient
24 retains the ability to independently and continuously maintain
25 an airway and to respond purposefully to physical stimulation
26 and to verbal command.

27 (d) “Anxiolysis” or premedication for anxiety - means
28 removing, eliminating or decreasing anxiety by the use of a
29 single anxiolytic or analgesia medication that is administered in
30 an amount consistent with the manufacturer’s current recom-
31 mended dosage for the unsupervised treatment of anxiety,
32 insomnia or pain, in conjunction with nitrous oxide and oxygen.
33 This does not include multiple dosing or exceeding current
34 normal dosage limits set by the manufacturer for unsupervised
35 use by the patient (at home), for the treatment of anxiety.

36 (e) “Central Nervous System Anesthesia” means an induced
37 controlled state of unconsciousness or depressed consciousness
38 produced by a pharmacologic method.

39 (f) “ACLS” means Advanced Cardiac Life Support.

40 (g) “BLS” means Basic Life Support.

41 (h) “CPR” means Cardiopulmonary Resuscitation.

42 (i) “Health Care Provider BLS/CPR” means Health Care
43 Provider Basic Life Support/Cardiopulmonary Resuscitation.

- 44 (j) "PALS" means Pediatric Advanced Life Support.
- 45 (k) "Board" means West Virginia Board of Dental
46 Examiners.
- 47 (l) "ADA" means the American Dental Association.
- 48 (m) "AMA" means the American Medical Association.
- 49 (n) "Subcommittee" means West Virginia Board of Dental
50 Examiners Subcommittee on Anesthesia.

§30-4A-3. Presumption of Degree of Central Nervous System Depression.

- 1 (1) In any hearing where a question exists as to the degree
2 of central nervous system depression a licensee has induced
3 (i.e., general anesthesia/deep conscious sedation, conscious
4 sedation, anxiolysis, or relative analgesia), the Board may base
5 its findings on, among other things, the types, dosages and
6 routes of administration of drugs administered to the patient and
7 what result can reasonably be expected from those drugs in
8 those dosages and routes administered in a patient of that
9 physical and psychological status.
- 10 (2) No permit holder may have more than one person under
11 conscious sedation and/or general anesthesia/deep conscious
12 sedation at the same time, exclusive of recovery.

§30-4A-4. Requirement for Anesthesia Certificate or Permit.

- 1 (1) No dentist may induce central nervous system anesthe-
2 sia without first having obtained an anesthesia permit under
3 these rules for the level of anesthesia being induced.
- 4 (2) The applicant for an anesthesia permit must pay the
5 appropriate permit fees and renewal fees, designated in section
6 six of this article, submit a completed Board-approved applica-

7 tion and consent to an office evaluation. The fees are to be set
8 in accordance with section eighteen of this article.

9 (3) Permits shall be issued to coincide with the applicant's
10 licensing period.

§30-4A-5. Classes of Anesthesia Certificates and Permits.

1 The Board shall issue the following certificates and/or
2 permits:

3 (1) Class 2 Certificate: A Class 2 Certificate authorizes a
4 dentist to induce anxiolysis.

5 (2) Class 3 Permit: A Class 3 Permit authorizes a dentist to
6 induce conscious sedation as limited enteral (3a) and/or
7 comprehensive parenteral (3b), and anxiolysis.

8 (3) Class 4 Permit: A Class 4 Permit authorizes a dentist to
9 induce general anesthesia/deep conscious sedation, conscious
10 sedation, and anxiolysis.

§30-4A-6. Qualifications, Standards Applicable, and Continuing Education Requirements for Anesthesia Certificate or Permit.

1 (a) Relative Analgesia.

2 (1) The Board shall allow administration of relative
3 analgesia without a permit if the practitioner:

4 (A) Is a licensed dentist in the State of West Virginia;

5 (B) Holds valid and current documentation showing
6 successful completion of a Health Care Provider BLS/CPR
7 course; and

8 (C) Has completed a training course of instruction in dental
9 school, continuing education or as a postgraduate in the
10 administration of relative analgesia.

11 (2) A practitioner who administers relative analgesia shall
12 have the following facilities, equipment and drugs available
13 during the procedure and during recovery:

14 (A) An operating room large enough to adequately accom-
15 modate the patient on an operating table or in an operating chair
16 and to allow delivery of age appropriate care in an emergency
17 situation;

18 (B) An operating table or chair which permits the patient to
19 be positioned so that the patient's airway can be maintained,
20 quickly alter the patient's position in an emergency, and
21 provide a firm platform for the administration of basic life
22 support;

23 (C) A lighting system which permits evaluation of the
24 patient's skin and mucosal color and a backup lighting system
25 of sufficient intensity to permit completion of any operation
26 underway in the event of a general power failure;

27 (D) Suction equipment which permits aspiration of the oral
28 and pharyngeal cavities;

29 (E) An oxygen delivery system with adequate full face
30 masks and appropriate connectors that is capable of delivering
31 high flow oxygen to the patient under positive pressure,
32 together with an adequate backup system;

33 (F) A nitrous oxide delivery system with a fail-safe
34 mechanism that will insure appropriate continuous oxygen
35 delivery and a scavenger system;

36 (G) All equipment used must be appropriate for the height
37 and weight of the patient.

38 (3) Before inducing nitrous oxide sedation, a practitioner
39 shall:

40 (A) Evaluate the patient;

41 (B) Give instruction to the patient or, when appropriate due
42 to age or psychological status of the patient, the patient's
43 guardian;

44 (C) Certify that the patient is an appropriate candidate for
45 relative analgesia.

46 (4) A practitioner who administers relative analgesia shall
47 see that the patient's condition is visually monitored. At all
48 times the patient shall be observed by trained personnel until
49 discharge criteria have been met. Trained personnel shall be
50 certified in both adult and pediatric CPR. Documentation of
51 credentials and training must be maintained in the personnel
52 records of the trained personnel. The patient shall be monitored
53 as to response to verbal stimulation and oral mucosal color.

54 (5) The record must include documentation of all medica-
55 tions administered with dosages, time intervals and route of
56 administration.

57 (6) A discharge entry shall be made in the patient's record
58 indicating the patient's condition upon discharge.

59 (7) Hold valid and current documentation:

60 (A) Showing successful completion of a Health Care
61 Provider BLS/CPR course; and

62 (B) Have received training and be competent in the
63 recognition and treatment of medical emergencies, monitoring
64 vital signs, the operation of nitrous oxide delivery systems and
65 the use of the sphygmomanometer and stethoscope.

66 (8) The practitioner shall assess the patient's responsive-
67 ness using preoperative values as normal guidelines and
68 discharge the patient only when the following criteria are met:

69 (A) The patient is alert and oriented to person, place and
70 time as appropriate to age and preoperative neurological status;

71 (B) The patient can talk and respond coherently to verbal
72 questioning or to preoperative neurological status;

73 (C) The patient can sit up unaided or without assistance or
74 to preoperative neurological status;

75 (D) The patient can ambulate with minimal assistance or to
76 preoperative neurological status; and

77 (E) The patient does not have nausea, vomiting or dizzi-
78 ness.

79 (b) Class 2 Certificate.

80 Class 2 Certificate: Anxiolysis.

81 (1) The Board shall issue a Class 2 Certificate to an
82 applicant who:

83 (A) Is a licensed dentist in West Virginia;

84 (B) Holds valid and current documentation showing
85 successful completion of a Health Care Provider BLS/CPR; and

86 (C) Has completed a Board approved course of at least 6
87 hours didactic and clinical of either predoctoral dental school or
88 postgraduate instruction.

89 (2) A dentist who induces anxiolysis shall have the follow-
90 ing facilities, properly maintained equipment and appropriate
91 drugs available during the procedures and during recovery:

92 (A) An operating room large enough to adequately accom-
93 modate the patient on an operating table or in an operating chair
94 and to allow an operating team of at least two individuals to
95 freely move about the patient;

96 (B) An operating table or chair which permits the patient to
97 be positioned so the operating team can maintain the patient's
98 airway, quickly alter the patient's position in an emergency, and
99 provide a firm platform for the administration of basic life
100 support;

101 (C) A lighting system which permits evaluation of the
102 patient's skin and mucosal color and a backup lighting system
103 of sufficient intensity to permit completion of any operation
104 underway in the event of a general power failure;

105 (D) Suction equipment which permits aspiration of the oral
106 and pharyngeal cavities;

107 (E) An oxygen delivery system with adequate full face
108 mask and appropriate connectors that is capable of delivering
109 high flow oxygen to the patient under positive pressure,
110 together with an adequate backup system;

111 (F) A nitrous oxide delivery system with a fail-safe
112 mechanism that will insure appropriate continuous oxygen
113 delivery and a scavenger system;

114 (G) A recovery area that has available oxygen, adequate
115 lighting, suction and electrical outlets. The recovery area can be
116 the operating room;

117 (H) Sphygmomanometer, stethoscope, and pulse oximeter;

118 (I) Emergency drugs; and

119 (J) A defibrillator device is recommended.

120 (K) All equipment and medication dosages must be in
121 accordance with the height and weight of the patient being
122 treated.

123 (3) Before inducing anxiolysis, a dentist shall:

124 (A) Evaluate the patient;

125 (B) Certify that the patient is an appropriate candidate for
126 anxiolysis sedation; and

127 (C) Obtain written informed consent from the patient or
128 patient's guardian for the anesthesia. The obtaining of the
129 informed consent shall be documented in the patient's record.

130 (4) The dentist shall monitor and record the patient's
131 condition or shall use trained personnel qualified as a monitor
132 to monitor and record the patient's condition. The trained
133 personnel must have a certificate showing successful comple-
134 tion in the last two years of BLS/CPR training. A Class 2
135 Certificate holder shall have no more than one person under
136 anxiolysis at the same time.

137 (5) The patient shall be monitored as follows:

138 (A) Patients must have continuous monitoring using pulse
139 oximetry. The patient's blood pressure, heart rate, and respira-
140 tion shall be recorded at least once before, during and after the
141 procedure, and these recordings shall be documented in the
142 patient record. At all times the patient shall be observed by
143 trained personnel until discharge criteria have been met. If the
144 dentist is unable to obtain this information, the reasons shall be
145 documented in the patient's record. The record must also
146 include documentation of all medications administered with
147 dosages, time intervals and route of administration.

148 (B) A discharge entry shall be made by the dentist in the
149 patient's record indicating the patient's condition upon dis-
150 charge.

151 (6) A permit holder who uses anxiolysis shall see that the
152 patient's condition is visually monitored. The patient shall be
153 monitored as to response to verbal stimulation, oral mucosal
154 color and preoperative and postoperative vital signs.

155 (7) The dentist shall assess the patient's responsiveness
156 using preoperative values as normal guidelines and discharge
157 the patient only when the following criteria are met:

158 (A) Vital signs including blood pressure, pulse rate and
159 respiratory rate are stable;

160 (B) The patient is alert and oriented to person, place and
161 time as appropriate to age and preoperative neurological status;

162 (C) The patient can talk and respond coherently to verbal
163 questioning, or to preoperative neurological status;

164 (D) The patient can sit up unaided, or to preoperative
165 neurological status;

166 (E) The patient can ambulate with minimal assistance, or to
167 preoperative neurological status; and

168 (F) The patient does not have uncontrollable nausea or
169 vomiting and has minimal dizziness.

170 (G) A dentist shall not release a patient who has undergone
171 anxiolysis except to the care of a responsible adult third party.

172 (c) Class 3 Permit (includes a limited (enteral) and a
173 comprehensive (parenteral) permit);

174 Class 3 Permit: Conscious sedation and anxiolysis.

175 (1) The Board shall issue or renew a Class 3 Permit to an
176 applicant who:

177 (A) Is a licensed dentist in West Virginia;

178 (B) Holds valid and current documentation showing
179 successful completion of a Health Care Provider BLS/CPR
180 course, ACLS and/or a PALS course if treating pediatric
181 patients; and

182 (C) Satisfies one of the following criteria:

183 (i) Certificate of completion of a comprehensive training
184 program in conscious sedation that satisfies the requirements
185 described in Part III of the *ADA Guidelines for Teaching the*
186 *Comprehensive Control of Pain and Anxiety in Dentistry* at the
187 time training was commenced.

188 (ii) Certificate of completion of an ADA accredited
189 postdoctoral training program which affords comprehensive and
190 appropriate training necessary to administer and manage
191 conscious sedation, commensurate with these guidelines.

192 (iii) In lieu of these requirements, the Board may accept
193 documented evidence of equivalent training or experience in
194 conscious sedation anesthesia:

195 (I) Limited (Enteral) Permit (3(a)) must have a Board
196 approved course of at least eighteen hours didactic and twenty
197 mentored clinical cases (PALS or ACLS course).

198 (II) Comprehensive (Parenteral) Permit (3(b)) must have a
199 Board approved course of at least sixty hours didactic and
200 twenty-mentored clinical cases (ACLS course).

201 (2) A dentist who induces conscious sedation shall have the
202 following facilities, properly maintained age appropriate

203 equipment and age appropriate medications available during the
204 procedures and during recovery:

205 (A) An operating room large enough to adequately accom-
206 modate the patient on an operating table or in an operating chair
207 and to allow an operating team of at least two individuals to
208 freely move about the patient;

209 (B) An operating table or chair which permits the patient to
210 be positioned so the operating team can maintain the patient's
211 airway, quickly alter the patient's position in an emergency, and
212 provide a firm platform for the administration of basic life
213 support;

214 (C) A lighting system which permits evaluation of the
215 patient's skin and mucosal color and a backup lighting system
216 of sufficient intensity to permit completion of any operation
217 underway in the event of a general power failure;

218 (D) Suction equipment which permits aspiration of the oral
219 and pharyngeal cavities and a backup suction device which will
220 function in the event of a general power failure;

221 (E) An oxygen delivery system with adequate full face
222 mask and appropriate connectors that is capable of delivering
223 high flow oxygen to the patient under positive pressure,
224 together with an adequate backup system;

225 (F) A nitrous oxide delivery system with a fail-safe
226 mechanism that will insure appropriate continuous oxygen
227 delivery and a scavenger system;

228 (G) A recovery area that has available oxygen, adequate
229 lighting, suction and electrical outlets. The recovery area can be
230 the operating room;

231 (H) Sphygmomanometer, pulse oximeter, oral and nasopha-
232 ryngeal airways, intravenous fluid administration equipment;

233 (I) Emergency drugs including, but not limited to: pharma-
234 cologic antagonists appropriate to the drugs used, vasopressors,
235 corticosteroids, bronchodilators, antihistamines,
236 antihypertensives and anticonvulsants; and

237 (J) A defibrillator device.

238 (3) Before inducing conscious sedation, a dentist shall:

239 (A) Evaluate the patient and document, using the *American*
240 *Society of Anesthesiologists Patient Physical Status Classifica-*
241 *tions*, that the patient is an appropriate candidate for conscious
242 sedation;

243 (B) Give written preoperative and postoperative instruc-
244 tions to the patient or, when appropriate due to age or neurolog-
245 ical status of the patient, the patient's guardian; and

246 (C) Obtain written informed consent from the patient or
247 patient's guardian for the anesthesia.

248 (4) The dentist shall monitor and record the patient's
249 condition or shall use an assistant qualified as a monitor to
250 monitor and record the patient's condition. A qualified monitor
251 shall be present to monitor the patient at all times.

252 (5) The patient shall be monitored as follows:

253 (A) Patients must have continuous monitoring using pulse
254 oximetry. At no time shall the patient be unobserved by trained
255 personnel until discharge criteria have been met. The trained
256 personnel must have a certificate showing successful comple-
257 tion in the last two years of BLS/CPR training and the Ameri-
258 can Association of Oral and Maxillofacial Surgeon Office
259 Anesthesia Assistant certification or an equivalent. The
260 patient's blood pressure, heart rate, and respiration shall be
261 recorded every 5 minutes, and these recordings shall be

262 documented in the patient record. The record must also include
263 documentation of preoperative and postoperative vital signs, all
264 medications administered with dosages, time intervals and route
265 of administration. If the dentist is unable to obtain this informa-
266 tion, the reasons shall be documented in the patient's record.

267 (B) During the recovery phase, the patient must be moni-
268 tored by a qualified monitor.

269 (C) A discharge entry shall be made by the dentist in the
270 patient's record indicating the patient's condition upon dis-
271 charge and the name of the responsible party to whom the
272 patient was discharged.

273 (6) A dentist shall not release a patient who has undergone
274 conscious sedation except to the care of a responsible adult
275 third party.

276 (7) The dentist shall assess the patient's responsiveness
277 using preoperative values as normal guidelines and discharge
278 the patient only when the following criteria are met:

279 (A) Vital signs including blood pressure, pulse rate and
280 respiratory rate are stable;

281 (B) The patient is alert and oriented to person, place and
282 time as appropriate to age and preoperative neurological status;

283 (C) The patient can talk and respond coherently to verbal
284 questioning, or to preoperative neurological status;

285 (D) The patient can sit up unaided, or to preoperative
286 neurological status;

287 (E) The patient can ambulate with minimal assistance, or to
288 preoperative neurological status; and

289 (F) The patient does not have uncontrollable nausea or
290 vomiting and has minimal dizziness.

291 (8) A dentist who induces conscious sedation shall employ
292 the services of an assistant at all times who holds a valid
293 BLS/CPR certification and maintains such certification.

294 (9) A dentist granted a Class 3 Permit must hold a valid
295 Health Care Provider BLS/CPR and ACLS certification for
296 Comprehensive (3(a)) Permit and ACLS or PALS certification
297 for Limited (3(b)) Permit and maintain such certification.

298 (d) Class 4 Permit

299 Class 4 Permit: general anesthesia/deep conscious sedation,
300 conscious sedation, and anxiolysis.

301 (1) The Board shall issue a Class 4 Permit to an applicant
302 who:

303 (A) Is a licensed dentist in West Virginia;

304 (B) Has a current Advanced Cardiac Life Support (ACLS)
305 Certificate;

306 (C) Satisfies one of the following criteria:

307 (i) Completion of an advanced training program in anesthe-
308 sia and related subjects beyond the undergraduate dental
309 curriculum that satisfies the requirements described in Part II of
310 the *ADA Guidelines for Teaching the Comprehensive Control*
311 *of Pain and Anxiety in Dentistry* at the time training was
312 commenced;

313 (ii) Completion of an ADA or AMA accredited postdoctoral
314 training program which affords comprehensive and appropriate
315 training necessary to administer and manage general anesthesia,
316 commensurate with these Guidelines;

317 (iii) In lieu of these requirements, the Board may accept
318 documented evidence of equivalent training or experience in
319 general anesthesia.

320 (2) A dentist who induces general anesthesia/deep con-
321 scious sedation shall have the following facilities, properly
322 maintained age appropriate equipment and age appropriate
323 drugs available during the procedure and during recovery:

324 (A) An operating room large enough to adequately accom-
325 modate the patient on an operating table or in an operating chair
326 and to allow an operating team of at least three individuals to
327 freely move about the patient;

328 (B) An operating table or chair which permits the patient to
329 be positioned so the operating team can maintain the patient's
330 airway, quickly alter the patient's position in an emergency, and
331 provide a firm platform for the administration of basic life
332 support;

333 (C) A lighting system which permits evaluation of the
334 patient's skin and mucosal color and a backup lighting system
335 of sufficient intensity to permit completion of any operation
336 underway in the event of a general power failure;

337 (D) Suction equipment which permits aspiration of the oral
338 and pharyngeal cavities and a backup suction device which will
339 function in the event of a general power failure;

340 (E) An oxygen delivery system with adequate full face
341 mask and appropriate connectors that is capable of delivering
342 high flow oxygen to the patient under positive pressure,
343 together with an adequate backup system;

344 (F) A nitrous oxide delivery system with a fail-safe
345 mechanism that will insure appropriate continuous oxygen
346 delivery and a scavenger system;

347 (G) A recovery area that has available oxygen, adequate
348 lighting, suction and electrical outlets. The recovery area can be
349 the operating room;

350 (H) Sphygmomanometer, pulse oximeter, electrocardio-
351 graph monitor, defibrillator or automated external defibrillator,
352 laryngoscope with endotracheal tubes, oral and nasopharyngeal
353 airways, intravenous fluid administration equipment;

354 (I) Emergency drugs including, but not limited to: pharma-
355 cologic antagonists appropriate to the drugs used, vasopressors,
356 corticosteroids, bronchodilators, intravenous medications for
357 treatment of cardiac arrest, narcotic antagonist, antihistaminic,
358 antiarrhythmics, antihypertensives and anticonvulsants; and

359 (J) A defibrillator device.

360 (3) Before inducing general anesthesia/deep conscious
361 sedation the dentist shall:

362 (A) Evaluate the patient and document, using the *American*
363 *Society of Anesthesiologists Patient Physical Status Classifica-*
364 *tions*, that the patient is an appropriate candidate for general
365 anesthesia or deep conscious sedation;

366 (B) Shall give written preoperative and postoperative
367 instructions to the patient or, when appropriate due to age or
368 neurological status of the patient, the patient's guardian; and

369 (C) Shall obtain written informed consent from the patient
370 or patient's guardian for the anesthesia.

371 (4) A dentist who induces general anesthesia/deep con-
372 scious sedation shall monitor and record the patient's condition
373 on a contemporaneous record or shall use an assistant qualified
374 as a monitor to monitor and record the patient's condition on a
375 contemporaneous record. The trained personnel must have a

376 certificate showing successful completion in the last two years
377 of BLS/CPR training and the American Association of Oral and
378 Maxillofacial Surgeon Office Anesthesia Assistant certification
379 or an equivalent. No permit holder shall have more than one
380 patient under general anesthesia at the same time.

381 (5) The patient shall be monitored as follows:

382 (A) Patients must have continuous monitoring of their heart
383 rate, oxygen saturation levels and respiration. At no time shall
384 the patient be unobserved by trained personnel until discharge
385 criteria have been met. The patient's blood pressure, heart rate
386 and oxygen saturation shall be assessed every five minutes, and
387 shall be contemporaneously documented in the patient record.
388 The record must also include documentation of preoperative
389 and postoperative vital signs, all medications administered with
390 dosages, time intervals and route of administration. The person
391 administering the anesthesia may not leave the patient while the
392 patient is under general anesthesia;

393 (B) During the recovery phase, the patient must be moni-
394 tored, including the use of pulse oximetry, by a qualified
395 individual to monitor patients recovering from general anesthe-
396 sia.

397 (6) A dentist shall not release a patient who has undergone
398 general anesthesia/deep conscious sedation except to the care
399 of a responsible adult third party.

400 (7) The dentist shall assess the patient's responsiveness
401 using preoperative values as normal guidelines and discharge
402 the patient only when the following criteria are met:

403 (A) Vital signs including blood pressure, pulse rate and
404 respiratory rate are stable;

405 (B) The patient is alert and oriented to person, place and
406 time as appropriate to age and preoperative neurological status;

407 (C) The patient can talk and respond coherently to verbal
408 questioning, or to preoperative neurological status;

409 (D) The patient can sit up unaided, or to preoperative
410 neurological status;

411 (E) The patient can ambulate with minimal assistance, or to
412 preoperative neurological status; and

413 (F) The patient does not have nausea or vomiting and has
414 minimal dizziness.

415 (8) A discharge entry shall be made in the patient's record
416 by the dentist indicating the patient's condition upon discharge
417 and the name of the responsible party to whom the patient was
418 discharged.

419 (9) A dentist who induces general anesthesia shall employ
420 the services of a qualified dental assistant who holds a valid
421 BLS/CPR certification and maintains such certification.

422 (10) A Class 4 permit holder must hold a valid Health Care
423 Provider BLS/CPR and ACLS certification and maintain such
424 certification.

**§30-4A-7. Authority of the West Virginia Board of Dental
Examiners to review, inspect and reinspect den-
tists for issuance of permits. On-site inspection by
West Virginia Board of Dental Examiners.**

1 By making application to the Board for an anesthesia
2 permit, said dentist consents and authorizes the Board to review
3 his or her credentials, inspect or reinspect his or her facilities,
4 and investigate any alleged anesthesia mortalities, misadven-
5 ture, or other adverse occurrences which the Board feels is
6 justified in the best interest of the public and the Board. The
7 Board shall have the authority and right to conduct an in-office

8 review or on-site inspection of any dentist applying for or
9 holding a permit to administer anesthesia at any time the Board
10 deems necessary.

11 Prior to issuing a permit, the Board has the right to conduct
12 an on-site inspection of facility, equipment, and auxiliary
13 personnel of the applicant to determine if, in fact, all the
14 requirements for such permit have been met. This inspection or
15 evaluation, if required, shall be carried out by at least two
16 members of the subcommittee directly appointed by the Board
17 as prescribed in section eight of this article. This evaluation is
18 to be carried out in a manner following the principles, but not
19 necessarily the procedures, set forth by the current edition of
20 the Office Anesthesia Evaluation Manual of the West Virginia
21 Board of Dental Examiners. On-site inspections are required
22 and shall be performed for all Class 3(a), 3(b) and 4 Permit
23 Holders. Thereafter, the Board may reinspect annually, at its
24 discretion, but must perform an on-site inspection for all permit
25 holders at least once every five years excepting Class 2 Certifi-
26 cate holders. The Board reserves the right to conduct an on-site
27 inspection whenever it deems necessary for all permit or
28 certificate holders. However, all on-site inspections shall be
29 held during regular business hours.

§30-4A-8. Office Evaluations.

1 (1) The in-office evaluation shall include:

2 (a) Observation of one or more cases of anesthesia to
3 determine the appropriateness of technique and adequacy of
4 patient evaluation and care;

5 (b) Inspection of facilities, equipment, drugs and records;
6 and

7 (2) The evaluation shall be performed by a team appointed
8 by the Board and shall include:

9 (a) A permit holder who has the same type of license as the
10 licensee to be evaluated and who holds a current anesthesia
11 permit in the same class or in a higher class than that held by
12 the licensee being evaluated;

13 (b) A member of the Board's Anesthesia Committee;

14 (c) Class 2 Certificate Holders may be audited periodically
15 as determined by the committee; and

16 (d) Class 3 and 4 Permit holders shall be evaluated once
17 every five years.

§30-4A-9. Reporting of Death, Serious Complications or Injury.

1 If a death, any serious complication or any injury occurs
2 which may have resulted from the administration of general
3 anesthesia/deep conscious sedation, conscious sedation,
4 anxiolysis, or relative analgesia, the licensee performing the
5 dental procedure must submit a written detailed report to the
6 Board within five days of the incident along with copies of the
7 patient's original complete dental records. If the anesthetic
8 agent was administered by a person other than the person
9 performing the dental procedure, that person must also submit
10 a detailed written report. The detailed report(s) must include:

11 (1) Name, age and address of patient;

12 (2) Name of the licensee and other persons present during
13 the incident;

14 (3) Address where the incident took place;

15 (4) Type of anesthesia and dosages of drugs administered
16 to the patient;

17 (5) A narrative description of the incident including
18 approximate times and evolution of symptoms; and

19 (6) The anesthesia record and the signed informed consent
20 form for the anesthesia when required.

§30-4A-10. Immunity from liability.

1 (a) Notwithstanding any other provision of law, no person
2 providing information to the Board of Dental Examiners or to
3 the Subcommittee may be held, by reason of having provided
4 such information, to be civilly liable under any law unless such
5 information was false and the person providing such informa-
6 tion knew or had reason to believe that such information was
7 false.

8 (b) No member or employee of the Board of Dental
9 Examiners or the Subcommittee may be held by reason of the
10 performance by him or her of any duty, function or activity
11 authorized or required of the Board or the Subcommittee to be
12 civilly liable. The foregoing provisions of this subsection shall
13 not apply with respect to any action taken by any individual if
14 such individual, in taking such action, was motivated by malice
15 toward any person affected by such action.

**§30-4A-11. Effect on practicing dentists who are currently
administering or supervising general anesthesia or
parenteral conscious sedation.**

1 Existing parenteral conscious sedation permits shall
2 become Class 3(b) Permits and general anesthesia permits shall
3 become Class 4 Permits.

§30-4A-12. New applicants.

1 On the effective date of this article and from that date
2 forward, any dentist not previously administering or supervising
3 Class 2, 3 or 4 anesthesia or techniques but wishing to do so,
4 shall make application to the Board as prescribed herein. The
5 Board and the Subcommittee shall then review the applicant's

6 credentials and further will require an on-site evaluation of the
7 dentist's facilities, equipment, techniques, and personnel prior
8 to issuing a regular annual permit or certification. After the
9 initial on-site inspection, the Board, at its discretion, will
10 conduct further on-site evaluations.

§30-4A-13. Issuance of regular annual permits.

1 Upon the recommendation of the Subcommittee to the
2 Board of Dental Examiners, the Board shall issue regular
3 permits to applicable dentists. An anesthesia permit or certifica-
4 tion must be renewed annually as described in section fifteen of
5 this article.

§30-4A-14. Waiting period for reapplication or reinspection of facilities.

1 A dentist whose application has been denied for failure to
2 satisfy the requirements in the application procedure or the
3 on-site evaluation must wait thirty days from the date of such
4 denial prior to reapplying and must submit to another on-site
5 evaluation prior to receiving a regular annual permit. It is the
6 responsibility of the Board and the Subcommittee to promptly
7 reinspect the applicant dentist's facilities, techniques, equip-
8 ment, and personnel within ninety days after said applicant has
9 made reapplication.

§30-4A-15. Application and annual renewal of regular permits; fees.

1 The Board of Dental Examiners shall require an initial
2 application fee and an annual renewal fee for Class 2 Certificate
3 and Class 3 and 4 Permits: *Provided*, That a person currently
4 holding a general anesthesia and/or parenteral conscious
5 sedation permit shall make application without an application
6 fee as set forth hereinabove. All permits shall expire on June

7 30th of every year and renewal fees shall be due on or before
8 June 30th of every year. The Board shall renew permits for the
9 use of anesthesia after receiving the renewal fee unless the
10 permit holder has been informed in writing within sixty days
11 prior to such renewal date that a reevaluation of his or her
12 credentials is required. In determining whether such reevalua-
13 tion is necessary, the Board may consider such factors as it
14 deems appropriate, including, but not limited to patient, dentist
15 or physician complaints and reports of adverse occurrence or
16 misadventures. Reevaluation may also include a yearly on-site
17 inspection of the facility, equipment, personnel, licentiate and
18 procedures utilized by the holder of such permit. However, an
19 on-site inspection of the facility, equipment, personnel,
20 licentiate and procedures utilized by the holder of such a permit
21 will be required for all Class 3 and 4 Permit holders within a
22 five-year period from the permit holder's last on-site inspection.

§30-4A-16. Violations of article; penalties for practicing anesthesia without a permit.

1 Violations of any of the provisions of this article, whether
2 intentional or unintentional, may result in the revocation or
3 suspension of the dentist's permit to administer anesthesia;
4 multiple or repeated violations or gross infractions, such as
5 practicing anesthesia without a valid permit may result in
6 suspension of the dentist's license to practice dentistry for up to
7 one year as well as other disciplinary measures as deemed
8 appropriate by the Board of Dental Examiners.

§30-4A-17. Appointment of Subcommittee by the West Virginia Board of Dental Examiners; credentials review; and on-site inspections.

1 (1) The West Virginia Board of Dental Examiners shall
2 appoint a minimum of a four member Subcommittee to carry
3 out the review and on-site inspection of any dentist applying for

4 or renewing a permit under this article. The Subcommittee shall
5 also make a recommendation for issuing or revoking a permit
6 under this article. This Subcommittee shall be known as the
7 “West Virginia Board of Dental Examiners Subcommittee on
8 Anesthesia,” hereinafter referred to as the “Subcommittee.” The
9 Subcommittee shall consist of one member of the Board of
10 Dental Examiners who shall act as chairman of the Subcommit-
11 tee, and two members holding a Class 4 Permit and two
12 members holding a Class 3 Permit. Further, the Board may
13 appoint additional members to this Subcommittee provided they
14 have the same credentials set forth hereinabove as necessary to
15 carry out the duties of the Subcommittee.

16 (2) The Subcommittee shall have the authority to adopt
17 policies and procedures related to the regulation of general
18 anesthesia/deep conscious sedation, conscious sedation,
19 anxiolysis, and relative analgesia with the same being approved
20 by the Board. Said Subcommittee members shall be paid and
21 reimbursed expenses pursuant to article four of this chapter.

§30-4A-18. Rule-making authority.

1 The Board shall propose additional rules for legislative
2 approval in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code to implement the provisions
4 of this article including, but not limited to, the following:

- 5 (a) Fees;
- 6 (b) Evaluations;
- 7 (c) Equipment; and
- 8 (d) Education.

CHAPTER 184

(Com. Sub. for H. B. 2371 — By Delegates Perdue,
Amores and Anderson)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §30-5-1b of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto four new sections, designated §30-5-26, §30-5-27, §30-5-28, and §30-5-29, all relating to requirements for collaborative pharmacy practice agreements between physicians and pharmacists, establishing locations, sunset provisions, and granting rule-making authority.

Be it enacted by the Legislature of West Virginia:

That §30-5-1b of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto four new sections, designated §30-5-26, §30-5-27, §30-5-28, and §30-5-29, all to read as follows:

ARTICLE 5. PHARMACISTS, PHARMACY TECHNICIANS, PHARMACY INTERNS AND PHARMACIES.

§30-5-1b. Definitions.

§30-5-26. Pharmacist requirements to participate in a collaborative pharmacy practice agreement.

§30-5-27. Collaborative pharmacy practice agreement.

§30-5-28. Rule-making authority.

§30-5-29. Collaborative pharmacy practice continuation.

§30-5-1b. Definitions.

1 The following words and phrases, as used in this article,
2 have the following meanings, unless the context otherwise
3 requires:

4 (1) “Administer” means the direct application of a drug to
5 the body of a patient or research subject by injection, inhalation,
6 ingestion or any other means.

7 (2) “Board of pharmacy” or “board” means the West
8 Virginia State Board of Pharmacy.

9 (3) “Collaborative pharmacy practice” is that practice of
10 pharmacy where one or more pharmacists have jointly agreed,
11 on a voluntary basis, to work in conjunction with one or more
12 physicians under written protocol where the pharmacist or
13 pharmacists may perform certain patient care functions autho-
14 rized by the physician or physicians under certain specified
15 conditions and limitations.

16 (4) “Collaborative pharmacy practice agreement” is a
17 written and signed agreement between a pharmacist, a physi-
18 cian, and the individual patient or the patients’ authorized
19 representative who has granted his or her informed consent, that
20 provides for collaborative pharmacy practice for the purpose of
21 drug therapy management of a patient, which has been ap-
22 proved by the Board of Pharmacy, the Board of Medicine in the
23 case of an allopathic physician or the West Virginia Board of
24 Osteopathy in the case of an osteopathic physician.

25 (5) “Compounding” means:

26 (A) The preparation, mixing, assembling, packaging or
27 labeling of a drug or device:

28 (i) As the result of a practitioner’s prescription drug order
29 or initiative based on the practitioner/patient/pharmacist

30 relationship in the course of professional practice for sale or
31 dispensing; or

32 (ii) For the purpose of, or as an incident to, research,
33 teaching or chemical analysis and not for sale or dispensing;
34 and

35 (B) The preparation of drugs or devices in anticipation of
36 prescription drug orders based on routine, regularly observed
37 prescribing patterns.

38 (6) "Confidential information" means information main-
39 tained by the pharmacist in the patient record or which is
40 communicated to the patient as part of patient counseling or
41 which is communicated by the patient to the pharmacist. This
42 information is privileged and may be released only to the
43 patient or to other members of the health care team and other
44 pharmacists where, in the pharmacists' professional judgment,
45 the release is necessary to the patient's health and well-being;
46 to other persons or governmental agencies authorized by law to
47 receive the privileged information; as necessary for the limited
48 purpose of peer review and utilization review; as authorized by
49 the patient or required by court order.

50 (7) "Deliver" or "delivery" means the actual, constructive
51 or attempted transfer of a drug or device from one person to
52 another, whether or not for a consideration.

53 (8) "Device" means an instrument, apparatus, implement or
54 machine, contrivance, implant or other similar or related article,
55 including any component part or accessory, which is required
56 under federal law to bear the label, "Caution: Federal or state
57 law requires dispensing by or on the order of a physician."

58 (9) "Dispense" or "dispensing" means the preparation and
59 delivery of a drug or device in an appropriately labeled and
60 suitable container to a patient or patient's representative or

61 surrogate pursuant to a lawful order of a practitioner for
62 subsequent administration to, or use by, a patient.

63 (10) "Distribute" means the delivery of a drug or device
64 other than by administering or dispensing.

65 (11) "Drug" means:

66 (A) Articles recognized as drugs in the USP-DI, facts and
67 comparisons, physicians desk reference or supplements thereto,
68 for use in the diagnosis, cure, mitigation, treatment or preven-
69 tion of disease in human or other animals;

70 (B) Articles, other than food, intended to affect the structure
71 or any function of the body of human or other animals; and

72 (C) Articles intended for use as a component of any articles
73 specified in paragraphs (A) or (B) of this subdivision.

74 (12) "Drug regimen review" includes, but is not limited to,
75 the following activities:

76 (A) Evaluation of the prescription drug orders and patient
77 records for:

78 (i) Known allergies;

79 (ii) Rational therapy-contraindications;

80 (iii) Reasonable dose and route of administration; and

81 (iv) Reasonable directions for use.

82 (B) Evaluation of the prescription drug orders and patient
83 records for duplication of therapy.

84 (C) Evaluation of the prescription drug for interactions
85 and/or adverse effects which may include, but are not limited
86 to, any of the following:

87 (i) Drug-drug;

88 (ii) Drug-food;

89 (iii) Drug-disease; and

90 (iv) Adverse drug reactions.

91 (D) Evaluation of the prescription drug orders and patient
92 records for proper use, including over use and under use and
93 optimum therapeutic outcomes.

94 (13) "Drug therapy management" means the review of drug
95 therapy regimens of patients by a pharmacist for the purpose of
96 evaluating and rendering advice to a physician regarding
97 adjustment of the regimen in accordance with the collaborative
98 pharmacy practice agreement. Decisions involving drug therapy
99 management shall be made in the best interest of the patient.
100 Drug therapy management shall be limited to:

101 (A) Implementing, modifying, and managing drug therapy
102 according to the terms of the collaborative pharmacy practice
103 agreement;

104 (B) Collecting and reviewing patient histories;

105 (C) Obtaining and checking vital signs, including pulse,
106 temperature, blood pressure and respiration;

107 (D) Ordering screening laboratory tests that are dose related
108 and specific to the patient's medication or are protocol driven
109 and are also specifically set out in the collaborative pharmacy
110 practice agreement between the pharmacist and physician.

111 (14) "Intern" means an individual who is:

112 (A) Currently registered by this state to engage in the
113 practice of pharmacy while under the supervision of a licensed

114 pharmacist and is satisfactorily progressing toward meeting the
115 requirements for licensure as a pharmacist; or

116 (B) A graduate of an approved college of pharmacy or a
117 graduate who has established educational equivalency by
118 obtaining a foreign pharmacy graduate examination committee
119 (FPGEC) certificate, who is currently licensed by the board for
120 the purpose of obtaining practical experience as a requirement
121 for licensure as a pharmacist; or

122 (C) A qualified applicant awaiting examination for
123 licensure; or

124 (D) An individual participating in a residency or fellowship
125 program.

126 (15) "Labeling" means the process of preparing and
127 affixing a label to a drug container exclusive, however, of a
128 labeling by a manufacturer, packer or distributor of a nonpre-
129 scription drug or commercially packaged legend drug or device.
130 Any label shall include all information required by federal law
131 or regulation and state law or rule.

132 (16) "Mail-order pharmacy" means a pharmacy, regardless
133 of its location, which dispenses greater than ten percent
134 prescription drugs via the mail.

135 (17) "Manufacturer" means a person engaged in the
136 manufacture of drugs or devices.

137 (18) "Manufacturing" means the production, preparation,
138 propagation or processing of a drug or device, either directly or
139 indirectly, by extraction from substances of natural origin or
140 independently by means of chemical or biological synthesis and
141 includes any packaging or repackaging of the substance or
142 substances or labeling or relabeling of its contents and the
143 promotion and marketing of the drugs or devices. Manufactur-

144 ing also includes the preparation and promotion of commer-
145 cially available products from bulk compounds for resale by
146 pharmacies, practitioners or other persons.

147 (19) "Nonprescription drug" means a drug which may be
148 sold without a prescription and which is labeled for use by the
149 consumer in accordance with the requirements of the laws and
150 rules of this state and the federal government.

151 (20) "Patient counseling" means the oral communication by
152 the pharmacist of information, as defined in the rules of the
153 board, to the patient to improve therapy by aiding in the proper
154 use of drugs and devices.

155 (21) "Person" means an individual, corporation, partner-
156 ship, association or any other legal entity, including govern-
157 ment.

158 (22) "Pharmaceutical care" is the provision of drug therapy
159 and other pharmaceutical patient care services intended to
160 achieve outcomes related to the cure or prevention of a disease,
161 elimination or reduction of a patient's symptoms or arresting or
162 slowing of a disease process as defined in the rules of the board.

163 (23) "Pharmacist" or "registered pharmacist" means an
164 individual currently licensed by this state to engage in the
165 practice of pharmacy and pharmaceutical care.

166 (24) "Pharmacist-in-charge" means a pharmacist currently
167 licensed in this state who accepts responsibility for the opera-
168 tion of a pharmacy in conformance with all laws and rules
169 pertinent to the practice of pharmacy and the distribution of
170 drugs and who is personally in full and actual charge of the
171 pharmacy and personnel.

172 (25) "Pharmacist's scope of practice pursuant to the
173 collaborative pharmacy practice agreement" means those duties

174 and limitations of duties placed upon the pharmacist by the
175 collaborating physician, as jointly approved by the Board of
176 Pharmacy and the Board of Medicine or the Board of Osteopa-
177 thy.

178 (26) "Pharmacy" means any drugstore, apothecary or place
179 within this state where drugs are dispensed and sold at retail or
180 displayed for sale at retail and pharmaceutical care is provided
181 and any place outside of this state where drugs are dispensed
182 and pharmaceutical care is provided to residents of this state.

183 (27) "Physician" means an individual currently licensed, in
184 good standing and without restrictions, as an allopathic physi-
185 cian by the West Virginia Board of Medicine, or an osteopathic
186 physician by the West Virginia Board of Osteopathy.

187 (28) "Pharmacy technician" means registered supportive
188 personnel who work under the direct supervision of a pharma-
189 cist who have passed an approved training program as described
190 in this article.

191 (29) "Practitioner" means an individual currently licensed,
192 registered or otherwise authorized by any state, territory or
193 district of the United States to prescribe and administer drugs
194 in the course of professional practices, including allopathic and
195 osteopathic physicians, dentists, physician's assistants, optome-
196 trists, veterinarians, podiatrists and nurse practitioners as
197 allowed by law.

198 (30) "Preceptor" means an individual who is currently
199 licensed as a pharmacist by the board, meets the qualifications
200 as a preceptor under the rules of the Board and participates in
201 the instructional training of pharmacy interns.

202 (31) "Prescription drug" or "legend drug" means a drug
203 which, under federal law, is required, prior to being dispensed

204 or delivered, to be labeled with either of the following statements:

205 (A) "Caution: Federal law prohibits dispensing without
206 prescription"; or

207 (B) "Caution: Federal law restricts this drug to use by, or on
208 the order of, a licensed veterinarian"; or a drug which is
209 required by any applicable federal or state law or rule to be
210 dispensed pursuant only to a prescription drug order or is
211 restricted to use by practitioners only.

212 (32) "Prescription drug order" means a lawful order of a
213 practitioner for a drug or device for a specific patient.

214 (33) "Prospective drug use review" means a review of the
215 patients' drug therapy and prescription drug order, as defined
216 in the rules of the board, prior to dispensing the drug as part of
217 a drug regimen review.

218 (34) "USP-DI" means the United States pharmaco-
219 peia-dispensing information.

220 (35) "Wholesale distributor" means any person engaged in
221 wholesale distribution of drugs, including, but not limited to,
222 manufacturers' and distributors' warehouses, chain drug
223 warehouses and wholesale drug warehouses, independent
224 wholesale drug trader and retail pharmacies that conduct
225 wholesale distributions.

**§30-5-26. Pharmacist requirements to participate in a collabora-
tive pharmacy practice agreement.**

1 For a pharmacist to participate in a collaborative pharmacy
2 practice agreement, the pharmacist must:

3 (a) Have an unrestricted and current license to practice as
4 a pharmacist in West Virginia;

5 (b) Have at least one million dollars of professional liability
6 insurance coverage;

7 (c) Meet one of the following qualifications, at a minimum:

8 (1) Earned a Certification from the Board of Pharmaceuti-
9 cal Specialties, is a Certified Geriatric Practitioner, or has
10 completed an American Society of Health System Pharma-
11 cists(ASHP) accredited residency program, which includes two
12 years of clinical experience approved by the Boards;

13 (2) Successfully completed the course of study and holds
14 the academic degree of Doctor of Pharmacy and has three years
15 of clinical experience approved by the Board and has completed
16 an Accreditation Council for Pharmacy Education (ACPE)
17 approved certificate program in the area of practice covered by
18 the collaborative pharmacy practice agreement; or

19 (3) Successfully completed the course of study and holds
20 the academic degree of Bachelor of Science in Pharmacy and
21 has five years of clinical experience approved by the Boards
22 and has completed two ACPE approved certificate programs
23 with at least one program in the area of practice covered by a
24 collaborative pharmacy practice agreement.

§30-5-27. Collaborative pharmacy practice agreement.

1 (a) A pharmacist engaging in collaborative pharmacy
2 practice shall have on file at his or her place of practice the
3 collaborative pharmacy practice agreement. The existence and
4 subsequent termination of the agreement and any additional
5 information the rules may require concerning the agreement,
6 including the agreement itself, shall be made available to the
7 appropriate licensing board for review upon request. The
8 agreement may allow the pharmacist, within the pharmacist's
9 scope of practice pursuant to the collaborative pharmacy
10 practice agreement, to conduct drug therapy management

11 activities approved by the collaborating physician. The collabo-
12 rative pharmacy practice agreement must be a voluntary
13 process, which is a physician directed approach, that is entered
14 into between an individual physician, an individual pharmacist
15 and an individual patient or the patient's authorized representa-
16 tive who has given informed consent.

17 (b) A collaborative pharmacy practice agreement may
18 authorize a pharmacist to provide drug therapy management. In
19 instances where drug therapy is discontinued, the pharmacist
20 shall notify the treating physician of such discontinuance in the
21 time frame and in the manner established by joint legislative
22 rules. Each protocol developed, pursuant to the collaborative
23 pharmacy practice agreement, shall contain detailed direction
24 concerning the services that the pharmacists may perform for
25 that patient. The protocol shall include, but need not be limited
26 to; (1) the specific drug or drugs to be managed by the pharma-
27 cist; (2) the terms and conditions under which drug therapy may
28 be implemented, modified or discontinued; (3) the conditions
29 and events upon which the pharmacist is required to notify the
30 physician; and (4) the laboratory tests that may be ordered in
31 accordance with drug therapy management. All activities
32 performed by the pharmacist in conjunction with the protocol
33 shall be documented in the patient's medical record. The
34 pharmacists shall report at least every thirty days to the
35 physician regarding the patient's drug therapy management.
36 The collaborative pharmacy practice agreement and protocols
37 shall be available for inspection by the West Virginia Board of
38 Pharmacy, the West Virginia Board of Medicine, or the West
39 Virginia Board of Osteopathy, depending on the licensing board
40 of the participating physician. A copy of the protocol shall be
41 filed in the patient's medical record.

42 (c) Collaborative pharmacy agreements shall not include
43 the management of controlled substances.

44 (d) A collaborative pharmacy practice agreement, meeting
45 the requirements herein established and in accordance with joint
46 rules, shall be allowed in the hospital setting, the nursing home
47 setting, the medical school setting and the hospital community
48 and ambulatory care clinics. The pharmacist shall be employed
49 by or under contract to provide services to such hospital,
50 nursing home or medical school, or hold a faculty appointment
51 with one of the schools of pharmacy or medicine in this state.

52 (e) Up to five pilot project sites in the community based
53 pharmacy setting which meet the requirements established in
54 rule shall be jointly selected by the Board of Pharmacy, Board
55 of Medicine and the Board of Osteopathy.

56 (f) For the purpose of proposing a legislative rule to clarify
57 and define a collaborative pharmacy practice relationship, the
58 Boards responsible for promulgating the rule shall establish an
59 advisory committee to assist them in the development and
60 implementation of the pharmacy collaborative practice act. The
61 advisory committee shall be made up of fourteen members.
62 These members shall include one representative appointed by
63 the West Virginia State Medical Association; one representative
64 appointed by the West Virginia Academy of Family Physicians;
65 one representative appointed by the West Virginia Society of
66 Osteopathic Medicine; one representative appointed by the
67 West Virginia School of Medicine; one representative ap-
68 pointed by the Marshall University School of Medicine; one
69 representative appointed by the West Virginia School of
70 Osteopathic Medicine; two representatives appointed by the
71 West Virginia Pharmacy Association, one of whom shall
72 represent chain pharmacies and one of whom shall represent
73 independent pharmacies; two representatives appointed by the
74 West Virginia Society of Health System Pharmacists, one of
75 whom shall represent long term care settings and one of whom
76 shall represent hospital pharmacists; one representative
77 appointed by the West Virginia School of Pharmacy; one

78 representative appointed by the University of Charleston School
79 of Pharmacy; one representative appointed by the West Virginia
80 Hospital Association; and one representative appointed by the
81 West Virginia Health Care Association. A representative of
82 each board with rule-making authority shall serve as an ex
83 officio member of the advisory committee.

§30-5-28. Rule-making authority.

1 The Board of Pharmacy, the Board of Medicine and the
2 Board of Osteopathy shall jointly agree and propose rules for
3 legislative approval in accordance with the provisions of article
4 three, chapter twenty-nine-a of the code.

§30-5-29. Collaborative pharmacy practice continuation.

1 Pursuant to the provisions of article ten, [§§4-10-1 et seq.]
2 chapter four of this code, pharmacy collaborative agreements
3 in community settings shall continue to exist until the first day
4 of July, two thousand eight, unless sooner terminated, contin-
5 ued or reestablished pursuant to that article.

CHAPTER 185

(H. B. 3151 — By Delegates Beane, Michael, Leach,
Long, Kominar, Perdue, Hatfield, Palumbo,
Fragale, Trump and H. White)

[Passed April 9, 2005; in effect July 1, 2005.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §30-7C-1, §30-7C-2, §30-7C-3,
§30-7C-4, §30-7C-5 and §30-7C-6 of the Code of West Virginia,

1931, as amended; and to amend said code by adding thereto seven new sections, designated §30-7C-7, §30-7C-8, §30-7C-9, §30-7C-10, §30-7C-11, §30-7C-12 and §30-7C-13, all relating to regulating dialysis technicians by the Board of Examiners for Registered Professional Nurses; authorizing performance and delegation of dialysis care; defining terms and activities; establishing qualifications and exceptions; providing for an application process and payment of fees to the Board; authorizing the use of titles; providing for approval of training programs and testing standards; defining powers and duties of the Board; providing for rule-making authority; establishing a dialysis technician advisory council; establishing a disciplinary procedure and grounds for discipline; prohibiting certain acts; providing for penalties; and providing for judicial review and injunctive and other relief.

Be it enacted by the Legislature of West Virginia:

That §30-7C-1, §30-7C-2, §30-7C-3, §30-7C-4, §30-7C-5 and §30-7C-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto seven new sections, designated §30-7C-7, §30-7C-8, §30-7C-9, §30-7C-10, §30-7C-11, §30-7C-12 and §30-7C-13, all to read as follows:

ARTICLE 7C. DIALYSIS TECHNICIANS.

- §30-7C-1. Definitions.
- §30-7C-2. Authority to delegate care; dialysis care by trainees in approved program.
- §30-7C-3. Qualifications; exceptions; application form and fees.
- §30-7C-4. Use of title "West Virginia dialysis technician" or "dialysis technician"; dialysis technician trainees.
- §30-7C-5. Authorized activities.
- §30-7C-6. Approval of training programs and testing standards.
- §30-7C-7. Powers and duties of Board; rule-making authority.
- §30-7C-8. Fees.
- §30-7C-9. Dialysis technician advisory council.
- §30-7C-10. Disciplinary proceeding; grounds for discipline of a dialysis technician.
- §30-7C-11. Prohibited acts; penalties.

§30-7C-12. Judicial review; appeal to Supreme Court of Appeals.

§30-7C-13. Injunction or other relief against unlawful acts.

§30-7C-1. Definitions.

1 As used in this article:

2 (1) "Approved dialysis technician training program" means
3 any board approved program used to train dialysis technicians
4 including, but not limited to, a Board approved dialysis
5 facility-sponsored training program or another state approved
6 program.

7 (2) "Board" means the West Virginia Board of Examiners
8 for Registered Professional Nurses.

9 (3) "Dialysis care" means performing and monitoring
10 dialysis procedures which includes initiating and discontinuing
11 dialysis, drawing blood, and administering medications
12 authorized under section seven of this article.

13 (4) "Dialysis technician trainee" means an individual
14 enrolled in an approved dialysis technician program.

15 (5) "Direct supervision" means initial and ongoing direc-
16 tion, procedural guidance, observation and evaluation, and the
17 on-site presence of a registered nurse or physician.

18 (6) "Facility" means any entity that is certified by the
19 Office of Health Facilities Licensure and Certification to
20 provide dialysis services.

21 (7) "West Virginia dialysis technician or dialysis techni-
22 cian" means an individual certified by the Board who has
23 successfully completed an approved dialysis technician training
24 program and who has achieved national certification as a
25 dialysis technician, or an individual who meets the require-
26 ments set forth in subsection (b), section three of this article.

§30-7C-2. Authority to delegate care; dialysis care by trainees in approved program.

1 (a) A registered professional nurse licensed under the
2 provisions of article seven of this chapter may delegate dialysis
3 care to a dialysis technician if:

4 (1) The dialysis technician has completed the requirements
5 set forth in this article and established by the Board by legisla-
6 tive rule;

7 (2) The registered professional nurse considers the dialysis
8 technician to be competent; and

9 (3) The dialysis technician provides the care under the
10 direct supervision of the registered professional nurse.

11 (b) A registered professional nurse licensed under the
12 provisions of article seven of this chapter may not delegate
13 dialysis care to an individual who is listed on the nurse aide
14 abuse registry with a substantiated finding of abuse, neglect or
15 misappropriation of property.

16 (c) Nothing in this article may be construed to prohibit a
17 dialysis technician trainee from performing dialysis care as a
18 part of and within the scope of the clinical skills instruction
19 segment of an approved dialysis technician training program.

§30-7C-3. Qualifications; exceptions; application form and fees.

1 (a) In order to be certified by the Board as a dialysis
2 technician, an individual must demonstrate that he or she:

3 (1) Is of good moral character;

4 (2) Has acquired at least a high school diploma, general
5 equivalency diploma or equivalent;

6 (3) Has successfully completed an approved dialysis
7 technician training program;

8 (4) Has achieved national certification as a dialysis techni-
9 cian; and

10 (5) Has met such other qualifications required by the Board
11 by legislative rule.

12 (b) On or before the first day of July, two thousand five, an
13 individual who is currently working as a dialysis technician in
14 a dialysis facility, and whose administrative registered profes-
15 sional nurse in charge acknowledges that he or she is competent
16 to perform the delegated duties and practices in accordance
17 with the laws regulating the provision of dialysis care, the rules
18 of the Board and any other applicable federal and state laws and
19 rules, will be considered as having met the requirements of
20 subdivisions (3) and (4), subsection (a) of this section for the
21 purposes of being certified by the Board as a dialysis techni-
22 cian.

23 (c) On or before the first day of July, two thousand six, an
24 individual who has successfully completed an approved dialysis
25 technician training program and who was working on or before
26 the first day of July, two thousand five, as a dialysis technician
27 trainee in a dialysis facility, and whose administrative regis-
28 tered professional nurse in charge acknowledges that he or she
29 is competent to perform the delegated duties and practices in
30 accordance with the laws regulating the provision of dialysis
31 care, the rules of the Board and any other applicable federal and
32 state laws and rules, will be considered as having met the
33 requirements of subdivision (4), subsection (a) of this section
34 for the purposes of being certified by the Board as a dialysis
35 technician.

36 (d) An applicant for certification must file with the Board
37 an application in the form and manner established by the Board

38 demonstrating that he or she has met the qualifications set forth
39 in subsection (a) of this section, and pay an application fee as
40 established by legislative rule.

41 (e) The Board may, upon receipt of a completed application
42 and fee in accordance with legislative rule, issue a temporary
43 permit to practice as a dialysis technician to any applicant who
44 has completed a board approved dialysis technician training
45 program. A temporary permit is not renewable, and is effective
46 from the date of issuance until three days following receipt by
47 the applicant and the Board of the results of the first written
48 certification examination, unless the Board revokes the tempo-
49 rary permit prior to its expiration.

50 (f) The Board may, upon receipt of a completed application
51 and fee in accordance with legislative rule, issue a temporary
52 endorsement to practice as a dialysis technician to an applicant
53 who has been certified as a dialysis technician under the laws
54 of another state, territory or foreign country and who meets the
55 qualifications of the Board. A temporary endorsement is not
56 renewable and is effective for ninety days unless the Board
57 revokes the endorsement prior to its expiration.

**§30-7C-4. Use of title “West Virginia dialysis technician” or
“dialysis technician”; dialysis technician trainees.**

1 (a) An individual certified by the Board as a dialysis
2 technician pursuant to the provisions of this article shall be
3 known as a West Virginia dialysis technician or dialysis
4 technician and may use the initials “D.T.” after his or her name.
5 After the thirtieth day of June, two thousand five, no other
6 individual may use the title, abbreviation or any other words,
7 letters, figures, signs or devices to indicate that he or she is a
8 dialysis technician.

9 (b) An individual enrolled in an approved dialysis techni-
10 cian training program shall use the title dialysis technician

11 trainee. A dialysis technician trainee shall adhere to the
12 standards for dialysis technicians and is subject to disciplinary
13 action by the Board as provided in the Board's rules.

§30-7C-5. Authorized activities.

1 A dialysis technician is authorized to perform the follow-
2 ing, under the direct supervision of a registered professional
3 nurse or a licensed physician:

4 (1) Preparation and initiation of dialysis access sites;

5 (2) Initiating, delivering or discontinuing dialysis care; and

6 (3) Administration of the following medications only:

7 (A) Heparin to prime the pump, initiate treatment or for
8 administration throughout the treatment, in an amount pre-
9 scribed by a physician or other authorized practitioner. This
10 may be done intravenously, peripherally via a fistula needle or
11 in another clinically acceptable manner;

12 (B) Normal saline via the dialysis extra corporeal circuit as
13 needed throughout the dialysis procedure; and

14 (C) Intradermal anesthetic in an amount prescribed by a
15 physician or other authorized practitioner;

16 (4) Obtaining a blood specimen via the dialysis extra
17 corporeal circuit or a peripheral access site;

18 (5) Reporting changes that arise in conjunction with
19 dialysis care to the registered nurse or physician; and

20 (6) Engaging in other acts as delegated by the registered
21 nurse or physician in order to provide dialysis care.

§30-7C-6. Approval of training programs and testing standards.

1 (a) The Board shall prescribe standards for approved
2 dialysis technician training programs, and prescribe testing
3 standards and requirements, by legislative rule.

4 (b) Persons and organizations providing training programs
5 and testing services must be approved by the Board.

6 (c) Approval may be denied or withdrawn for failure to
7 meet the standards set out in code or rule.

§30-7C-7. Powers and duties of Board; rule-making authority.

1 (a) The Board may:

2 (1) Adopt and amend rules consistent with this article
3 necessary to enable it to carry into effect the provisions of this
4 article, including disciplinary rules;

5 (2) Prescribe standards for preparing individuals for the role
6 of dialysis technician under this article;

7 (3) Provide for standards for approved dialysis technician
8 training programs;

9 (4) Accredite educational programs for the preparation of
10 dialysis technicians that meet the requirements of this article;

11 (5) Provide surveys of educational programs when the
12 Board considers it necessary;

13 (6) Approve, reapprove and prescribe standards for testing
14 organizations and the tests offered by organizations for dialysis
15 technicians;

16 (7) Deny or withdraw approval of testing organizations;

- 17 (8) Prescribe standards for dialysis technician trainees;
- 18 (9) Issue, renew or revoke temporary permits, endorsements
19 and certifications for dialysis technicians;
- 20 (10) Deny or withdraw accreditation of approved dialysis
21 technician training programs for failure to meet or maintain
22 prescribed standards required by this article and by the Board;
- 23 (11) Conduct hearings upon charges calling for discipline
24 of a dialysis technician;
- 25 (12) Keep a record of all proceedings of the Board; and
- 26 (13) Further regulate, as necessary, dialysis technicians:
27 *Provided, That the Board is not authorized to establish staffing*
28 *ratios.*
- 29 (b) The Board shall propose rules for legislative approval
30 in accordance with the provisions of article three, chapter
31 twenty-nine-a of the code to:
- 32 (1) Prescribe standards for training programs;
- 33 (2) Prescribe testing standards and requirements;
- 34 (3) Prescribe requirements for persons and organizations
35 providing training programs and testing services;
- 36 (4) Assess fees for the certification of dialysis technicians,
37 approval of training programs, tests and providers of training
38 programs and testing services, and other services performed by
39 the Board; and
- 40 (5) Provide for any other requirements necessary to carry
41 out the purposes of this article.

42 (c) The Board may promulgate emergency rules pursuant
43 to the provisions of section fifteen, article three, chapter twenty-
44 nine-a of this code for the purposes set forth in this section.

§30-7C-8. Fees.

1 All fees and other moneys collected by the Board pursuant
2 to the provisions of this article shall be kept in a separate
3 special fund called the Dialysis Technician Fund to be estab-
4 lished for the Board in the State Treasury and shall be used for
5 the administration of this article. No part of this special fund
6 reverts to the General Fund of this state. The costs and all
7 expenses incurred under this article are to be paid from this
8 special fund. No compensation or expense incurred under this
9 article is a charge against the general fund of this state.

§30-7C-9. Dialysis technician advisory council.

1 (a) There is created, under the Board, the dialysis technician
2 advisory council, which shall advise the Board regarding
3 qualifications, standards for training, competency determination
4 of dialysis technicians and all other matters related to dialysis
5 technicians.

6 (b) The council shall be appointed by the Board and
7 consists of:

8 (1) One member of the Board, who serves as chair of the
9 council;

10 (2) Two dialysis technicians;

11 (3) Two nurses who regularly perform dialysis and care for
12 patients who receive dialysis; and

13 (4) One physician who regularly treats patients receiving
14 dialysis care.

15 (c) The Board may solicit nominations for the council from
16 interested parties or organizations.

17 (d) The Board shall specify the terms for the council
18 members. Members serve at the discretion of the Board and
19 shall receive reimbursement for their actual and necessary
20 expenses incurred in the performance of their official duties.

**§30-7C-10. Disciplinary proceeding; grounds for discipline of a
dialysis technician.**

1 (a) The Board may, in accordance with rules promulgated
2 under the provisions of article three, chapter twenty-nine-a of
3 this code, refuse to approve a dialysis technician.

4 (b) The Board may deny, revoke or suspend its certification
5 of a dialysis technician in accordance with the provisions of this
6 article, or to otherwise impose discipline upon proof that he or
7 she:

8 (1) Is or was guilty of fraud or deceit in procuring or
9 attempting to procure approval to be a dialysis technician;

10 (2) Has been convicted of a felony;

11 (3) Is unfit or incompetent by reason of negligence, habits
12 or other causes;

13 (4) Is habitually intemperate or is addicted to the use of
14 alcohol or habit-forming drugs;

15 (5) Is mentally incompetent;

16 (6) Is guilty of conduct derogatory to the morals or standing
17 of the practice;

18 (7) Is practicing or attempting to practice as a dialysis
19 technician without Board approval; or

20 (8) Has willfully or repeatedly violated any of the provi-
21 sions of this article.

22 (c) After following procedures to be determined by the
23 Board in rules, the discipline may include any of the following:

24 (1) Summary suspension of the right to practice or reprimand of the dialysis technician;

26 (2) Probation of the dialysis technician for a specified
27 period of time, with or without limitations and conditions;

28 (3) Suspension of the dialysis technician for a specified
29 period of time; or

30 (4) Permanent revocation of dialysis technician privileges.

31 (d) The Board may establish a committee that has the
32 authority to resolve disciplinary matters through a formal
33 consent agreement with a licensee, permitting the licensee to
34 voluntarily agree to disciplinary action in lieu of a formal
35 evidentiary hearing.

§30-7C-11. Prohibited acts; penalties.

1 (a) No individual, firm, corporation, facility or association
2 of individuals may:

3 (1) Sell or fraudulently obtain or furnish any national
4 dialysis technician certification credential or documentation of
5 successful completion of a dialysis technician training program
6 or aid or abet therein;

7 (2) Act as a dialysis technician unless authorized by the
8 provisions of this article;

9 (3) Use in connection with his or her name any designation
10 tending to imply that he or she is a dialysis technician unless
11 authorized by the provisions of this article; or

12 (4) Otherwise violate any provision of this article.

13 (b) An individual violating a provision of subsection (a) of
14 this section is guilty of a misdemeanor and, upon conviction
15 thereof, shall be fined not less than five hundred nor more than
16 one thousand dollars.

17 (c) It is unlawful for any individual to practice as a dialysis
18 technician who is listed on the nurse aide abuse registry with a
19 substantiated finding of abuse, neglect or misappropriation of
20 property.

§30-7C-12. Judicial review; appeal to Supreme Court of Appeals.

1 (a) Any individual, firm, corporation, facility or association
2 of individuals adversely affected by a decision of the Board
3 rendered after a hearing held in accordance with the provisions
4 of this article is entitled to a judicial review of the decision. All
5 of the pertinent provisions of section four, article five, chapter
6 twenty-nine-a of this code apply to and govern the judicial
7 review with like effect as if the provisions of section four of
8 this article were set forth in this section.

9 (b) The judgment of the circuit court is final unless re-
10 versed, vacated or modified on appeal to the Supreme Court of
11 Appeals in accordance with the provisions of section one,
12 article six, chapter twenty-nine of this code.

§30-7C-13. Injunction or other relief against unlawful acts.

1 (a) The practice of dialysis technician by an individual who
2 has not met the requirements of this article is declared to be
3 inimical to the public health and welfare and to be a public
4 nuisance.

5 (b) Whenever, in the judgment of the Board, an individual
6 has engaged in, is engaging in, or is about to engage in, the

7 practice of dialysis technician without holding a valid certifica-
8 tion under this article, or has engaged, is engaging or is about
9 to engage in any act which constitutes, or will constitute, a
10 violation of this article, the Board may make application to the
11 appropriate court having equity jurisdiction for an order
12 enjoining the practices or acts, and upon a showing that the
13 individual has engaged, is engaging or is about to engage, in
14 any such practices or acts, an injunction, restraining order, or
15 other order as the court considers appropriate shall be entered
16 by the court.

17 (c) The remedy provided in this section is in addition to,
18 and not in lieu of, all other penalties and remedies provided in
19 this article.

CHAPTER 186

(H. B. 3031 — By Delegates Beane, Butcher, Martin, Perdue and Yost)

[Passed April 9, 2005; in effect July 1, 2005.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-22-5a, relating to the West Virginia State Board of Landscape Architects; authorizing an increase of fees for one year; and limiting the increase.

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 §30-22-5a, to read as follows:

ARTICLE 22. LANDSCAPE ARCHITECTS.**§30-22-5a. Limited fee increase.**

1 Notwithstanding the fees set forth in this article, the West
2 Virginia State Board of Landscape Architects is hereby
3 authorized to increase the fees it assesses under the provisions
4 of this article. The fee increase shall be for one year, commenc-
5 ing the first day of July, two thousand five. Each increased fee
6 may not exceed one hundred dollars.

CHAPTER 187

**(H. B. 3016 — By Mr. Speaker, Mr. Kiss, and Delegates G. White,
Beach, Beane, Ennis, Varner, H. White, Browning,
Staton, Mahan and Stalnaker)**

[Passed April 9, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §30-40-5 of the Code of West Virginia, 1931, as amended, relating to excepting the making of appointments by secretaries of licensed real estate brokers and salespersons with buyers and sellers or potential buyers and sellers of real estate from the scope of practice of real estate brokerage subject to licensing.

Be it enacted by the Legislature of West Virginia:

That §30-40-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30-40-5. Scope of practice; exceptions.

1 (a) The practice of real estate brokerage includes acting in
2 the capacity of a broker, associate broker or salesperson as
3 defined in section four of this article.

4 (b) The practice of real estate brokerage does not include
5 the activities normally performed by an appraiser, mortgage
6 company, lawyer, engineer, contractor, surveyor, home inspec-
7 tor or other professional who may perform an ancillary service
8 in conjunction with a real estate transaction.

9 (c) The provisions of this article do not apply to:

10 (1) Any person acting on his or her own behalf as owner or
11 lessor of real estate.

12 (2) The regular employees of an owner of real estate, who
13 perform any acts regulated by this article, where the acts are
14 incidental to the management of the real estate: *Provided*, That
15 the employee does not receive additional compensation for the
16 act and does not perform the act as a vocation.

17 (3) Attorneys-at-law: *Provided*, That attorneys-at-law shall
18 be required to submit to the written examination required under
19 section twelve of this article in order to qualify for a broker's
20 license: *Provided, however*, That an attorney-at-law who is
21 licensed as a real estate broker prior to the first day of July, one
22 thousand nine hundred eighty, is exempt from the written
23 examination required under section twelve of this article.

24 (4) Any person holding, in good faith, a valid power of
25 attorney from the owner or lessor of the real estate.

26 (5) Any person acting as a receiver, trustee, administrator,
27 executor, guardian, conservator or under the order of any court
28 or under the authority of a deed of trust or will.

29 (6) A public officer while performing his or her official
30 duties.

31 (7) Any person acquiring or disposing of any interest in
32 timber or minerals, or acquiring or disposing of properties for
33 easements and rights-of-ways for pipelines, electric power lines
34 and stations, public utilities, railroads or roads.

35 (8) Any person employed exclusively to act as the manage-
36 ment or rental agent for the real estate of one person, partner-
37 ship or corporation.

38 (9) Any person properly licensed pursuant to the provisions
39 of article two-c, chapter nineteen of this code when conducting
40 an auction, any portion of which contains any leasehold or
41 estate in real estate, only when the person so licensed is retained
42 to conduct an auction by:

43 (A) A receiver or trustee in bankruptcy;

44 (B) A fiduciary acting under the authority of a deed of trust
45 or will; or

46 (C) A fiduciary of a decedent's estate.

47 (10) Any person employed by a broker in a noncommis-
48 sioned secretarial or clerical capacity who may in the normal
49 course of employment, be required to:

50 (A) Disseminate brokerage preprinted and predetermined
51 real estate sales and rental information;

52 (B) Accept and process rental reservations or bookings for
53 a period not to exceed thirty consecutive days in a manner and
54 procedure predetermined by the broker;

55 (C) Collect predetermined rental fees for the rentals which
56 are to be promptly tendered to the broker;

- 57 (D) Make appointments on behalf of the broker or licensed
58 salesperson with buyers and sellers of real estate and potential
59 buyers and sellers of real estate; or
- 60 (E) Any combination thereof.

CHAPTER 188

(Com. Sub. for S. B. 498 — By Senators Bowman, Kessler, Jenkins,
McCabe, Dempsey, McKenzie, Barnes, Unger and Plymale)

[Passed April 8, 2005; in effect July 1, 2005.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §7-4-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §7-4-6a, all relating to the West Virginia Prosecuting Attorneys Institute; clarifying the scope of responsibility of the Institute to include services to the entire staff of prosecutors; authorizing the Institute to train state and local law-enforcement and investigative personnel; allowing the Institute to accept moneys for reimbursement of expenses; and continuation of the West Virginia Prosecuting Attorneys Institute.

Be it enacted by the Legislature of West Virginia:

That §7-4-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §7-4-6a, all to read as follows:

ARTICLE 4. PROSECUTING ATTORNEY, REWARDS AND LEGAL ADVICE.

§7-4-6. West Virginia Prosecuting Attorneys Institute.

§7-4-6a. West Virginia Prosecuting Attorneys Institute continued.

§7-4-6. West Virginia Prosecuting Attorneys Institute.

1 (a) There is continued the West Virginia Prosecuting
2 Attorneys Institute, a public body whose membership shall
3 consist of the fifty-five elected county prosecuting attorneys in
4 the state. The Institute shall meet at least once each calendar
5 year and the presence of twenty-eight of the fifty-five prosecu-
6 tors at any meeting constitutes a quorum for the conduct of the
7 Institute's business.

8 (b) There is continued the Executive Council of the West
9 Virginia Prosecuting Attorneys Institute which shall consist of
10 five prosecuting attorneys elected by the membership of the
11 West Virginia Prosecuting Attorneys Institute at its annual
12 meeting and two persons appointed annually by the County
13 Commissioner's Association of West Virginia. The Executive
14 Council shall elect one member of the Council to serve as
15 Chairman of the Institute for a term of one year without
16 compensation. The Executive Council shall serve as the regular
17 executive body of the Institute.

18 (c) There is continued the position of Executive Director of
19 the West Virginia Prosecuting Attorneys Institute to be em-
20 ployed by the Executive Council of the Institute. The Executive
21 Director of the West Virginia Prosecuting Attorneys Institute
22 shall serve at the will and pleasure of the Executive Council of
23 the Institute. The Executive Director shall be licensed to
24 practice law in the State of West Virginia and shall devote full
25 time to his or her official duties and may not engage in the
26 private practice of law.

27 (d) The duties and responsibilities of the Institute, as
28 implemented by and through its Executive Council and its
29 Executive Director, shall include the following:

30 (1) The provision for special prosecuting attorneys to
31 pursue a criminal matter in any county upon the request of a

32 circuit court judge of that county and upon the approval of the
33 Executive Council;

34 (2) The establishment and implementation of general and
35 specialized training programs for prosecuting attorneys, their
36 staffs and, where determined practical by the Executive Council
37 and Executive Director, all statutorily authorized law-enforce-
38 ment or investigative agencies of the state or its political
39 subdivisions;

40 (3) The provision of materials for prosecuting attorneys and
41 their staffs, including legal research, technical assistance and
42 technical and professional publications;

43 (4) The compilation and dissemination of information on
44 behalf of prosecuting attorneys and their staffs on current
45 developments and changes in the law and the administration of
46 criminal justice;

47 (5) The establishment and implementation of uniform
48 reporting procedures for prosecuting attorneys and their
49 professional staffs in order to maintain and to provide accurate
50 and timely data and information relative to criminal prosecuto-
51 rial matters;

52 (6) The acceptance and expenditure of grants, moneys for
53 reimbursement of expenses, gifts and acceptance of services
54 from any public or private source;

55 (7) The entering into of agreements and contracts with
56 public or private agencies, groups, organizations or educational
57 institutions;

58 (8) The identification of experts and other resources for use
59 by Prosecutors in criminal matters;

60 (9) The recommendation to the Legislature or the Supreme
61 Court of Appeals of the State of West Virginia on measures
62 required, or procedural rules to be promulgated, to make
63 uniform the processing of juvenile cases in the fifty-five
64 counties of the state; and

65 (10) The development of a written handbook for prosecu-
66 tors and their assistants to use which delineates relevant
67 information concerning the elements of various crimes in West
68 Virginia and other information the Institute considers appropri-
69 ate.

70 (e) Each prosecuting attorney is subject to appointment by
71 the Institute to serve as a special prosecuting attorney in any
72 county where the prosecutor for that county or his or her office
73 has been disqualified from participating in a particular criminal
74 case. The circuit judge of any county of this state, who
75 disqualifies the prosecutor or his or her office from participat-
76 ing in a particular criminal case in that county, shall seek the
77 appointment by the Institute of a special prosecuting attorney to
78 substitute for the disqualified prosecutor. The Executive
79 Director of the Institute shall, upon written request to the
80 Institute by any circuit judge as a result of disqualification of
81 the prosecutor or for other good cause shown, and upon
82 approval of the Executive Council, appoint a prosecuting
83 attorney to serve as a special prosecuting attorney. The special
84 prosecuting attorney appointed shall serve without any further
85 compensation other than that paid to him or her by his or her
86 county, except that he or she is entitled to be reimbursed for his
87 or her legitimate expenses associated with travel, mileage and
88 room and board from the county to which he or she is appointed
89 as a prosecutor. The county commission in which county he or
90 she is special prosecutor is responsible for all expenses associ-
91 ated with the prosecution of the criminal action. No person
92 who is serving as a prosecuting attorney or an assistant prose-

93 cutting attorney of any county is required to take an additional
94 oath when appointed to serve as a special prosecuting attorney.

95 (f) The Executive Director of the Institute shall maintain an
96 appointment list that shall include the names of all fifty-five
97 prosecuting attorneys and that shall also include the names of
98 any assistant prosecuting attorney who wishes to serve as a
99 special prosecuting attorney upon the same terms and condi-
100 tions as set forth in this section. The Executive Director of the
101 Institute, with the approval of the Executive Council, shall
102 appoint special prosecuting attorneys from the appointment list
103 for any particular matter giving due consideration to the
104 proximity of the proposed special prosecuting attorney's home
105 county to the county requesting a special prosecutor and giving
106 due consideration to the expertise of the special prosecuting
107 attorney.

108 (g) Each county commission shall pay, on a monthly basis,
109 a special prosecution premium to the Treasurer of the state for
110 the funding of the West Virginia Prosecuting Attorneys
111 Institute. The monthly premiums shall be paid according to the
112 following schedule:

113 **MONTHLY PREMIUMS**

114 Assessed Valuation of Property
115 of All Classes in the County

116	Category	Minimum	Maximum	Premium
117	A	\$1,500,000,000	Unlimited	\$400
118	B	\$1,000,000,000	\$1,499,999,000	\$375
119	C	\$ 800,000,000	\$ 999,999,000	\$350
120	D	\$ 700,000,000	\$ 799,999,000	\$325
121	E	\$ 600,000,000	\$ 699,999,000	\$300
122	F	\$ 500,000,000	\$ 599,999,000	\$250
123	G	\$ 400,000,000	\$ 499,999,000	\$200

1524		PROFESSIONS AND OCCUPATIONS		[Ch. 188
124	H	\$ 300,000,000	\$ 399,999,000	\$150
125	I	\$ 200,000,000	\$ 299,999,000	\$100
126	J	-0-	\$ 199,999,000	\$ 50

127 (h) Upon receipt of a premium, grant, reimbursement or
128 other funding source, excluding federal funds as provided in
129 article two, chapter four of this code, the Treasurer shall deposit
130 the funds into a special revenue fund to be known as the "West
131 Virginia Prosecuting Attorneys Institute Fund". All costs of
132 operating the West Virginia Prosecuting Attorneys Institute
133 shall be paid from the West Virginia Prosecuting Attorneys
134 Institute Fund upon proper authorization by the Executive
135 Council or by the Executive Director of the Institute and subject
136 to annual appropriation by the Legislature of the amounts
137 contained within the Fund.

138 (i) The Institute shall annually, by the first day of the
139 regular Legislative session, provide the Joint Committee on
140 Government and Finance with a report setting forth the activi-
141 ties of the Institute and suggestions for legislative action.

142 (j) Neither the Institute nor its employees acting in their
143 employment capacity shall engage in activities before govern-
144 mental bodies which advocate positions on issues other than
145 those issues consistent with the duties of the Institute set forth
146 in subsection (d) of this section.

§7-4-6a. West Virginia Prosecuting Attorneys Institute continued.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia Prosecuting Attorneys Institute shall
3 continue to exist until the first day of July, two thousand eight,
4 unless sooner terminated, continued or reestablished.

CHAPTER 189

**(H. B. 3106 — By Delegates Michael, Stalnaker, Ron Thompson,
G. White, H. K. White, Border, Wakim, Hall,
Anderson, Cann and Susman)**

[Passed April 5, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §5-16-18 of the Code of West Virginia, 1931, as amended, relating to the ability of the Public Employees Insurance Agency to participate in the investment pools of the Investment Management Board.

Be it enacted by the Legislature of West Virginia:

That §5-16-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-18. Payment of costs by employer; schedule of insurance; special funds created; duties of Treasurer with respect thereto.

- 1 (a) All employers operating from state general revenue or
- 2 special revenue funds or federal funds or any combination of
- 3 those funds shall budget the cost of insurance coverage pro-
- 4 vided by the Public Employees Insurance Agency to current and
- 5 retired employees of the employer as a separate line item, titled
- 6 “PEIA”, in its respective annual budget and are responsible for
- 7 the transfer of funds to the director for the cost of insurance for
- 8 employees covered by the plan. Each spending unit shall pay to
- 9 the director its proportionate share from each source of funds.

10 Any agency wishing to charge general revenue funds for
11 insurance benefits for retirees under section thirteen of this
12 article shall provide documentation to the director that the
13 benefits cannot be paid for by any special revenue account or
14 that the retiring employee has been paid solely with general
15 revenue funds for twelve months prior to retirement.

16 (b) If the general revenue appropriation for any employer,
17 excluding county boards of education, is insufficient to cover
18 the cost of insurance coverage for the employer's participating
19 employees, retired employees and surviving dependents, the
20 employer shall pay the remainder of the cost from its "personal
21 services" or "unclassified" line items. The amount of the
22 payments for county boards of education shall be determined by
23 the method set forth in section twenty-four, article nine-a,
24 chapter eighteen of this code: *Provided*, That local excess levy
25 funds shall be used only for the purposes for which they were
26 raised: *Provided, however*, That after approval of its annual
27 financial plan, but in no event later than the thirty-first day of
28 December of each year, the finance board shall notify the
29 Legislature and county boards of education of the maximum
30 amount of employer premiums that the county boards of
31 education shall pay for covered employees during the following
32 fiscal year.

33 (c) All other employers not operating from the State
34 General Revenue Fund shall pay to the director their share of
35 premium costs from their respective budgets. The finance board
36 shall establish the employers' share of premium costs to reflect
37 and pay the actual costs of the coverage including incurred but
38 not reported claims.

39 (d) The contribution of the other employers (namely: A
40 county, city or town) in the state; any separate corporation or
41 instrumentality established by one or more counties, cities or
42 towns, as permitted by law; any corporation or instrumentality
43 supported in most part by counties, cities or towns; any public

44 corporation charged by law with the performance of a govern-
45 mental function and whose jurisdiction is coextensive with one
46 or more counties, cities or towns; any comprehensive commu-
47 nity mental health center or comprehensive mental retardation
48 facility established, operated or licensed by the Secretary of
49 Health and Human Resources pursuant to section one, article
50 two-a, chapter twenty-seven of this code, and which is sup-
51 ported in part by state, county or municipal funds; and a
52 combined city-county health department created pursuant to
53 article two, chapter sixteen of this code for their employees
54 shall be the percentage of the cost of the employees' insurance
55 package as the employers determine reasonable and proper
56 under their own particular circumstances.

57 (e) The employee's proportionate share of the premium or
58 cost shall be withheld or deducted by the employer from the
59 employee's salary or wages as and when paid and the sums
60 shall be forwarded to the director with any supporting data as
61 the director may require.

62 (f) All moneys received by the Public Employees Insurance
63 Agency shall be deposited in a special fund or funds as are
64 necessary in the State Treasury and the Treasurer of the State is
65 custodian of the fund or funds and shall administer the fund or
66 funds in accordance with the provisions of this article or as the
67 director may from time to time direct. The Treasurer shall pay
68 all warrants issued by the State Auditor against the fund or
69 funds as the director may direct in accordance with the provi-
70 sions of this article. All funds received by the agency, includ-
71 ing, but not limited to, basic insurance premiums, administra-
72 tive expenses and optional life insurance premiums, shall be
73 deposited, as determined by the director, in any of the invest-
74 ment pools with the West Virginia Investment Management
75 Board, including, but not limited to, the equity and fixed
76 income pools, with the interest income or other earnings a
77 proper credit to all such funds for the benefit of the public
78 employees insurance agency.

CHAPTER 190

**(Com. Sub. for S. B. 558 — By Senators Tomblin,
Mr. President, and Sprouse]
[By Request of the Executive]**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to repeal §12-6-10 and §12-6-15 of the Code of West Virginia, 1931, as amended; to amend and reenact §12-1-2, §12-1-12 and §12-1-13 of said code; to amend said code by adding thereto a new section, designated §12-1-12c; to amend and reenact §12-2-2 and §12-2-3 of said code; to amend and reenact §12-3A-4 of said code; to amend and reenact §12-6-1a, §12-6-5, §12-6-8 and §12-6-13 of said code; to amend and reenact §12-6B-4 of said code; and to amend said code by adding thereto a new article, designated §12-6C-1, §12-6C-2, §12-6C-3, §12-6C-4, §12-6C-5, §12-6C-6, §12-6C-7, §12-6C-8, §12-6C-9, §12-6C-10, §12-6C-11, §12-6C-12, §12-6C-13, §12-6C-14, §12-6C-15, §12-6C-16, §12-6C-17, §12-6C-18, §12-6C-19 and §12-6C-20, all relating generally to the management and investment of public funds; authorizing investment accounts for the Board of Treasury Investments; adding State Treasurer to entities receiving reports from depositories regarding accounts not approved by the State Treasurer; allowing the Board of Treasury Investments to accept funds remitted by the State Treasurer; codifying and clarifying the duties of the State Treasurer in administering the Federal Cash Management Improvement Act; authorizing the Federal Cash Management Interest Fund and the Federal Cash Management - Administration Fund; enabling the Board of Treasury Investments to invest moneys in the consolidated fund; codifying current

method of handling receipts using the state accounting system; authorizing Legislature to transfer moneys; requiring spending units to comply with procedures for receipt and disbursement of moneys not due the state; clarifying roles and administration of the West Virginia pay card; transferring management of consolidated fund from Investment Management Board to West Virginia Board of Treasury Investments; removing provision that the Investment Management Board can order the State Auditor and the State Treasurer to transmit funds; creating West Virginia Board of Treasury Investments; changing the date the debt capacity report is due from the first day of October to the fifteenth day of January; providing purposes, legislative findings and definitions for the Board of Treasury Investments; specifying membership of Board, appointment of certain directors of Board, terms of office, vacancies in office, removal of directors, expenses of directors, meetings and powers of Board; transferring management, control and administration of consolidated fund to the Board of Treasury Investments; requiring annual review of asset allocation plans and investment policies; specifying requirements and restrictions on investments; authorizing loans for industrial development; handling of securities; establishing the standard of care for investments; transferring existing cash, securities and other investments to the Board of Treasury Investments; requiring audits, financial statements and reports; continuing the current powers of spending units as to investments; transferring all loans from the consolidated fund to the Board of Treasury Investments; creating the fee fund and the investment fund; authorizing fees for administration and expenses; and termination of Board.

Be it enacted by the Legislature of West Virginia:

That §12-6-10 and §12-6-15 of the Code of West Virginia, 1931, as amended, be repealed; that §12-1-2, §12-1-12 and §12-1-13 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §12-1-12c; that §12-2-2 and §12-2-3

of said code be amended and reenacted; that §12-3A-4 of said code be amended and reenacted; that §12-6-1a, §12-6-5, §12-6-8 and §12-6-13 of said code be amended and reenacted; that §12-6B-4 of said code be amended and reenacted; and that said code be amended by adding thereto a new article, designated §12-6C-1, §12-6C-2, §12-6C-3, §12-6C-4, §12-6C-5, §12-6C-6, §12-6C-7, §12-6C-8, §12-6C-9, §12-6C-10, §12-6C-11, §12-6C-12, §12-6C-13, §12-6C-14, §12-6C-15, §12-6C-16, §12-6C-17, §12-6C-18, §12-6C-19 and §12-6C-20, all to read as follows:

Article

1. **State Depositories.**
2. **Payment and Deposit of Taxes and Other Amounts Due the State or any Political Subdivision.**
- 3A. **Financial Electronic Commerce.**
6. **West Virginia Investment Management Board.**
- 6B. **Debt Capacity Advisory Division.**
- 6C. **West Virginia Board of Treasury Investments.**

ARTICLE 1. STATE DEPOSITORIES.

- §12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by State Treasurer; definition of spending unit.
- §12-1-12. Investing funds in treasury; depositories outside the state.
- §12-1-12c. Cash management improvement act; administration; reports.
- §12-1-13. Payment of banking services and litigation costs for prior investment losses.

§12-1-2. Depositories for demand deposits; categories of demand deposits; competitive bidding for disbursement accounts; maintenance of deposits by State Treasurer; definition of spending unit.

- 1 (a) The State Treasurer shall designate the state and
- 2 national banks and the state and federal savings and loan
- 3 associations in this state meeting the requirements of this
- 4 chapter as depositories for all state funds placed in demand
- 5 deposits.

6 (b)(1) Demand deposit accounts shall consist of receipt and
7 disbursement accounts. Receipt accounts are accounts in which
8 are deposited moneys belonging to or due the State of West
9 Virginia or any official, department, board, commission or
10 agency of the state.

11 (2) Disbursement accounts are accounts from which are
12 paid moneys due from the State of West Virginia or any
13 official, department, board, commission, political subdivision
14 or agency of the state to any political subdivision, person, firm
15 or corporation, except moneys paid from investment accounts.

16 (3) Investment accounts are accounts established by the
17 West Virginia Investment Management Board, the West
18 Virginia Board of Treasury Investments or the State Treasurer
19 for the buying and selling of securities for investment purposes.

20 (c) The State Treasurer shall propose rules for legislative
21 approval, in accordance with the provisions of article three,
22 chapter twenty-nine-a of this code, concerning depositories for
23 receipt accounts prescribing the selection criteria, procedures,
24 compensation and any other contractual terms it considers to be
25 in the best interests of the state giving due consideration to: (1)
26 The activity of the various accounts maintained in the deposito-
27 ries; (2) the reasonable value of the banking services rendered
28 or to be rendered the state by the depositories; and (3) the value
29 and importance of the deposits to the economy of the communi-
30 ties and the various areas of the state affected by the deposits.

31 (d) The State Treasurer shall select depositories for
32 disbursement accounts through competitive bidding by eligible
33 banks in this state. If none of the eligible banks in this state are
34 able to provide the needed services, then the State Treasurer
35 may include eligible banks outside this state in the competitive
36 bidding process. The State Treasurer shall propose rules for
37 legislative approval in accordance with the provisions of article

38 three, chapter twenty-nine-a of this code, prescribing the
39 procedures and criteria for the bidding and selection. The State
40 Treasurer shall, in the invitations for bids, specify the approxi-
41 mate amounts of deposits, the duration of contracts to be
42 awarded and any other contractual terms the State Treasurer
43 considers to be in the best interests of the state, consistent with
44 obtaining the most efficient service at the lowest cost.

45 The amount of money needed for current operation pur-
46 poses of the state government, as determined by the State
47 Treasurer, shall be maintained at all times in the State Treasury,
48 in cash, in short term investments not to exceed five days or in
49 disbursement accounts with financial institutions designated as
50 depositories in accordance with the provisions of this section.
51 No state officer or employee shall make or cause to be made
52 any deposits of state funds in financial institutions which have
53 not been designated as depositories.

54 (e) Except as otherwise provided in this code, only banks
55 and state and federal savings and loan associations designated
56 by the State Treasurer as depositories may accept deposits of
57 state funds. Only the Legislature and the State Treasurer may
58 determine whether funds are state funds and only the State
59 Treasurer may approve the opening of an account or processing
60 of a transaction with a financial institution.

61 (f) Boards, commissions and spending units with authority
62 pursuant to this code to deposit moneys in a financial institution
63 without approval of the State Treasurer shall retain that
64 authority and are not required to have the State Treasurer
65 designate a financial institution as a depository: *Provided*, That
66 boards, commissions and spending units with moneys deposited
67 in financial institutions not approved for that purpose by the
68 State Treasurer shall submit a report on those moneys annually
69 to the Legislative Auditor and the State Treasurer.

70 (g) The provisions of this section shall not apply to the
71 proceeds from the sale of general obligation bonds or bonds
72 issued by the School Building Authority, the Parkways,
73 Economic Development and Tourism Authority, the Housing
74 Development Fund, the Economic Development Authority, the
75 Infrastructure and Jobs Development Council, the Water
76 Development Authority or the Hospital Finance Authority.

77 (h) As used in this chapter, “spending unit” means a
78 department, agency, board, commission or institution of state
79 government for which an appropriation is requested, or to
80 which an appropriation is made by the Legislature.

§12-1-12. Investing funds in treasury; depositories outside the state.

1 (a) When the funds in the Treasury exceed the amount
2 needed for current operational purposes, as determined by the
3 State Treasurer, the State Treasurer shall make all excess funds
4 available for investment by the Board of Treasury Investments
5 which shall invest the excess for the benefit of the general
6 revenue fund: *Provided*, That the State Treasurer, after review-
7 ing the cash flow needs of the state, may withhold and invest
8 amounts not to exceed one hundred twenty-five million dollars
9 of the operating funds needed to meet current operational
10 purposes. Investments made by the State Treasurer under this
11 section shall be made in short term investments not to exceed
12 five days. Operating funds means the consolidated fund
13 established in section eight, article six of this chapter, including
14 all cash and investments of the fund.

15 (b) Spending units with authority to retain interest or
16 earnings on a fund or account may submit requests to the State
17 Treasurer to transfer moneys to a specific investment pool of
18 the Investment Management Board or the Board of Treasury
19 Investments and retain any interest or earnings on the money

20 invested. The general revenue fund shall receive all interest or
21 other earnings on money invested that are not designated for a
22 specific fund or account.

23 (c) Whenever the funds in the Treasury exceed the amount
24 for which depositories within the state have qualified, or the
25 depositories within the state which have qualified are unwilling
26 to receive larger deposits, the State Treasurer may designate
27 depositories outside the state, disbursement accounts being bid
28 for in the same manner as required by depositories within the
29 state, and when depositories outside the state have qualified by
30 giving the bond prescribed in section four of this article, the
31 State Treasurer shall deposit funds in the same manner as funds
32 are deposited in depositories within the state under this article.

33 (d) The State Treasurer may transfer funds to financial
34 institutions outside the state to meet obligations to paying
35 agents outside the state if the financial institution meets the
36 same collateral requirements as set forth in this article.

**§12-1-12c. Cash management improvement act; administration;
reports.**

1 (a) The Cash Management Improvement Act of 1990,
2 Public Law 101-453, October 24, 1990, 31 USCA Section 6501,
3 *et seq.*, (CMIA) and regulations, as amended, establishes
4 requirements and techniques, including calculations, for the
5 receipt and disbursement of federal funds by states. The
6 authorized official and representative of the State of West
7 Virginia for the CMIA is the State Treasurer.

8 (b) In administering the CMIA, the State Treasurer is
9 authorized to do all things reasonably necessary, including
10 without limitation, entering into agreements with, negotiating
11 settlements with, refunding any interest due and satisfying any
12 liability to the United States Treasury in accordance with the
13 CMIA.

14 (c) Periodically the State Treasurer shall transfer to the
15 Federal Cash Management Interest Fund, which is hereby
16 authorized and continued, earnings on the State General
17 Revenue Fund in an amount the State Treasurer estimates is
18 needed to make refunds in accordance with the CMIA. After
19 each annual settlement with the United States Treasury, the
20 State Treasurer shall transfer to the State General Revenue
21 Fund any moneys remaining in the Federal Cash Management
22 Interest Fund for the period just settled.

23 (d) The State Treasurer shall also transfer periodically to
24 the Federal Cash Management – Administration Fund, which is
25 hereby authorized and continued, earnings on the State General
26 Revenue Fund in an amount the State Treasurer determines is
27 needed to pay for the costs of administering the CMIA. The
28 State Treasurer may pay the costs he or she incurs in adminis-
29 tering the CMIA from the Federal Cash Management – Admin-
30 istration Fund.

31 (e) All state spending units shall cooperate fully with the
32 State Treasurer in accumulating all the necessary data elements
33 to fully comply with the CMIA.

34 (f) The State Treasurer shall send quarterly reports on the
35 activities involving the CMIA to the Governor, State Auditor,
36 Secretary of Revenue and Joint Committee on Government and
37 Finance.

**§12-1-13. Payment of banking services and litigation costs for
prior investment losses.**

1 (a) The State Treasurer is authorized to pay for banking
2 services, and goods and services ancillary to the banking
3 services, by either a compensating balance in an account
4 maintained at the financial institution providing the services or
5 with a state warrant as described in section one, article three of
6 this chapter.

7 (b) The Investment Management Board may pay for the
8 investigation and pursuit of claims against third parties for the
9 investment losses incurred during the period beginning on the
10 first day of August, one thousand nine hundred eighty-four, and
11 ending on the thirty-first day of August, one thousand nine
12 hundred eighty-nine. The payment may be in the form of a
13 state warrant.

14 (c) If payment is made by a state warrant, the West Virginia
15 Board of Treasury Investments, at the request of the State
16 Treasurer, may establish within the consolidated fund an
17 investment pool which will generate sufficient income to pay
18 for all banking services provided to the state and to pay for the
19 investigation and pursuit of the prior investment loss claims.
20 All income earned by the investment pool shall be paid into a
21 special account of the State Treasurer known as the banking
22 services account to pay for all banking services and goods and
23 services ancillary to the banking services provided to the state,
24 for the investigation and pursuit of the prior investment loss
25 claims, and for amortization of the balance in the investment
26 imbalance fund.

**ARTICLE 2. PAYMENT AND DEPOSIT OF TAXES AND OTHER
AMOUNTS DUE THE STATE OR ANY POLITICAL
SUBDIVISION.**

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

§12-2-3. Deposit of moneys not due the state.

§12-2-2. Itemized record of moneys received for deposit; regulations governing deposits; credit to state fund; exceptions.

1 (a) All officials and employees of the state authorized by
2 statute to accept moneys due the State of West Virginia shall
3 keep a daily itemized record of moneys received for deposit in
4 the State Treasury and shall deposit within twenty-four hours

5 with the State Treasurer all moneys received or collected by
6 them for or on behalf of the state for any purpose whatsoever.
7 The State Treasurer may review the procedures and methods
8 used by officials and employees authorized to accept moneys
9 due the state and change the procedures and methods if he or
10 she determines it is in the best interest of the state: *Provided,*
11 That the State Treasurer may not review or amend the proce-
12 dures by which the Department of Revenue accepts moneys due
13 the state. The State Treasurer shall propose rules for legislative
14 approval, in accordance with the provisions of article three,
15 chapter twenty-nine-a of this code governing the procedure for
16 deposits. The official or employee making deposits with the
17 State Treasurer shall prepare deposit lists in the manner and
18 upon report forms prescribed by the State Treasurer in the state
19 accounting system. The State Treasurer shall review the
20 deposits in the state accounting system and forward the
21 information to the State Auditor and to the Secretary of
22 Revenue.

23 (b) All moneys received by the state from appropriations
24 made by the Congress of the United States shall be recorded in
25 special fund accounts, in the State Treasury apart from the
26 general revenues of the state, and shall be expended in accor-
27 dance with the provisions of article eleven, chapter four of this
28 code. All moneys, other than federal funds, defined in section
29 two, article eleven, chapter four of this code, shall be credited
30 to the state fund and treated by the State Auditor and State
31 Treasurer as part of the general revenue of the state except the
32 following funds which shall be recorded in separate accounts:

33 (1) All funds excluded by the provisions of section six,
34 article eleven, chapter four of this code;

35 (2) All funds derived from the sale of farm and dairy
36 products from farms operated by any spending unit of the state;

37 (3) All endowment funds, bequests, donations, executive
38 emergency funds and death and disability funds;

39 (4) All fees and funds collected at state educational
40 institutions for student activities;

41 (5) All funds derived from collections from dormitories,
42 boardinghouses, cafeterias and road camps;

43 (6) All moneys received from counties by institutions for
44 the deaf and blind on account of clothing for indigent pupils;

45 (7) All insurance collected on account of losses by fire and
46 refunds;

47 (8) All funds derived from bookstores and sales of blank
48 paper and stationery, and collections by the chief inspector of
49 public offices;

50 (9) All moneys collected and belonging to the capitol
51 building fund, state road fund, state road sinking funds, general
52 school fund, school fund, state fund (moneys belonging to
53 counties, districts and municipalities), state interest and sinking
54 funds, state compensation funds, the fund maintained by the
55 Public Service Commission for the investigation and supervi-
56 sion of applications and all fees, money, interest or funds
57 arising from the sales of all permits and licenses to hunt, trap,
58 fish or otherwise hold or capture fish and wildlife resources and
59 money reimbursed and granted by the federal government for
60 fish and wildlife conservation; and

61 (10) All moneys collected or received under any act of the
62 Legislature providing that funds collected or received under the
63 act shall be used for specific purposes.

64 (c) All moneys, except as provided in subdivisions (1)
65 through (9), inclusive, subsection (b) of this section, shall be

66 paid into the State Treasury in the same manner as collections
67 not excepted and recorded in separate accounts for receipt and
68 expenditure for the purposes for which the moneys are autho-
69 rized to be collected by law: *Provided*, That amounts collected
70 pursuant to subdivision (10), subsection (b) of this section,
71 which are found, from time to time, to exceed funds needed for
72 the purposes set forth in general law may be transferred to other
73 accounts or funds and redesignated for other purposes by
74 appropriation of the Legislature. The gross amount collected in
75 all cases shall be paid into the State Treasury. Commissions,
76 costs and expenses, including, without limitation, amounts
77 charged for use of bank, charge, credit or debit cards, incurred
78 in the collection process shall be paid from the gross amount
79 collected in the same manner as other payments are made from
80 the State Treasury.

81 (d) The State Treasurer may establish an imprest fund or
82 funds in the office of any state spending unit upon receipt of a
83 proper application. To implement this authority, the State
84 Treasurer shall propose rules for legislative approval in
85 accordance with the provisions of article three, chapter
86 twenty-nine-a of this code. The State Treasurer or his or her
87 designee shall annually audit all imprest funds and prepare a list
88 of the funds showing the location and amount as of fiscal year
89 end, retaining the list as a permanent record of the State
90 Treasurer until the Legislative Auditor has completed an audit
91 of the imprest funds of all agencies and institutions involved.

92 (e) The State Treasurer may develop and implement a
93 centralized receipts processing center. The State Treasurer may
94 request the transfer of equipment and personnel from appropri-
95 ate state agencies to the centralized receipts processing center
96 in order to implement the provisions of this section: *Provided*,
97 That the Governor or appropriate constitutional officer has
98 authority to authorize the transfer of equipment or personnel to
99 the centralized receipts processing center from the respective
100 agency.

§12-2-3. Deposit of moneys not due the state.

1 All officials and employees of the state authorized to accept
2 moneys that the State Treasurer determines or that this code
3 specifies are not funds due the state pursuant to the provisions
4 of section two of this article shall deposit the moneys, as soon
5 as practicable, in the manner and in the depository specified by
6 the State Treasurer. The State Treasurer shall prescribe the
7 forms and procedures for depositing the moneys.

8 Notwithstanding any provision of this code to the contrary,
9 including provisions stating funds collected are not state funds
10 and provisions authorizing a spending unit to have one or more
11 accounts outside the Treasury, a spending unit shall comply
12 with the State Treasurer's procedures for the receipt and
13 disbursement of moneys not due the state and obtain written
14 authorization from the State Treasurer before depositing any
15 moneys in an account outside the Treasury. Upon the State
16 Treasurer's written revocation of the authorization, the spend-
17 ing unit shall deposit funds deposited in an account outside the
18 Treasury into the Treasury in the manner and in the depository
19 specified by the State Treasurer. The State Treasurer is the
20 final determining authority as to whether these funds are funds
21 due or not due the state pursuant to section two of this article.
22 The State Treasurer shall on a quarterly basis provide the
23 Legislative Auditor with a report of all accounts authorized
24 under this section.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.**§12-3A-4. Payment by a West Virginia pay card.**

1 The State Auditor and the State Treasurer may jointly
2 establish a state stored value debit card program known as the
3 "West Virginia Pay Card" for recipients of employee payroll,
4 retirement benefits or entitlement programs who do not possess
5 a federally insured depository institution account. The State

6 Auditor and the State Treasurer shall use every reasonable
7 effort to encourage all identified unbanked recipients to obtain
8 a federally insured depository account. The State Auditor shall
9 include an unbanked recipient in the program upon determining
10 that good cause exists. Once an unbanked recipient is included
11 in the program, the State Auditor shall provide the State
12 Treasurer with an electronic file containing the necessary
13 unbanked recipient information. The State Treasurer shall issue
14 a request for proposals in accordance with section three of this
15 article to aid in the administration of the program. The State
16 Auditor shall assist in the review of pay card proposals. In
17 carrying out the purposes of this article, the State Treasurer
18 shall not compete with banks or other federally insured finan-
19 cial institutions, or for profit.

ARTICLE 6. WEST VIRGINIA INVESTMENT MANAGEMENT BOARD.

§12-6-1a. Legislative findings.

§12-6-5. Powers of the Board.

§12-6-8. Investment funds established; management thereof.

§12-6-13. Board as agency for investments; exceptions.

§12-6-1a. Legislative findings.

1 (a) The Legislature hereby finds and declares that all the
2 public employees covered by the Public Employees Retirement
3 System, the Teachers Retirement System, the West Virginia
4 State Police Retirement System, the Death, Disability and
5 Retirement Fund of the Division of Public Safety, the Judges'
6 Retirement System and the Deputy Sheriffs Retirement System
7 should benefit from a prudent and conscientious staff of
8 financial professionals dedicated to the administration, invest-
9 ment and management of those employees and employers
10 financial contributions and that an independent board and staff
11 should be immune to changing political climates and should
12 provide a stable and continuous source of professional financial
13 investment and management.

14 (b) The Legislature finds and declares that teachers and
15 other public employees throughout the state are experiencing
16 economic difficulty and that in order to reduce this economic
17 hardship on these dedicated public employees and to help foster
18 sound financial practices, the West Virginia Investment
19 Management Board may develop, implement and maintain an
20 efficient and modern system for the investment and manage-
21 ment of the state's money, except those moneys managed in
22 accordance with article six-c of this chapter. The Legislature
23 further finds that in order to implement these sound fiscal
24 policies, the West Virginia Investment Management Board shall
25 operate as an independent board with its own full-time staff of
26 financial professionals, immune to changing political climates,
27 in order to provide a stable and continuous source of profes-
28 sional financial management.

29 (c) The Legislature hereby finds and declares further that
30 experience has demonstrated that prudent investment provides
31 diversification and beneficial return not only for public employ-
32 ees but for all citizens of the state and that in order to have
33 access to this sound fiscal policy, public employee and em-
34 ployer contributions to the 401(a) plans are declared to be made
35 to an irrevocable trust on behalf of each plan, available for no
36 use or purpose other than for the benefit of those public
37 employees.

38 (d) The Legislature hereby finds and declares further that
39 the Workers' Compensation Fund and Coal-Workers' Pneumo-
40 coniosis Fund are trust funds to be used exclusively for those
41 workers, miners and their beneficiaries who have sacrificed
42 their health in the performance of their jobs and further finds
43 that the assets available to pay awarded benefits should be
44 prudently invested so that awards may be paid.

45 (e) The Legislature hereby finds and declares further that an
46 independent public body corporate with appropriate governance

47 is the best means of assuring prudent financial management of
48 these funds under rapidly changing market conditions and
49 regulations.

50 (f) The Legislature hereby finds and declares further that in
51 accomplishing this purpose, the West Virginia Investment
52 Management Board, created and established by this article, is
53 acting in all respects for the benefit of the state's public
54 employees and ultimately the citizens of the state and the West
55 Virginia Investment Management Board may act as trustee of
56 the irrevocable trusts created by this article and to manage and
57 invest other state funds.

58 (g) The Legislature hereby finds and declares further that
59 the standard of care and prudence applied to trustees, the
60 conduct of the affairs of the irrevocable trusts created by this
61 article and the investment of other state funds is intended to be
62 that applied to the investment of funds as described in the
63 "Uniform Prudent Investor Act" codified as article six-c,
64 chapter forty-four of this code and as described in section
65 eleven of this article.

66 (h) The Legislature further finds and declares that the West
67 Virginia Supreme Court of Appeals declared the West Virginia
68 Trust Fund Act unconstitutional in its decision rendered on the
69 twenty-eighth day of March, one thousand nine hundred
70 ninety-seven, to the extent that it authorized investments in
71 corporate stock, but the court also recognized that there were
72 other permissible constitutional purposes of the West Virginia
73 Trust Fund Act and that it is the role of the Legislature to
74 determine those purposes consistent with the court's decision
75 and the Constitution of West Virginia.

76 (i) The Legislature hereby further finds and declares that it
77 is in the best interests of the state and its citizens to create a
78 new investment management board in order to: (1) Be in full

79 compliance with the provisions of the Constitution of West
80 Virginia; and (2) protect all existing legal and equitable rights
81 of persons who have entered into contractual relationships with
82 the West Virginia Board of Investments and the West Virginia
83 Trust Fund.

§12-6-5. Powers of the Board.

1 The Board may exercise all powers necessary or appropri-
2 ate to carry out and effectuate its corporate purposes. The
3 Board may:

4 (1) Adopt and use a common seal and alter it at pleasure;

5 (2) Sue and be sued;

6 (3) Enter into contracts and execute and deliver instru-
7 ments;

8 (4) Acquire (by purchase, gift or otherwise), hold, use and
9 dispose of real and personal property, deeds, mortgages and
10 other instruments;

11 (5) Promulgate and enforce bylaws and rules for the
12 management and conduct of its affairs;

13 (6) Notwithstanding any other provision of law, retain and
14 employ legal, accounting, financial and investment advisors and
15 consultants;

16 (7) Acquire (by purchase, gift or otherwise), hold, ex-
17 change, pledge, lend and sell or otherwise dispose of securities
18 and invest funds in interest earning deposits and in any other
19 lawful investments;

20 (8) Maintain accounts with banks, securities dealers and
21 financial institutions both within and outside this state;

22 (9) Engage in financial transactions whereby securities are
23 purchased by the Board under an agreement providing for the
24 resale of the securities to the original seller at a stated price;

25 (10) Engage in financial transactions whereby securities
26 held by the Board are sold under an agreement providing for the
27 repurchase of the securities by the Board at a stated price;

28 (11) Consolidate and manage moneys, securities and other
29 assets of the other funds and accounts of the state and the
30 moneys of political subdivisions which may be made available
31 to it under the provisions of this article;

32 (12) Enter into agreements with political subdivisions of the
33 state whereby moneys of the political subdivisions are invested
34 on their behalf by the Board;

35 (13) Charge and collect administrative fees from political
36 subdivisions for its services;

37 (14) Exercise all powers generally granted to and exercised
38 by the holders of investment securities with respect to manage-
39 ment of the investment securities;

40 (15) Contract with one or more banking institutions in or
41 outside the state for the custody, safekeeping and management
42 of securities held by the Board;

43 (16) Make and, from time to time, amend and repeal
44 bylaws, rules and procedures not inconsistent with the provi-
45 sions of this article;

46 (17) Hire its own employees, consultants, managers and
47 advisors as it considers necessary and fix their compensation
48 and prescribe their duties;

49 (18) Develop, implement and maintain its own banking
50 accounts and investments;

51 (19) Do all things necessary to implement and operate the
52 Board and carry out the intent of this article;

53 (20) Upon request of the State Treasurer, transmit funds for
54 deposit in the State Treasury to meet the daily obligations of
55 state government;

56 (21) Establish one or more investment funds for the purpose
57 of investing the funds for which it is trustee, custodian or
58 otherwise authorized to invest pursuant to this article. Interests
59 in each fund shall be designated as units and the Board shall
60 adopt industry standard accounting procedures to determine
61 each fund's unit value. The securities in each investment fund
62 are the property of the Board and each fund shall be considered
63 an investment pool or fund and may not be considered a trust
64 nor may the securities of the various investment funds be
65 considered held in trust. However, units in an investment fund
66 established by or sold by the Board and the proceeds from the
67 sale or redemption of any unit may be held by the Board in its
68 role as trustee of the participant plans; and

69 (22) Notwithstanding any other provision of the code to the
70 contrary, conduct investment transactions, including purchases,
71 sales, redemptions and income collections, which shall not be
72 treated by the State Auditor as recordable transactions on the
73 state's accounting system.

§12-6-8. Investment funds established; management thereof.

1 (a) There is continued a special investment fund designated
2 as the Consolidated Fund. Effective the thirtieth day of June,
3 two thousand five, the power and authority of the Board as to
4 the consolidated fund terminates. On the first day of July, two
5 thousand five, the Board shall transfer the consolidated fund, all
6 moneys, obligations, assets, securities and other investments of
7 the consolidated fund and all records, properties and any other
8 document or item pertaining to the consolidated fund in its

9 possession or under its control to the West Virginia Board of
10 Treasury Investments established in article six-c of this chapter.

11 (b) Each board, commission, department, official or agency
12 charged with the administration of state funds may request the
13 State Treasurer to make moneys available to the Board for
14 investment.

15 (c) Each political subdivision of this state through its
16 treasurer or equivalent financial officer may enter into agree-
17 ments with the State Treasurer for the investment of moneys of
18 the political subdivision. Any political subdivision may enter
19 into an agreement with a state spending unit from which it
20 receives funds to request transfer of the funds to their invest-
21 ment account with the Investment Management Board or the
22 West Virginia Board of Treasury Investments.

23 (d) Moneys held in the various funds and accounts adminis-
24 tered by the Board shall be invested as permitted by this article
25 and subject to the restrictions contained in this article.. The
26 Board shall report the earnings on the various funds under
27 management to the State Treasurer at the times determined by
28 the State Treasurer. The Board shall also establish rules for the
29 administration of the various funds and accounts established by
30 this section as it considers necessary for the administration of
31 the funds and accounts, including, but not limited to: (1) The
32 specification of amounts which may be deposited in any fund
33 or account and minimum periods of time for which deposits
34 will be retained; and (2) creation of reserves for losses:
35 *Provided*, That in the event any moneys made available to the
36 Board may not lawfully be combined for investment or depos-
37 ited in the consolidated funds established by this section, the
38 Board may create special accounts and may administer and
39 invest those moneys in accordance with the restrictions spe-
40 cially applicable to those moneys.

§12-6-13. Board as agency for investments; exceptions.

1 All duties vested by law in any agency, commission,
2 official or other board of the state relating to the investment of
3 moneys, and the acquisition, sale, exchange or disposal of
4 securities or any other investment are hereby transferred to the
5 Board: *Provided*, That neither this section nor any other section
6 of this article applies to the duties vested by law in any agency,
7 commission, official or other board of the state relating to the
8 investment of moneys and the acquisition, sale, exchange or
9 disposal of securities or any other investment by the West
10 Virginia Board of Treasury Investments pursuant to article six-c
11 of this chapter, to the Board of the School Fund or to the School
12 Fund established by section 4, article XII of the State Constitu-
13 tion: *Provided, however*, That funds under the control of the
14 Municipal Bond Commission may, in the discretion of the
15 Commission, be made available to the Board for investment by
16 the Commission as provided in article three, chapter thirteen of
17 this code.

ARTICLE 6B. DEBT CAPACITY ADVISORY DIVISION.**§12-6B-4. Powers and duties.**

1 The Division shall perform the following functions and
2 duties:

3 (a) Promulgate rules pursuant to article three, chapter
4 twenty-nine-a of this code, for the management and conduct of
5 its affairs;

6 (b) Annually review the size and condition of the state`s
7 tax-supported debt and submit to the Governor and to the
8 Legislature, on or before the fifteenth day of January of each
9 year, an estimate of the maximum amount of new tax-supported
10 debt that prudently may be authorized for the next fiscal year,
11 together with a report explaining the basis for the estimate. The

12 estimate shall be advisory and in no way restrict the Governor
13 or the Legislature. In preparing its annual review and estimate,
14 the Division shall, at a minimum, consider:

15 (1) The amount of net tax supported debt that, during the
16 next fiscal year and annually for the following ten fiscal years:
17 (A) Will be outstanding; and (B) has been authorized but not
18 yet issued;

19 (2) Projected debt service requirements during the next
20 fiscal year and annually for the following ten fiscal years based
21 upon: (A) Existing outstanding debt; (B) previously authorized
22 but unissued debt; and (C) projected bond authorizations;

23 (3) Any information available from the budget section of
24 the Department of Administration in connection with antici-
25 pated capital expenditures projected for the next five fiscal
26 years;

27 (4) The criteria that recognized bond rating agencies use to
28 judge the quality of state bonds;

29 (5) Any other factor that the Division finds as relevant to:
30 (A) The ability of the state to meet its projected debt service
31 requirements for the next fiscal year; (B) the ability of the state
32 to meet its projected debt service requirement for the next five
33 fiscal years; and (C) any other factor affecting the marketability
34 of the bond; and

35 (6) The effect of authorizations of new tax-supported debt
36 on each of the considerations of this subsection.

37 (c) Conduct ongoing review of the amount and condition of
38 bonds, notes and other security obligations of the state's
39 spending units: (1) Not secured by the full faith and credit of
40 the state or for which the Legislature is not obligated to
41 replenish reserve funds or make necessary debt service pay-

42 ments; (2) for which the state has a contingent or limited
43 liability or for which the Legislature is permitted to replenish
44 reserve funds or make necessary debt service payments if
45 deficiencies occur. When appropriate, the Division shall
46 recommend limits on the additional obligations to the Governor
47 and to the Legislature. The recommendation is advisory and in
48 no way restricts the Governor, the Legislature or the spending
49 unit.

50 (d) The State Treasurer may review all proposed offerings
51 of debt, as defined in this article, submitted to the Division of
52 Debt Management, as provided in section six, article six-a of
53 this chapter. The Division may also request any additional
54 information which may be needed to issue an advisory opinion
55 to the Governor, the Speaker of the House of Delegates and the
56 President of the Senate as to the impact of the proposed offering
57 on the state's net tax-supported debt outstanding and any other
58 criteria which the State Treasurer feels may be relevant to the
59 marketability of said offering and its impact on the state's credit
60 rating. The advisory opinion shall in no way restrict the
61 Governor, the Legislature or the spending unit.

62 (e) Do all things necessary or convenient to effectuate the
63 intent of this article and to carry out its powers and functions.

ARTICLE 6C. WEST VIRGINIA BOARD OF TREASURY INVESTMENTS.

§12-6C-1. Purposes and objects; how article cited.

§12-6C-2. Legislative findings.

§12-6C-3. Definitions.

§12-6C-4. West Virginia Board of Treasury Investments created; body corporate;
board; directors; nomination and appointment of directors, qualifica-
tions and terms of appointment, advice and consent; annual and other
meetings; committees; board approval of investment policies
required; open meetings, qualifications.

§12-6C-5. Powers of the Board.

§12-6C-6. Consolidated fund continued; management.

§12-6C-7. Management and control of fund; officers; staff; fiduciary or surety
bonds for directors; liability of directors.

- §12-6C-8. Administration of Consolidated Fund.
- §12-6C-9. Asset allocation; investment policies, authorized investments; restrictions.
- §12-6C-10. Investment authority for Consolidated Fund transferred to Board; exceptions.
- §12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.
- §12-6C-12. Securities handling.
- §12-6C-13. Standard of care.
- §12-6C-14. Existing investments.
- §12-6C-15. Annual audits; financial statements; information.
- §12-6C-16. Reports to participants.
- §12-6C-17. Legal status of spending units continued.
- §12-6C-18. Authorization for loans by the Board.
- §12-6C-19. Creation of fee account and investment account; budget.
- §12-6C-20. Termination of board.

§12-6C-1. Purposes and objects; how article cited.

1 This article, cited as the West Virginia Treasury Invest-
2 ments Act, is enacted to provide for the investment and
3 management of the Consolidated Fund for the purposes of
4 making state moneys more accessible to state government and
5 allowing the Investment Management Board to focus on long-
6 term investment of the trust estates it manages pursuant to
7 article six of this chapter.

§12-6C-2. Legislative findings.

1 (a) The Legislature finds and declares that the Consolidated
2 Fund should benefit from financial professionals dedicated to
3 and focused on the sound administration, investment and
4 management of the Fund.

5 (b) The Legislature finds and declares that the State
6 Treasurer currently enters into agreements on behalf of the
7 West Virginia Investment Management Board with political
8 subdivisions and provides reporting services for participants in
9 the Consolidated Fund.

10 (c) The Legislature finds and declares that the transfer of
11 the Consolidated Fund to the West Virginia Board of Treasury
12 Investments will allow for management of the fund within state
13 government and will encourage better cash management of state
14 moneys.

15 (d) The Legislature finds and declares that a public body
16 corporate within state government with appropriate governance
17 is the best means of assuring reasonable access to and prudent
18 management and investment of the Consolidated Fund.

19 (e) The Legislature finds and declares that in accomplishing
20 these purposes, the West Virginia Board of Treasury Invest-
21 ments is acting in all respects for the benefit of the citizens of
22 the state in managing and investing the Consolidated Fund.

23 (f) The Legislature further finds and declares that it is in the
24 best interests of the state, its citizens and the political subdivi-
25 sions to create the West Virginia Board of Treasury Invest-
26 ments to manage and invest the Consolidated Fund to: (1)
27 Provide focused investment services for the operating funds of
28 the state and of its political subdivisions; (2) provide better
29 management of all state funds within state government; and (3)
30 allow the West Virginia Investment Management Board to
31 focus on the long-term investment of the trust estates it man-
32 ages pursuant to article six of this chapter.

§12-6C-3. Definitions.

1 As used in this article, unless a different meaning clearly
2 appears from the context:

3 (1) "Board" means the governing body for the West
4 Virginia Board of Treasury Investments. References in this
5 code to the entity investing the moneys of the Consolidated
6 Fund, to the West Virginia Board of Investments, to the West
7 Virginia Trust Fund or to the West Virginia Investment

8 Management Board in connection with investing moneys in the
9 Consolidated Fund means the Board as defined in this subdivi-
10 sion;

11 (2) "Consolidated fund" means the investment fund
12 continued in section six of this article and transferred to the
13 Board by the West Virginia Investment Management Board for
14 Management and Investment;

15 (3) "Director" means any member serving on the Board;

16 (4) "Local government funds" means the moneys of a
17 political subdivision, including policemen's and firemen's
18 pension and relief funds, and volunteer fire department funds,
19 transferred to the Board for deposit;

20 (5) "Participant" means any state government spending unit
21 or political subdivision which transfers moneys to the Board for
22 investment;

23 (6) "Political subdivision" means and includes a county,
24 municipality or any agency, authority, board, county board of
25 education, commission or instrumentality of a county or
26 municipality and regional councils created pursuant to the
27 provisions of section five, article twenty-five, chapter eight of
28 this code;

29 (7) "Securities" means all bonds, notes, debentures or other
30 evidences of indebtedness and other lawful investment instru-
31 ments; and

32 (8) "State funds" means all moneys of the state which may
33 be lawfully invested except for the "school fund" established by
34 section four, article XII of the State Constitution.

**§12-6C-4. West Virginia Board of Treasury Investments created;
body corporate; board; directors; nomination and**

appointment of directors, qualifications and terms of appointment, advice and consent; annual and other meetings; committees; board approval of investment policies required; open meetings, qualifications.

1 (a) The West Virginia Board of Treasury Investments is
2 created as a public body corporate and established to provide
3 prudent fiscal administration, investment and management for
4 the Consolidated Fund.

5 (b) Any appointment to the Board is effective immediately
6 upon appointment by the Governor with respect to voting,
7 constituting a quorum, receiving expenses and all other rights
8 and privileges of the Director position. A trustee of the West
9 Virginia Investment Management Board other than the Gover-
10 nor, State Treasurer or State Auditor is not eligible to serve as
11 a Director of the Board.

12 (c) The Board shall consist of five members, as follows:

13 (1) The Governor, the State Treasurer and the State Auditor
14 or their designees. They shall serve by virtue of their offices
15 and are not entitled to compensation under the provisions of this
16 article. The Governor, State Treasurer and State Auditor or
17 their designees are subject to all duties, responsibilities and
18 requirements of the provisions of this article; and

19 (2) Two persons appointed by the Governor subject to the
20 advice and consent of the Senate.

21 (d) Of the two persons appointed by the Governor, one shall
22 be a certified public accountant with experience in finance,
23 investing and management, and one shall be an attorney with
24 experience in finance, investing and management.

25 (e) (1) Initial appointment of the appointed directors shall
26 be for the following terms:

27 (A) One member shall be appointed for a term ending the
28 thirtieth day of June, two thousand seven; and

29 (B) One member shall be appointed for a term ending the
30 thirtieth day of June, two thousand nine.

31 (2) Except for appointments to fill vacancies, each subse-
32 quent appointment shall be for the term ending the thirtieth day
33 of June of the fourth year following the year the preceding term
34 expired. A Director may be reappointed. In the event a
35 vacancy occurs it shall be filled by appointment for the unex-
36 pired term. A Director whose term has expired shall continue
37 in office until a successor has been duly appointed and quali-
38 fied. No appointed member of the Board may be removed from
39 office by the Governor except for official misconduct, incompe-
40 tency, neglect of duty, gross negligence, misfeasance or gross
41 immorality.

42 (f) All directors shall receive reasonable and necessary
43 expenses actually incurred in discharging director's duties
44 pursuant to this article.

45 (g) The Board shall hold quarterly meetings. Board bylaws
46 may provide for calling and holding additional meetings.
47 Representatives of participants and members of the public may
48 attend any meeting held by the Board, except during those
49 meetings or part of meetings closed by the Board as permitted
50 by law. Attendees shall observe standards of decorum estab-
51 lished by board policy.

52 (h) The Board shall annually adopt a fee schedule and a
53 budget reflecting fee structures for the year.

54 (i) The Board chairman may appoint committees as needed,
55 including, but not limited to, an investment policies committee
56 to discuss drafting, reviewing or modifying written investment
57 policies. Each committee shall seek input from participants

58 before reporting its recommendations to the Board. The Board
59 may meet with any or all committees during any of its meet-
60 ings.

61 (j) Any meeting of the Board may be closed upon adoption
62 of a motion by any Director when necessary to preserve the
63 attorney-client privilege, to protect the privacy interests of
64 individuals, to review personnel matters or to maintain confi-
65 dentiality when confidentiality is in the best interest of the
66 participants.

§12-6C-5. Powers of the Board.

1 The Board may exercise all powers necessary or appropri-
2 ate to carry out and effectuate its corporate purposes. The
3 Board may:

4 (1) Adopt and use a common seal and alter it at pleasure;

5 (2) Sue and be sued;

6 (3) Enter into contracts and execute and deliver instruments
7 using the policies and procedures of the State Treasurer's
8 Office;

9 (4) Acquire (by purchase, gift or otherwise), hold, use and
10 dispose of real and personal property, deeds, mortgages and
11 other instruments;

12 (5) Promulgate and enforce bylaws and rules for the
13 management and conduct of its affairs;

14 (6) Notwithstanding any other provision of law to the
15 contrary, specifically article three, chapter five-a of this code,
16 retain and contract with legal, accounting, financial and
17 investment managers, advisors and consultants;

18 (7) Acquire (by purchase, gift or otherwise), hold, ex-
19 change, pledge, lend and sell or otherwise dispose of securities
20 and invest funds in investments authorized by this article;

21 (8) Maintain accounts with banks, securities dealers and
22 financial institutions both within and outside this state;

23 (9) Engage in financial transactions whereby securities are
24 purchased by the Board under an agreement providing for the
25 resale of the securities to the original seller at a stated price;

26 (10) Engage in financial transactions whereby securities
27 held by the Board are sold under an agreement providing for the
28 repurchase of the securities by the Board at a stated price;

29 (11) Consolidate and manage moneys, securities and other
30 assets of the consolidated fund and accounts of the state and the
31 moneys of political subdivisions which may be made available
32 to it under the provisions of this article;

33 (12) Abide by agreements entered into by the State Trea-
34 surer with political subdivisions of the state for investment of
35 moneys of the political subdivisions by the Board;

36 (13) Charge and collect administrative fees from partici-
37 pants, including political subdivisions, for its services;

38 (14) Exercise all powers generally granted to and exercised
39 by the holders of investment securities with respect to manage-
40 ment of the investment securities;

41 (15) Use any contract or agreement of the Investment
42 Management Board or the State Treasurer's Office and enter
43 into its own contracts or agreements, including, without
44 limitation entering into a contract or agreement with one or
45 more banking institutions in or outside the state for the custody,
46 safekeeping and management of securities held by the Board

47 and with any investment manager and investment advisor
48 needed;

49 (16) Make, and from time to time, amend and repeal
50 bylaws, rules and procedures not inconsistent with the provi-
51 sions of this article;

52 (17) Hire its own employees, consultants, managers and
53 advisors as it considers necessary and fix their compensation
54 and prescribe their duties;

55 (18) Develop, implement and maintain its own investment
56 accounts;

57 (19) Offer assistance and seminars to spending units and to
58 political subdivisions;

59 (20) Upon request of the State Treasurer, transmit funds for
60 deposit to the State Treasury to meet the daily obligations of
61 state government; and

62 (21) Establish one or more investment funds, pools or
63 participant accounts within the consolidated fund for the
64 purpose of investing the moneys and assets for which it is
65 director, trustee, custodian or otherwise authorized to invest
66 pursuant to this article. Interests in each fund, pool or partici-
67 pant account are designated as units and the Board shall adopt
68 industry standard accounting procedures to determine the unit
69 value of each fund, pool or participant account. The securities
70 in each investment fund, pool or participant account are the
71 property of the Board and each fund, pool or participant account
72 is considered an investment pool, investment fund or invest-
73 ment participant account.

§12-6C-6. Consolidated fund continued; management.

1 (a) The consolidated fund is continued and notwithstanding
2 any provision of this code to the contrary is vested in the West

3 Virginia Board of Treasury Investments on the first day of July,
4 two thousand five.

5 (b) Each spending unit authorized to invest moneys shall
6 unless prohibited by law, request the State Treasurer to invest
7 its moneys. Based upon spending unit representations, the State
8 Treasurer shall send the moneys to the West Virginia Board of
9 Treasury Investments or to the Investment Management Board
10 for investment.

11 (c) Each political subdivision of this state through its State
12 Treasurer or equivalent financial officer may enter into agree-
13 ments with the State Treasurer for the investment of moneys of
14 the political subdivision. Any political subdivision may enter
15 into an agreement with the state spending unit from which it
16 receives moneys to allow the board to invest the moneys.

17 (d) Moneys held in the various funds and accounts adminis-
18 tered by the Board are invested as permitted by this article and
19 subject to the restrictions contained in this article.

20 (e) The State Treasurer shall maintain records of the
21 deposits and withdrawals of each participant and the perfor-
22 mance of the various funds, pools and accounts. The Board
23 shall report the earnings on the funds, pools, and accounts under
24 management to the State Treasurer at the times determined by
25 the State Treasurer.

26 (f) The Board shall establish policies for the administration
27 of the various funds, pools and accounts authorized by this
28 article as it determines necessary. The policies may specify the
29 minimum amounts and timing of deposits and withdrawals and
30 any other matters authorized by the Board.

**§12-6C-7. Management and control of fund; officers; staff;
fiduciary or surety bonds for directors; liability of
directors.**

1 (a) The management and control of the Consolidated Fund
2 is vested solely in the Board in accordance with the provisions
3 of this article.

4 (b) The State Treasurer is the Chairman of the Board. The
5 Board shall elect a vice chairman. Annually, the Directors shall
6 elect a secretary to keep a record of the proceedings of the
7 Board and provide any other duties required by the Board. The
8 Board may elect a person who is not a member of the Board as
9 secretary.

10 (c) The board may use the staff of the State Treasurer,
11 employ personnel and contract with any person or entity needed
12 to perform the tasks related to operating the Consolidated Fund.

13 (d) The Board shall retain an internal auditor to report
14 directly to the Board and shall fix his or her compensation. As
15 a minimum qualification, the internal auditor shall be a certified
16 public accountant with at least three years' experience as an
17 auditor. The Internal Auditor shall develop an internal audit
18 plan, with Board approval, for the testing of procedures,
19 internal controls and the security of transactions.

20 (e) The Board shall retain one employee with a chartered
21 financial analyst designation or an employee who is a certified
22 treasury manager.

23 (f) Each director shall give a separate fiduciary or surety
24 bond from a surety company qualified to do business within this
25 state in a penalty amount of one million dollars for the faithful
26 performance of his or her duties as a director. The Board shall
27 purchase a blanket bond for the faithful performance of its
28 duties in the amount of fifty million dollars or in an amount
29 equivalent to one percent of the assets under management,
30 whichever is greater. The amount of the blanket bond is in
31 addition to the one million dollar individual bond required of
32 each director by the provisions of this section. The Board may

33 require a fiduciary or surety bond from a surety company
34 qualified to do business in this state for any person who has
35 charge of, or access to, any securities, funds or other moneys
36 held by the Board and the amount of the fiduciary or surety
37 bond are fixed by the Board. The premiums payable on all
38 fiduciary or surety bonds are expenses of the Board.

39 (g) The Directors, employees of the Board and employees
40 of the State Treasurer performing work for or on behalf of the
41 Board are not liable personally, either jointly or severally, for
42 any debt or obligation created by the Board: *Provided*, That the
43 Directors and employees of the Board are liable for acts of
44 misfeasance or gross negligence.

45 (h) The Board is exempt from the provisions of article
46 three, chapter five-a, and sections seven and eleven, article
47 three, chapter twelve of this code. However, the Board is
48 subject to the purchasing policies and procedures of the State
49 Treasurer's Office.

§12-6C-8. Administration of Consolidated Fund.

1 (a) In the administration of the Consolidated Fund contin-
2 ued by this article, the Board may:

3 (1) Purchase, retain, hold, transfer and exchange and sell,
4 at public or private sale, the whole or any part of the Fund or
5 pools upon any terms and conditions it considers advisable;

6 (2) Invest and reinvest the fund and pools or any part
7 thereof in fixed income securities as provided in this article;

8 (3) Carry the securities and other property held in trust
9 either in the name of the Board or in the name of its nominee;

10 (4) Vote, in person or by proxy, all securities held; join in
11 or dissent from and oppose the reorganization, recapitalization,

12 consolidation, merger, liquidation or sale of corporations or
13 property; exchange securities for other securities issued in
14 connection with or resulting from any transaction; pay any
15 assessment or expense which the Board considers advisable for
16 the protection of its interest as holder of the securities; exercise
17 any option appurtenant to any securities for the conversion of
18 any securities into other securities; and exercise or sell any
19 rights issued upon or with respect to the securities of any
20 corporation, all upon terms the Board considers advisable;

21 (5) Prosecute, defend, compromise, arbitrate or otherwise
22 adjust or settle claims in favor of or against the board or a
23 director;

24 (6) Employ and pay from the Fund any investment advisors,
25 brokers, counsel, managers and any other assistants and agents
26 the Board considers advisable;

27 (7) Develop, implement and modify an asset allocation plan
28 and investment policy for each fund or pool; and

29 (8) Create a local government investment pool, a program
30 to purchase certificates of deposit from West Virginia financial
31 institutions that are state depositories and any funds, pools or
32 participant accounts needed.

33 (b) All income and earnings are free from anticipation,
34 alienation, assignment or pledge by, and free from attachment,
35 execution, appropriation or control by or on behalf of, any and
36 all creditors of any beneficiary by any proceeding at law, in
37 equity, in bankruptcy or insolvency.

38 (c) The Board shall render an annual accounting not more
39 than one hundred twenty days following the close of the fiscal
40 year.

§12-6C-9. Asset allocation; investment policies, authorized investments; restrictions.

1 (a) The Board shall develop, adopt, review or modify an
2 asset allocation plan for the Consolidated Fund at each annual
3 board meeting.

4 (b) The Board shall adopt, review, modify or cancel the
5 investment policy of each fund or pool created at each annual
6 board meeting. For each participant directed account autho-
7 rized by the State Treasurer, staff of the Board shall develop an
8 investment policy for the account and create the requested
9 account. The Board shall review all existing participant
10 directed accounts and investment policies at its annual meeting
11 for modification.

12 (c) The Board shall consider the following when adopting,
13 reviewing, modifying or canceling investment policies:

14 (1) Preservation of capital;

15 (2) Risk tolerance;

16 (3) Credit standards;

17 (4) Diversification;

18 (5) Rate of return;

19 (6) Stability and turnover;

20 (7) Liquidity;

21 (8) Reasonable costs and fees;

22 (9) Permissible investments;

23 (10) Maturity ranges;

- 24 (11) Internal controls;
- 25 (12) Safekeeping and custody;
- 26 (13) Valuation methodologies;
- 27 (14) Calculation of earnings and yields;
- 28 (15) Performance benchmarks and evaluation; and
- 29 (16) Reporting.

30 (d) No security may be purchased by the Board unless the
31 type of security is on a list approved at a board meeting. The
32 Board shall review the list at its annual meeting.

33 (e) Notwithstanding the restrictions which are otherwise
34 provided by law with respect to the investment of funds, the
35 Board and all participants, now and in the future, may invest
36 funds in these securities:

37 (1) Obligations of, or obligations that are insured as to
38 principal and interest by, the United States of America or any
39 agency or corporation thereof and obligations and securities of
40 the United States sponsored enterprises, including, without
41 limitation:

- 42 (i) United States Treasury;
- 43 (ii) Export-Import Bank of the United States;
- 44 (iii) Farmers Home Administration;
- 45 (iv) Federal Farm Credit Banks;
- 46 (v) Federal Home Loan Banks;
- 47 (vi) Federal Home Loan Mortgage Corporation;

- 48 (vii) Federal Land Banks;
- 49 (viii) Government National Mortgage Association;
- 50 (ix) Merchant Marine bonds; and
- 51 (x) Tennessee Valley Authority Obligations.
- 52 (2) Obligations of the Federal National Mortgage Associa-
53 tion;
- 54 (3) Commercial paper with one of the two highest commer-
55 cial paper credit ratings by a nationally recognized investment
56 rating firm;
- 57 (4) Corporate debt rated in one of the six highest rating
58 categories by a nationally recognized rating agency;
- 59 (5) State and local government, or any instrumentality or
60 agency thereof, securities with one of the three highest ratings
61 by a nationally recognized rating agency;
- 62 (6) Repurchase agreements involving the purchase of
63 United States Treasury securities and repurchase agreements
64 fully collateralized by obligations of the United States govern-
65 ment or its agencies or instrumentalities;
- 66 (7) Reverse repurchase agreements involving the purchase
67 of United States Treasury securities and reverse repurchase
68 agreements fully collateralized by obligations of the United
69 States government or its agencies or instrumentalities;
- 70 (8) Asset-backed securities rated in the highest category by
71 a nationally recognized rating agency, but excluding mortgage-
72 backed securities; and
- 73 (9) Investments in accordance with the Linked Deposit
74 Program, a program using financial institutions in West

75 Virginia to obtain certificates of deposit, loans approved by the
76 Legislature and any other programs authorized by the Legisla-
77 ture.

78 (f) In addition to the restrictions and conditions contained
79 in this section:

80 (1) At no time shall more than seventy-five percent of the
81 Consolidated Fund be invested in any bond, note, debenture,
82 commercial paper or other evidence of indebtedness of any
83 private corporation or association;

84 (2) At no time shall more than five percent of the Consoli-
85 dated Fund be invested in securities issued by a single private
86 corporation or association; and

87 (3) At no time shall less than fifteen percent of the Consoli-
88 dated Fund be invested in any direct obligation of or obligation
89 guaranteed as to the payment of both principal and interest by
90 the United States of America.

**§12-6C-10. Investment authority for Consolidated Fund trans-
ferred to Board; exceptions.**

1 Effective the first day of July, two thousand and five, all
2 duties vested by law in state spending units and the West
3 Virginia Investment Management Board relating to the Consoli-
4 dated Fund are transferred to the Board, including without
5 limitation the investment of moneys, and the acquisition, sale,
6 exchange or disposal of securities or any other investment:
7 *Provided*, That neither this section nor any other section of this
8 article applies to the “board of the school fund” and the “school
9 fund” established by section 4, article XII of the State Constitu-
10 tion: *Provided, however*, That the municipal bond commission
11 may make funds under its control available to the board for
12 investment.

§12-6C-11. Legislative findings; loans for industrial development; availability of funds and interest rates.

1 (a) The Legislature finds and declares that the citizens of
2 the state benefit from the creation of jobs and businesses within
3 the state; that business and industrial development loan pro-
4 grams provide for economic growth and stimulation within the
5 state; that loans from pools established in the Consolidated
6 Fund will assist in providing the needed capital to assist
7 business and industrial development; and that time constraints
8 relating to business and industrial development projects prohibit
9 duplicative review by both the Board and West Virginia
10 Economic Development Authority Board. The Legislature
11 further finds and declares that an investment in the West
12 Virginia Enterprise Capital Fund, LLC, of moneys in the
13 Consolidated Fund as hereinafter provided will assist in
14 creating jobs and businesses within the state and provide the
15 needed risk capital to assist business and industrial develop-
16 ment. This section is enacted in view of these findings.

17 (b) The West Virginia Board of Treasury Investments shall
18 make available, subject to a liquidity determination, in the form
19 of a revolving loan, up to one hundred seventy-five million
20 dollars from the Consolidated Fund to loan the West Virginia
21 Economic Development Authority for business or industrial
22 development projects authorized by section seven, article
23 fifteen, chapter thirty-one of this code and to consolidate
24 existing loans authorized to be made to the West Virginia
25 Economic Development Authority pursuant to this section and
26 pursuant to section twenty, article fifteen, chapter thirty-one of
27 this code which authorizes a one hundred seventy-five million
28 dollar revolving loan and article eighteen-b, chapter thirty-one
29 of this code which authorizes a fifty million dollar investment
30 pool: *Provided*, That the West Virginia Economic Develop-
31 ment Authority may not loan more than fifteen million dollars
32 for any one business or industrial development project. The

33 revolving loan authorized by this subsection shall be secured by
34 one note at a variable interest rate equal to the twelve-month
35 average of the board's yield on its cash liquidity pool. The rate
36 shall be set on the first day of July and adjusted annually on the
37 same date. The maximum annual adjustment may not exceed
38 one percent. Monthly payments made by the West Virginia
39 Economic Development Authority to the Board shall be
40 calculated on a one hundred twenty-month amortization. The
41 revolving loan is secured by a security interest that pledges and
42 assigns the cash proceeds of collateral from all loans under this
43 revolving loan pool. The West Virginia Economic Develop-
44 ment Authority may also pledge as collateral certain revenue
45 streams from other revolving loan pools which source of funds
46 does not originate from federal sources or from the Board.

47 (c) The outstanding principal balance of the revolving loan
48 from the Board to the West Virginia Economic Development
49 Authority may at no time exceed one hundred three percent of
50 the aggregate outstanding principal balance of the business and
51 industrial loans from the West Virginia Economic Development
52 Authority to economic development projects funded from this
53 revolving loan pool. The independent audit of the West
54 Virginia Economic Development Authority financial records
55 shall annually certify that one hundred three-percent require-
56 ment.

57 (d) The interest rates and maturity dates on the loans made
58 by the West Virginia Economic Development Authority for
59 business and industrial development projects authorized by
60 section seven, article fifteen, chapter thirty-one of this code
61 shall be at competitive rates and maturities as determined by the
62 West Virginia Economic Development Authority Board.

63 (e) Any and all outstanding loans made by the West
64 Virginia Board of Treasury Investments, or any predecessor
65 entity, to the West Virginia Economic Development Authority

66 are refundable by proceeds of the revolving loan contained in
67 this section and the Board shall make no loans to the West
68 Virginia Economic Development Authority pursuant to section
69 twenty, article fifteen, chapter thirty-one of this code or article
70 eighteen-b of said chapter.

71 (f) The Directors of the Board shall bear no fiduciary
72 responsibility with regard to any of the loans contemplated in
73 this section.

74 (g) Subject to cash availability, the Board shall make
75 available to the West Virginia Economic Development Author-
76 ity, from the Consolidated Fund, a nonresource loan in an
77 amount up to twenty-five million dollars, for the purpose of the
78 West Virginia Economic Development Authority making a loan
79 or loans from time to time to the West Virginia Enterprise
80 Advancement Corporation, an affiliated nonprofit corporation
81 of the West Virginia Economic Development Authority. The
82 respective loans authorized by this subsection by the Board to
83 the West Virginia Economic Development Authority to the
84 West Virginia Enterprise Advancement Corporation shall each
85 be evidenced by one note and shall each bear interest at the rate
86 of three percent per annum. The proceeds of any and all loans
87 made by the West Virginia Economic Development Authority
88 to the West Virginia Enterprise Advancement Corporation
89 pursuant to this subsection shall be invested by the West
90 Virginia Enterprise Corporation in the West Virginia Enterprise
91 Capital Fund, LLC, the manager of which is the West Virginia
92 Enterprise Advancement Corporation. The loan to West
93 Virginia Economic Development Authority authorized by this
94 subsection shall be nonrevolving, and advances under the loan
95 shall be made at times and in amounts requested or directed by
96 the West Virginia Economic Development Authority, upon
97 reasonable notice to the Board. The loan authorized by this
98 subsection is not subject to or included in the limitations set
99 forth in subsection (b) of this section with respect to the fifteen

100 million-dollar limitation for any one business or industrial
101 development project and limitation of one hundred three
102 percent of outstanding loans, and may not be included in the
103 revolving fund loan principal balance for purposes of calculat-
104 ing the loan amortization in subsection (b) of this section. The
105 loan authorized by this subsection to the West Virginia Eco-
106 nomic Development Authority shall be classified by the Board
107 as a long-term fixed income investment, shall bear interest on
108 the outstanding principal balance of the loan at the rate of three
109 percent per annum payable annually on or before the thirtieth
110 day of June of each year, and the principal of which shall be
111 repaid no later than the thirtieth day of June, two thousand
112 twenty-two, in annual installments due on or before the thirtieth
113 day of June of each year. The annual installments, which need
114 not be equal shall commence no later than the thirtieth day of
115 June, two thousand five, in annual principal amounts agreed
116 upon between the Board and the West Virginia Economic
117 Development Authority. The loan authorized by this subsection
118 shall be nonrecourse and shall be payable by the West Virginia
119 Economic Development Authority solely from amounts or
120 returns received by the West Virginia Economic Development
121 Authority in respect of the loan authorized by this subsection to
122 the West Virginia Enterprise Advancement Corporation,
123 whether in the form of interest, dividends, realized capital
124 gains, return of capital or otherwise, in all of which the Board
125 shall have a security interest to secure repayment of the loan to
126 the West Virginia Economic Development Authority authorized
127 by this subsection. Any and all loans from the West Virginia
128 Enterprise Advancement Corporation made pursuant to this
129 subsection shall also bear interest on the outstanding principal
130 balance of the loan at the rate of three percent per annum
131 payable annually on or before the thirtieth day of June of each
132 year, shall be nonrecourse and shall be payable by the West
133 Virginia Enterprise Advancement Corporation solely from
134 amounts of returns received by the West Virginia Enterprise
135 Advancement Corporation in respect to its investment in the

136 West Virginia Enterprise Capital Fund, LLC, whether in the
137 form of interest, dividends, realized capital gains, return of
138 capital or otherwise, in all of which that Board shall have a
139 security interest to secure repayment of the loan to the West
140 Virginia Economic Development Authority authorized by this
141 subsection. In the event the amounts or returns received by the
142 West Virginia Enterprise Corporation in respect to its invest-
143 ment in the West Virginia Enterprise Capital Fund, LLC, are
144 not adequate to pay when due the principal or interest install-
145 ments, or both, with respect to the loan authorized by this
146 subsection by the Board to the West Virginia Economic
147 Development Authority, the principal or interest, or both, as the
148 case may be, due on the loan made to the West Virginia
149 Economic Development Authority pursuant to this subsection
150 shall be deferred and any and all past-due principal and interest
151 payments shall promptly be paid to the fullest extent possible
152 upon receipt by the West Virginia Enterprise Advancement
153 Corporation of moneys in respect to its investments in the West
154 Virginia Enterprise Capital Fund, LLC. The Directors or the
155 Board shall bear no fiduciary responsibility as provided in
156 section thirteen of this article with regard to the loan authorized
157 by this subsection.

§12-6C-12. Securities handling.

1 In financial transactions whereby securities are purchased
2 by the Board under an agreement providing for the resale of the
3 securities to the original seller at a stated price, the Board shall
4 take physical possession of the securities, directly, by its
5 custodian bank or through a neutral third party: *Provided*, That
6 an agreement with a neutral third party may not waive liability
7 for the handling of the securities: *Provided, however*, That
8 when the board is unable to take possession, directly, by its
9 custodian bank or through a mutual third party, the Board may
10 leave securities in a segregated account with the original seller,
11 provided the amount of the securities with any one seller may
12 not exceed one hundred fifty million dollars.

§12-6C-13. Standard of care.

1 (a) The Uniform Prudent Investor Act, codified in article
2 six-c, chapter forty-four of this code, is the standard for any
3 investments made under this article. Investments are further
4 subject to the following:

5 (1) The directors shall diversify fund investment so as to
6 minimize the risk of large losses unless, under the circum-
7 stances, it is clearly prudent not to do so;

8 (2) The directors shall defray reasonable expenses of
9 investing and managing the Consolidated Fund by charging fees
10 as provided in this article; and

11 (3) The directors shall discharge their duties in accordance
12 with the documents and instruments consistent with the
13 provisions of this article.

14 (b) The duties of the directors apply only with respect to
15 those assets deposited with or otherwise held by the Board.

§12-6C-14. Existing investments.

1 The Investments Management Board shall transfer the cash,
2 securities and other investments of the Consolidated Fund it
3 holds, maintains or administers to the West Virginia Board of
4 Treasury investments on the first day of July, two thousand
5 five, which will lawfully vest the West Virginia Board of
6 Treasury Investments with ownership of all securities or other
7 investments of the Consolidated Fund.

§12-6C-15. Annual audits; financial statements; information.

1 (a) The Board shall have an annual financial and compli-
2 ance audit of the assets, funds, pools and participant accounts
3 managed by the Board made by a certified public accounting

4 firm which has a minimum staff of ten certified public accountants and which is a member of the American Institute of Certified Public Accountants and, if doing business in West Virginia, a member of the West Virginia Society of Certified Public Accountants. The Board shall have financial and compliance audits of the Board's books, accounts and records with respect to its receipts, disbursements, investments, contracts and all other matters relating to its financial operations completed annually.

13 (b) The Board shall produce monthly financial statements for the assets managed by the Board and send them to each member of the Board and provide copies as reasonably requested.

17 (c) Each quarter the Board shall deliver a report for the prior quarter to the Council of Finance and Administration.

19 (d) The Board shall contract with an investment consulting or a certified public accounting firm meeting the criteria set out in subsection (a) of this section for an annual audit of the reported returns of the assets managed by the Board.

23 (e) The Board shall prepare an annual report detailing all fees charged by the Board under this article. The Board shall furnish copies of the report to the Legislative Joint Committee on Government and Finance.

27 (f) Unless specifically otherwise stated, copies of the reports required in this section shall be furnished to the Board, Governor, President of the Senate, Speaker of the House of Delegates, Council of Finance and Administration, Legislative Librarian and upon request to any legislator, legislative committee, financial institution, member of the media and the public.

34 (g) The Board shall provide any other information re-
35 quested in writing by the Council of Finance and Administra-
36 tion or any member of the Legislature.

§12-6C-16. Reports to participants.

1 (a) On a monthly basis, the Board shall timely provide the
2 State Treasurer with information to enable the State Treasurer
3 to provide an itemized statement of a spending unit's or other
4 participant's account in the Consolidated Fund to each state
5 spending unit and any other entity investing moneys in the
6 Consolidated Fund. The statement shall include the beginning
7 balance, contributions, withdrawals, income distributed, change
8 in value and ending balance.

9 (b) The Board shall prepare annually, or more frequently if
10 determined necessary by the Board, a report of its operations
11 and the performance of the various funds, pools and participant
12 accounts administered by it. The Board shall furnish copies of
13 the report to each participant, the President of the Senate,
14 Speaker of the House of Delegates, Legislative Auditor, and
15 upon request to any legislative committee, any legislator, any
16 banking institution or state or federal savings and loan associa-
17 tion in this state and any member of the news media. The
18 Board shall also keep the reports available for inspection by any
19 citizen of this state.

§12-6C-17. Legal status of spending units continued.

1 Except as otherwise provided in this article, every state
2 spending unit shall retain all of the powers and shall exercise all
3 of the functions and duties vested in or imposed upon it by law,
4 as to any fund or account.

§12-6C-18. Authorization for loans by the Board.

1 (a) Any loan made from the Consolidated Fund by a
2 predecessor entity shall remain in existence and in accordance
3 with the terms and conditions of the loan.

4 (b) The Board shall continue the work of the Investment
5 Management Board in taking the steps necessary to increase the
6 liquidity of the Consolidated Fund to allow for any loans
7 authorized by the Legislature without increasing the risk of loss.

**§12-6C-19. Creation of fee account and investment account;
budget.**

1 (a) The Board may charge fees, which are subtracted from
2 the total return on investments, for the reasonable and necessary
3 expenses incurred by the Board in rendering services. All fees
4 collected shall be deposited in a special account in the State
5 Treasury created and designated the Board of Treasury Invest-
6 ments Fee Fund. Expenditures from the Fund shall be for the
7 purposes set forth in this article and are not authorized from
8 collections, but are to be made only in accordance with appro-
9 priation by the Legislature, in accordance with the provisions
10 of article three, chapter twelve of this code and upon the
11 fulfillment of the provisions set forth in article two, chapter
12 eleven-b of this code: *Provided*, That for the fiscal year ending
13 the thirtieth day of June, two thousand six, expenditures are
14 authorized from collections rather than pursuant to an appropri-
15 ation by the Legislature.

16 (b) There is created in the State Treasury a special account
17 designated the Board of Treasury Investments Investment Fund
18 for use in receiving funds for investment, disbursing funds from
19 investments and processing investment transactions.

20 (c) All fees dedicated, identified or readily identifiable to an
21 entity, fund, pool or participant account shall be charged to that
22 entity, fund, pool or participant account and all other fees shall
23 be charged as a percentage of assets under management. At its

24 annual meeting, the Board shall adopt a fee schedule and a
25 budget reflecting fee schedules.

§12-6C-20. Termination of board.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the West Virginia Board of Treasury Investments shall
3 continue to exist until the first day of July, two thousand ten.

CHAPTER 191

(H. B. 2939 — By Delegates Ron Thompson and Perry)

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §12-1-12b; to amend and reenact §12-3A-3 of said code; and to amend and reenact §44-1-28, all relating generally to the administration of moneys held by the state; establishing specific authorization for the State Treasurer to continue as the authorized official and representative as part of the cash management duties; allowing the Auditor and Treasurer to accept electronic submittal of documents without certification, notarization or verification under certain circumstances; and authorizing the Treasurer to remit property to heirs under certain circumstances and establishing effect of such remittance.

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 §12-1-12b; that §12-3A-3

of said code be amended and reenacted; and that §44-1-28 of said code be amended and reenacted, all to read as follows:

Chapter

12. Public Moneys and Securities.

44. Administration of Estates and Trusts.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

Article

1. State Depositories.

3A. Financial Electronic Commerce.

ARTICLE 1. STATE DEPOSITORIES.

§12-1-12b. Cash Management Improvement Act; administration; reports.

1 (a) The Cash Management Improvement Act of 1990,
2 Public Law 101-453, October 24, 1990, 31 U.S.C. Section 6501
3 et. seq. (CMIA) and regulations, as amended, establishes
4 requirements and techniques, including calculations, for the
5 receipt and disbursement of federal funds by states. The
6 authorized official and representative of the State of West
7 Virginia for the CMIA is the State Treasurer.

8 (b) In administering the CMIA, the State Treasurer is
9 authorized to do all things reasonably necessary, including
10 without limitation, entering into agreements with, negotiating
11 settlements with, refunding any interest due and satisfying any
12 liability to the United States Treasury in accordance with the
13 CMIA.

14 (c) Periodically, the State Treasurer shall transfer to the
15 "Federal Cash Management Fund", which is hereby authorized
16 and continued, earnings on the State General Revenue Fund in
17 an amount the Treasurer estimates is needed to make refunds in
18 accordance with the CMIA. After each annual settlement with
19 the United States Treasury, the State Treasurer shall transfer to

20 the State General Revenue Fund any moneys remaining in the
21 Federal Cash Management Interest Fund for the period just
22 settled.

23 (d) The State Treasurer shall also transfer periodically to
24 the "Federal Cash Management - Administration Fund," which
25 is hereby authorized and continued, earnings on the State
26 General Revenue Fund in an amount the Treasurer determines
27 is needed to pay for the costs of administering the CMIA. The
28 State Treasurer may pay the costs he or she incurs in adminis-
29 tering the CMIA from the Federal Cash Management-Adminis-
30 tration Fund.

31 (e) All state spending units shall cooperate fully with the
32 State Treasurer in accumulating all the necessary data elements
33 to fully comply with the CMIA.

34 (f) The State Treasurer shall send quarterly reports on the
35 activities involving the CMIA to the Governor, Auditor,
36 Secretary of Revenue and Joint Committee on Government and
37 Finance.

ARTICLE 3A. FINANCIAL ELECTRONIC COMMERCE.

§12-3A-3. Financial electronic commerce.

1 The State Auditor and the State Treasurer shall implement
2 electronic commerce capabilities for each of their offices to
3 facilitate the performance of their duties under this code. The
4 State Treasurer shall competitively bid the selection of vendors
5 needed to provide the necessary banking, investment and
6 related goods and services, and the provisions of article one-b,
7 chapter five, and articles three and seven, chapter five-a of this
8 code shall not apply, unless requested by the State Auditor or
9 State Treasurer.

10 A record, an authentication, a document or a signature
11 received, issued or used by the Auditor or the Treasurer shall be

12 considered an original and may not be denied legal effect on the
13 ground that it is in electronic form. The Auditor and Treasurer
14 may accept a document for the receipt or disbursements of
15 moneys requiring certification, notarization or verification in an
16 electronic format without the certification, notarization or
17 verification.

18 The head of each spending unit is responsible for adopting
19 and implementing security procedures to ensure adequate
20 integrity, security, confidentiality, and auditability of the
21 business transactions of his or her spending unit when utilizing
22 electronic commerce.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-28. Payment of small sums due employees to distributees of decedents upon whose estates there have been no qualifications.

1 (a) When there is due from the State of West Virginia, any
2 of its political subdivisions, the United States, or any employer,
3 as pension or money allowed for burial expenses, or money,
4 wages or salary due from any employer to a deceased em-
5 ployee, upon whose estate there has been no qualification, a
6 sum of not exceeding one thousand dollars, it shall be lawful for
7 the State of West Virginia, any of its political subdivisions, the
8 United States, or such employer, after one hundred and twenty
9 days from the death of said person to whom such money is due,
10 to pay said sum to his or her surviving consort, if any; if none
11 such, then to the distributees of the said decedent under the laws
12 of the State of West Virginia, whose receipt therefor shall be a
13 full discharge and acquittance to all persons whomsoever on
14 account of such sum.

15 (b) When the State Treasurer holds property in accordance
16 with article eight, chapter thirty-six of this code on behalf of a
17 decedent whose estate has no qualification or is closed and the
18 amount of the property is five thousand dollars or less, the
19 Treasurer may remit the property to the surviving spouse of the
20 decedent, if any; and if no spouse survives the decedent, then to
21 the distributees of the decedent under the laws of the State of
22 West Virginia. Payment in accordance with this section is in
23 full discharge and acquittance to all persons whomsoever on
24 account of the property.

CHAPTER 192

(Com. Sub. for S. B. 348 — By Senator Tomblin, Mr. President)

[Passed April 9, 2005; in effect July 1, 2005.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §12-4-14 of the Code of West Virginia, 1931, as amended, relating to persons who receive state grants; providing definitions; clarifying when reports of state grants are required; providing consequences for not complying with reporting requirements; providing the withholding of state grants or funds; providing for the debarment from future state grants under certain circumstances; requiring state agencies who administer state grants to have additional duties under certain circumstances; removing filing fees for volunteer fire departments; and providing criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §12-4-14 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. Accountability of persons receiving state funds or grants; sworn statements by volunteer fire departments; criminal penalties.

1 (a) For the purposes of this section:

2 (1) "Grantor" means a state spending unit awarding a state
3 grant.

4 (2) "Person" includes any corporation, partnership,
5 association, individual or other legal entity. The term "person"
6 does not include a state spending unit or a local government as
7 defined in section one-a, article nine, chapter six of this code.

8 (3) "Report" means a compliance attestation engagement,
9 performed and prepared by a certified public accountant to test
10 whether state grants were spent as intended. The term "report"
11 does not mean a full-scope audit or review of the person
12 receiving state funds.

13 (4) "State grant" means funding provided by a state
14 spending unit to a person upon application for a specific
15 purpose. The term "state grant" does not include: (A) Pay-
16 ments for goods and services purchased by a state spending
17 unit; (B) compensation to state employees and public officials;
18 (C) reimbursements to state employees and public officials for
19 travel or incidental expenses; (D) grants of student aid; (E)
20 government transfer payments; (F) direct benefits provided
21 under state insurance and welfare programs; and (G) retirement
22 benefits. The term "state grant" does include formula distribu-
23 tions to volunteer and part-volunteer fire departments made
24 pursuant to sections fourteen-d and thirty-three, article three,
25 chapter thirty-three of this code and section sixteen-a, article
26 twelve of said chapter.

27 (b)(1) Any person who receives one or more state grants in
28 the amount of twenty-five thousand dollars or more in the
29 aggregate in a calendar year shall file with the grantor a report
30 of the disbursement of state grant funds.

31 (2) The report required by subdivision (1) of this subsection
32 shall be filed within two years of the end of the calendar
33 year in which the disbursement of state grant funds by the
34 grantor was made. The report shall be made by an independent
35 certified public accountant at the cost of the person receiving
36 the state grant. The scope of the report is limited to showing
37 that the state grant funds were spent for the purposes intended
38 when the grant was made.

39 (c)(1) Any person failing to file a required report within the
40 two-year period provided in subdivision (2), subsection (b) of
41 this section for any state grant funds disbursed after the first
42 day of July, two thousand three, is barred from subsequently
43 receiving state grants until the person has filed the report and
44 is otherwise in compliance with the provisions of this section.

45 (2) Any grantor of a state grant shall report any persons
46 failing to file a required report within the required time period
47 provided in subdivision (2), subsection (b) of this section for
48 any state grant disbursed after the first day of July, two
49 thousand three, to the Legislative Auditor for purposes of
50 debarment from receiving state grants.

51 (d)(1) The state agency administering the state grant shall
52 notify the grantee of the reporting requirements set forth in this
53 section.

54 (2) Any state agency administering a state grant shall, in
55 the manner designated by the Legislative Auditor, notify the
56 Legislative Auditor of the amount of funds to be disbursed, the
57 identity of the person authorized to receive the funds and the

58 purpose and nature of the state grant within thirty days of
59 making the state grant or authorizing the disbursement of the
60 funds: *Provided*, That if the state grant was awarded prior to
61 the effective date of the amendment and reenactment of this
62 section in the year two thousand five, the grantor shall provide
63 the information required by this section within ninety days of
64 the effective date.

65 (3) All grantors making state grants that would be subject
66 to the report requirements of this section shall, prior to award-
67 ing a state grant, take reasonable actions to verify that the
68 person is not barred from receiving state grants pursuant to this
69 section. The verification process shall, at a minimum, include:

70 (A) A requirement that the person seeking the state grant
71 provide a sworn statement from an authorized representative
72 that the person has filed all reports for state grants received as
73 required under this section; and

74 (B) Confirmation from the Legislative Auditor by the
75 grantor that the person has not been identified as one who has
76 failed to file a report under this section. Confirmation may be
77 accomplished by accessing the computerized database provided
78 in subdivision (4) of this subsection.

79 (4) The Legislative Auditor shall maintain a list identifying
80 persons who have failed to file reports required by this section.
81 The list may be in the form of a computerized database that
82 may be accessed by state agencies over the Internet.

83 (e) If any report performed pursuant to the requirements of
84 this section provides evidence of a reportable condition or
85 violation, the grantor shall provide a copy of the report to the
86 Legislative Auditor within thirty days of receipt by the grantor.

87 (f) The grantor shall maintain copies of reports required by
88 this section and make the reports available for public inspec-

89 tion, as well as for use in audits and performance reviews of the
90 grantor.

91 (g) Reports of state grants not required under the provi-
92 sions of this section may be authorized by the Joint Committee
93 on Government and Finance to be conducted by the Legislative
94 Auditor at no cost to the grantee.

95 (h)(1) Volunteer and part-volunteer fire departments may
96 satisfy the report requirements of this section by submitting a
97 sworn statement of annual expenditures to the Legislative
98 Auditor on or before the fourteenth day of February of each
99 year. The sworn statement of expenditures shall be signed by
100 the chief or director of the volunteer fire department and shall
101 be made under oath and acknowledged before a notary public.

102 (2) If the sworn statement is not submitted on or before the
103 fifteenth day of May, unless the time period is extended by the
104 Legislative Auditor, the Legislative Auditor may conduct a
105 report of the volunteer or part-volunteer fire department.

106 (3) If the sworn statement of annual expenditures is not
107 filed with the Legislative Auditor by the first day of July,
108 unless the time period is extended by the Legislative Auditor,
109 the Legislative Auditor shall notify the State Treasurer who
110 shall withhold payment of any amount that would otherwise be
111 distributed to the fire department under the provisions of
112 sections fourteen-d and thirty-three, article three, chapter
113 thirty-three of this code and section sixteen-a, article twelve of
114 said chapter until the report is complete. Moneys withheld
115 pursuant to this subdivision are to be deposited in the special
116 revenue account created in the State Treasury in subdivision
117 (4) of this subsection.

118 (4) The Legislative Auditor may assign an employee or
119 employees to perform audits or reviews at the direction of the

120 Legislative Auditor of the disbursement of state grant funds to
121 volunteer fire departments. The volunteer fire department shall
122 cooperate with the Legislative Auditor, the Legislative Audi-
123 tor's employees and the State Auditor in performing their
124 duties under this section. If the Legislative Auditor determines
125 a volunteer fire department is not cooperating, the Legislative
126 Auditor shall notify the State Treasurer who shall withhold
127 payment of any amount that would otherwise be distributed to
128 the fire department under the provisions of sections fourteen-d
129 and thirty-three, article three, chapter thirty-three of this code
130 and section sixteen-a, article twelve of said chapter until the
131 Legislative Auditor informs the Treasurer that the fire depart-
132 ment has cooperated as required by this section. The State
133 Treasurer shall pay the amount withheld into a special revenue
134 account hereby created in the State Treasury and designated the
135 "Volunteer Fire Department Audit Account". If, after one year
136 from payment of the amount withheld into the special revenue
137 account, the Legislative Auditor informs the State Treasurer of
138 continued noncooperation by the fire department, the State
139 Treasurer shall pay the amount withheld to the fund from
140 which it was distributed to be redistributed the following year
141 pursuant to the applicable provisions of those sections.

142 (5) Whenever the State Auditor performs an audit of a
143 volunteer fire department for any purpose the Auditor shall
144 also conduct an audit of other state funds received by the fire
145 department pursuant to sections fourteen-d and thirty-three,
146 article three, chapter thirty-three of this code and section
147 sixteen-a, article twelve of said chapter. The Auditor shall
148 send a copy of the audit to the Legislative Auditor. The
149 Legislative Auditor may accept an audit performed by the
150 Auditor in lieu of performing a report under this section.

151 (i) Any report submitted pursuant to the provisions of this
152 section may be filed electronically in accordance with the
153 provisions of article one, chapter thirty-nine-a of this code.

154 (j) Any person who files a fraudulent sworn statement of
155 expenditures under subsection (g) of this section, a fraudulent
156 sworn statement under subsection (d) of this section, or a
157 fraudulent report under this section is guilty of a felony and,
158 upon conviction thereof, shall be fined not less than one
159 thousand dollars nor more than five thousand dollars or
160 imprisoned in a state correctional facility for not less than one
161 year nor more than five years, or both fined and imprisoned.

CHAPTER 193

**(H. B. 3280 — By Delegates Staton, Browning, Pino,
Varner, Ennis, Yost and DeLong)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §16-13A-25 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24-2-11 of said code, all relating to modifying the review by the Public Service Commission of public convenience and necessity applications where the project has been approved by Infrastructure and Jobs Development Council; removing the necessity for public service districts to prefile with the Public Service Commission; providing for a waiver of thirty day notice requirement for projects approved by the Infrastructure and Jobs Development Council; providing that the Public Service Commission render a final decision on infrastructure and jobs development council approved applications; providing that infrastructure and jobs development council approved projects receiving a certificate of public convenience may not be compelled to reopen; and allowing electric power projects to apply for and receive certain licenses and permits.

Be it enacted by the Legislature of West Virginia:

That §16-13A-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-2-11 of said code be amended and reenacted, all to read as follows:

Chapter

16. Public Health.

24. Public Service Commission.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-25. Borrowing and bond issuance; procedure.

1 (a) Notwithstanding any other provisions of this article to
2 the contrary, a public service district may not borrow money,
3 enter into contracts for the provision of engineering, design or
4 feasibility studies, issue or contract to issue revenue bonds or
5 exercise any of the powers conferred by the provisions of
6 section thirteen, twenty or twenty-four of this article, without
7 the prior consent and approval of the Public Service Commis-
8 sion.

9 (b) The Public Service Commission may waive the provi-
10 sion of prior consent and approval for entering into contracts for
11 engineering, design or feasibility studies pursuant to this section
12 for good cause shown which is evidenced by the public service
13 district filing a request for waiver of this section stated in a
14 letter directed to the commission with a brief description of the
15 project, a verified statement by the board members that the
16 public service district has complied with chapter five-g of this
17 code, and further explanation of ability to evaluate their own
18 engineering contract, including, but not limited to:

19 (1) Experience with the same engineering firm; or

20 (2) Completion of a construction project requiring engineer-
21 ing services. The district shall also forward an executed copy of
22 the engineering contract to the commission after receiving
23 approval of the waiver.

24 (c) An engineering contract that meets one or more of the
25 following criteria is exempt from the waiver or approval
26 requirements:

27 (1) A contract with a public service district that is a Class
28 A utility on the first day of April, two thousand three, or
29 subsequently becomes a Class A utility as defined by commis-
30 sion rule;

31 (2) A contract with a public service district that does not
32 require borrowing and that can be paid out of existing rates;

33 (3) A contract where the payment of engineering fees are
34 contingent upon the receipt of funding, and commission
35 approval of the funding, to construct the project which is the
36 subject of the contract; or

37 (4) A contract that does not exceed fifteen thousand dollars.

38 (d) Requests for approval or waivers of engineering
39 contracts shall be deemed granted thirty days after the filing
40 date unless the staff of the Public Service Commission or a
41 party files an objection to the request. If an objection is filed,
42 the Public Service Commission shall issue its decision within
43 one hundred twenty days of the filing date. In the event
44 objection is received to a request for a waiver, the application
45 shall be considered a request for waiver as well as a request for
46 approval in the event a waiver is not appropriate.

47 (e) Unless the properties to be constructed or acquired
48 represent ordinary extensions or repairs of existing systems in
49 the usual course of business, a public service district must first
50 obtain a certificate of public convenience and necessity from

51 the Public Service Commission in accordance with the provi-
52 sions of chapter twenty-four of this code, when a public service
53 district is seeking to acquire or construct public service prop-
54 erty.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

***§24-2-11. Requirements for certificate of public convenience and necessity.**

1 (a) No public utility, person or corporation shall begin the
2 construction of any plant, equipment, property or facility for
3 furnishing to the public any of the services enumerated in
4 section one, article two of this chapter, nor apply for, nor obtain
5 any franchise, license or permit from any municipality or other
6 governmental agency, except ordinary extensions of existing
7 systems in the usual course of business, unless and until it shall
8 obtain from the Public Service Commission a certificate of
9 public convenience and necessity authorizing such construction
10 franchise, license or permit.

11 (b) Upon the filing of any application for such certificate,
12 and after hearing, the commission may, in its discretion, issue
13 or refuse to issue, or issue in part and refuse in part, such
14 certificate of convenience and necessity: *Provided*, That the
15 commission, after it gives proper notice and if no protest is
16 received within thirty days after the notice is given, may waive
17 formal hearing on the application. Notice shall be given by
18 publication which shall state that a formal hearing may be
19 waived in the absence of protest, made within thirty days, to the
20 application. The notice shall be published as a Class I legal
21 advertisement in compliance with the provisions of article

* CLERK'S NOTE: This section was also amended by H. B. 2813 (Chapter 194) which passed subsequent to this act.

22 three, chapter fifty-nine of this code. The publication area shall
23 be the proposed area of operation.

24 (c) Any public utility, person or corporation subject to the
25 provisions of this section shall give the commission at least
26 thirty days' notice of the filing of any such application for a
27 certificate of public convenience and necessity under this
28 section: *Provided*, That the commission may modify or waive
29 the thirty-day notice requirement and shall waive the thirty day
30 notice requirement for projects approved by the infrastructure
31 and jobs development council.

32 (d) The commission shall render its final decision on any
33 application filed under the provisions of this section or section
34 eleven-a of this article within two hundred seventy days of the
35 filing of the application and within ninety days after final
36 submission of any such application for decision following a
37 hearing.

38 (e) The commission shall render its final decision on any
39 application filed under the provisions of this section that has
40 received the approval of the Infrastructure and Jobs Develop-
41 ment Council pursuant to article fifteen-A of chapter thirty-one
42 of this code, within one hundred-eighty days after filing of the
43 application: *Provided*, That if a protest is received within thirty
44 days after the notice is provided pursuant to subsection (b), the
45 commission shall render its final decision within two hundred
46 seventy days of the filing of the application.

47 (f) If the projected total cost of a project which is the
48 subject of an application filed pursuant to this section or section
49 eleven-a of this article is greater than fifty million dollars, the
50 commission shall render its final decision on any such applica-
51 tion filed under the provisions of this section or section eleven-
52 a of this article within four hundred days of the filing of the
53 application and within ninety days after final submission of any
54 such application for decision after a hearing.

55 (g) If a decision is not rendered within the aforementioned
56 one hundred eighty-days, two hundred seventy days, four
57 hundred days or ninety days, the commission shall issue a
58 certificate of convenience and necessity as applied for in the
59 application.

60 (h) The commission shall prescribe such rules as it may
61 deem proper for the enforcement of the provisions of this
62 section; and, in establishing that public convenience and
63 necessity do exist, the burden of proof shall be upon the
64 applicant.

65 (i) Pursuant to the requirements of this section the commis-
66 sion may issue a certificate of public convenience and necessity
67 to any intrastate pipeline, interstate pipeline, or local distribu-
68 tion company for the transportation in intrastate commerce of
69 natural gas used by any person for one or more uses, as defined,
70 by rule, by the commission in the case of:

71 (1) Natural gas sold by a producer, pipeline or other seller
72 to such person; or

73 (2) Natural gas produced by such person.

74 (j) A public utility which has received a certificate of public
75 convenience and necessity from the commission and has been
76 approved by the infrastructure and jobs development council,
77 is not required to, and cannot be compelled to, reopen the
78 proceeding if the cost of the project changes but the change
79 does not effect the rates established for the project.

80 (k) Any public utility, person or corporation proposing any
81 electric power project that requires a certificate under this
82 section is not required to obtain such certificate before applying
83 for or obtaining any franchise, license or permit from any
84 municipality or other governmental agency.

CHAPTER 194

(H. B. 2813 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed April 5, 2005; in effect from passage.]
[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §24-2-11 of the Code of West Virginia, 1931, as amended, relating to requirements for certificate of public convenience and necessity; and removing the prohibition for electric power projects on applying for and obtaining franchises, licenses or permits prior to obtaining a certificate of public convenience and necessity from the Public Service Commission.

Be it enacted by the Legislature of West Virginia:

That §24-2-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

***§24-2-11. Requirements for certificate of public convenience and necessity.**

- 1 (a) No public utility, person or corporation shall begin the
- 2 construction of any plant, equipment, property or facility for
- 3 furnishing to the public any of the services enumerated in
- 4 section one, article two of this chapter nor apply for, nor obtain
- 5 any franchise, license or permit from any municipality or other

* **CLERK'S NOTE:** This section was also amended by H. B. 3280 (Chapter 193) which passed subsequent to this act.

6 governmental agency, except ordinary extensions of existing
7 systems in the usual course of business, unless and until it shall
8 obtain from the Public Service Commission a certificate of
9 public convenience and necessity authorizing such construction
10 franchise, license or permit. Upon the filing of any application
11 for such certificate, and after hearing, the Commission may, in
12 its discretion, issue or refuse to issue, or issue in part and refuse
13 in part, such certificate of convenience and necessity: *Provided,*
14 That the Commission, after it gives proper notice and if no
15 protest is received within thirty days after the notice is given,
16 may waive formal hearing on the application. Notice shall be
17 given by publication which shall state that a formal hearing may
18 be waived in the absence of protest, made within thirty days, to
19 the application. The notice shall be published as a Class I legal
20 advertisement in compliance with the provisions of article
21 three, chapter fifty-nine of this code. The publication area shall
22 be the proposed area of operation. Any public utility, person or
23 corporation subject to the provisions of this section shall give
24 the Commission at least thirty days' notice of the filing of any
25 such application for a certificate of public convenience and
26 necessity under this section: *Provided,* That the Commission
27 may modify or waive the thirty-day notice requirement. The
28 Commission shall render its final decision on any application
29 under the provisions of this section or section eleven-a of this
30 article within two hundred seventy days of the filing of the
31 application and within ninety days after final submission of any
32 such application for decision following a hearing: *Provided,*
33 *however,* That if the projected total cost of the project is greater
34 than fifty million dollars, the Commission shall render its final
35 decision on any such application filed under the provisions of
36 this section or section eleven-a of this article within four
37 hundred days of the filing of the application and within ninety
38 days after final submission of any such application for decision
39 after a hearing. If such decision is not rendered within the
40 aforementioned two hundred seventy days, four hundred days
41 or ninety days, the Commission shall issue a certificate of

42 convenience and necessity as applied for in the application. The
43 Commission shall prescribe such rules as it may deem proper
44 for the enforcement of the provisions of this section; and, in
45 establishing that public convenience and necessity do exist, the
46 burden of proof shall be upon the applicant.

47 (b) Pursuant to the requirements of subsection (a) of this
48 section the Commission may issue a certificate of public
49 convenience and necessity to any intrastate pipeline, interstate
50 pipeline, or local distribution company for the transportation in
51 intrastate commerce of natural gas used by any person for one
52 or more uses, as defined, by rule, by the Commission in the
53 case of:

54 (1) Natural gas sold by a producer, pipeline or other seller
55 to such person; or

56 (2) Natural gas produced by such person.

57 (c) Any public utility, person or corporation proposing any
58 electric power project that requires a certificate under this
59 section is not required to obtain such certificate before applying
60 for or obtaining any franchise, license or permit from any
61 municipality or other governmental agency.

CHAPTER 195

(H. B. 3045 — By Delegates Boggs and Browning)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §16-13A-2 of the Code of West Virginia, 1931, as amended, relating to the creation and modifica-

tion of public service districts; requiring the county commission to provide the Public Service Commission a copy of the order or petition seeking the creation, modification or dissolution of a public service district, as well as the time of the hearing to be held by the county commission; providing that the Public Service Commission may conduct a hearing in the affected county on the matter.

Be it enacted by the Legislature of West Virginia:

That §16-13A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

§16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the Secretary of State.

1 (a) The county commission of any county may propose the
2 creation, enlargement, reduction, merger, dissolution, or
3 consolidation of a public service district by any of the following
4 methods: (1) On its own motion by order duly adopted, (2)
5 upon the recommendation of the Public Service Commission,
6 or (3) by petition of twenty-five percent of the registered voters
7 who reside within the limits of the proposed public service
8 district within one or more counties. The petition shall contain
9 a description, including metes and bounds, sufficient to identify
10 the territory to be embraced therein and the name of such
11 proposed district: *Provided*, That after the effective date of this
12 section, no new public service district shall be created, en-
13 larged, reduced, merged, dissolved or consolidated under this
14 section without the written consent and approval of the Public

15 Service Commission, which approval and consent shall be in
16 accordance with rules promulgated by the Public Service
17 Commission and may only be requested after consent is given
18 by the appropriate county commission or commissions pursuant
19 to this section. Any territory may be included regardless of
20 whether or not the territory includes one or more cities,
21 incorporated towns or other municipal corporations which own
22 and operate any public service properties and regardless of
23 whether or not it includes one or more cities, incorporated
24 towns or other municipal corporations being served by privately
25 owned public service properties: *Provided, however,* That the
26 same territory shall not be included within the boundaries of
27 more than one public service district except where the territory
28 or part thereof is included within the boundaries of a separate
29 public service district organized to supply water, sewerage
30 services, stormwater services or gas facilities not being fur-
31 nished within such territory or part thereof: *Provided further,*
32 That no city, incorporated town or other municipal corporation
33 shall be included within the boundaries of the proposed district
34 except upon the adoption of a resolution of the governing body
35 of the city, incorporated town or other municipal corporation
36 consenting.

37 (b) The petition shall be filed in the office of the clerk of
38 the county commission of the county in which the territory to
39 constitute the proposed district is situated, and if the territory is
40 situated in more than one county, then the petition shall be filed
41 in the office of the clerk of the county commission of the
42 county in which the major portion of the territory extends, and
43 a copy thereof (omitting signatures) shall be filed with each of
44 the clerks of the county commission of the other county or
45 counties into which the territory extends. The clerk of the
46 county commission receiving such petition shall present it to
47 the county commission of the county at the first regular meeting

48 after the filing or at a special meeting called for the consider-
49 ation thereof.

50 (c) When the county commission of any county enters an
51 order on its own motion proposing the creation, enlargement,
52 reduction, merger, dissolution or consolidation of a public
53 service district, as aforesaid, or when a petition for the creation
54 is presented, as aforesaid, the county commission shall at the
55 same session fix a date of hearing in the county on the creation,
56 enlargement, reduction, merger, dissolution or consolidation of
57 the proposed public service district, which date so fixed shall be
58 not more than forty days nor less than twenty days from the
59 date of the action. Within ten days of fixing the date of hearing,
60 the county commission shall provide the Executive Secretary of
61 the Public Service Commission with a copy of the order or
62 petition and notification of the time and place of the hearing to
63 be held by the county commission. If the territory proposed to
64 be included is situated in more than one county, the county
65 commission, when fixing a date of hearing, shall provide for
66 notifying the county commission and clerk thereof of each of
67 the other counties into which the territory extends of the date so
68 fixed. The clerk of the county commission of each county in
69 which any territory in the proposed public service district is
70 located shall cause notice of the hearing and the time and place
71 thereof, and setting forth a description of all of the territory
72 proposed to be included therein to be given by publication as a
73 Class I legal advertisement in compliance with the provisions
74 of article three, chapter fifty-nine of this code, and the publica-
75 tion area for the publication shall be by publication in each city,
76 incorporated town or municipal corporation if available in each
77 county in which any territory in the proposed public service
78 district is located. The publication shall be at least ten days
79 prior to the hearing.

80 (d) In all cases where proceedings for the creation, enlarge-
81 ment, reduction, merger, dissolution or consolidation of the

82 public service districts are initiated by petition as aforesaid, the
83 person filing the petition shall advance or satisfactorily indem-
84 nify the payment of the cost and expenses of publishing the
85 hearing notice, and otherwise the costs and expenses of the
86 notice shall be paid in the first instance by the county commis-
87 sion out of contingent funds or any other funds available or
88 made available for that purpose. In addition to the notice
89 required herein to be published, there shall also be posted in at
90 least five conspicuous places in the proposed public service
91 district, a notice containing the same information as is con-
92 tained in the published notice. The posted notices shall be
93 posted not less than ten days before the hearing.

94 (e) All persons residing in or owning or having any interest
95 in property in the proposed public service district shall have an
96 opportunity to be heard for and against its creation, enlarge-
97 ment, reduction, merger, dissolution or consolidation. At the
98 hearing the county commission before which the hearing is
99 conducted shall consider and determine the feasibility of the
100 creation, enlargement, reduction, merger, dissolution or
101 consolidation of the proposed district. If the county commission
102 determines that the construction or acquisition by purchase or
103 otherwise and maintenance, operation, improvement and
104 extension of public service properties by the public service
105 district will be conducive to the preservation of public health,
106 comfort and convenience of such area, the county commission
107 shall by order create, enlarge, reduce, merge, dissolve or
108 consolidate such public service district. If the county commis-
109 sion, after due consideration, determines that the proposed
110 district will not be conducive to the preservation of public
111 health, comfort or convenience of the area or that the creation,
112 enlargement, reduction, merger, dissolution or consolidation of
113 the proposed district as set forth and described in the petition or
114 order is not feasible, it may refuse to enter an order creating the
115 district or it may enter an order amending the description of the

116 proposed district and create, enlarge, reduce, merge, dissolve or
117 consolidate the district as amended.

118 (f) If the county commission determines that any other
119 public service district or districts can adequately serve the area
120 of the proposed public service district, whether by enlargement,
121 reduction, merger, dissolution or consolidation, it shall refuse
122 to enter the order, but shall enter an order creating, enlarging,
123 reducing, merging, dissolving or consolidating the area with an
124 existing public service district, in accordance with rules adopted
125 by the Public Service Commission for such purpose: *Provided,*
126 That no enlargement of a public service district may occur if the
127 present or proposed physical facilities of the public service
128 district are determined by the appropriate county commission
129 or the Public Service Commission to be inadequate to provide
130 such enlarged service. The clerk of the county commission of
131 each county into which any part of such district extends shall
132 retain in his office an authentic copy of the order creating,
133 enlarging, reducing, merging, dissolving or consolidating the
134 district: *Provided, however,* That within ten days after the entry
135 of an order creating, enlarging, reducing, merging, dissolving
136 or consolidating a district, such order must be filed for review
137 and approval by the Public Service Commission. The Public
138 Service Commission may provide a hearing in the affected
139 county on the matter and may approve, reject or modify the
140 order of the county commission if it finds it is in the best
141 interests of the public to do so. The Public Service Commission
142 shall adopt rules relating to such filings and the approval,
143 disapproval or modification of county commission orders for
144 creating, enlarging, merging, dissolving or consolidating
145 districts. The provisions of this section shall not apply to the
146 implementation by a county commission of an order issued by
147 the Public Service Commission pursuant to this section and
148 section one-b, of this article.

149 (g) The county commission may, if in its discretion it
150 deems it necessary, feasible and proper, enlarge the district to
151 include additional areas, reduce the area of the district, where
152 facilities, equipment, service or materials have not been
153 extended, or dissolve the district if inactive or create or consoli-
154 date two or more such districts. If consolidation of districts is
155 not feasible, the county commission may consolidate and
156 centralize management and administration of districts within its
157 county or multi-county area to achieve efficiency of operations:
158 *Provided*, That where the county commission determines on its
159 own motion by order entered of record, or there is a petition to
160 enlarge the district, merge and consolidate districts, or the
161 management and administration thereof, reduce the area of the
162 district or dissolve the district if inactive, all of the applicable
163 provisions of this article providing for hearing, notice of
164 hearing and approval by the Public Service Commission shall
165 apply. The Commission shall at all times attempt to bring about
166 the enlargement or merger of existing public service districts in
167 order to provide increased services and to eliminate the need for
168 creation of new public service districts in those areas which are
169 not currently serviced by a public service district: *Provided*,
170 *however*, That where two or more public service districts are
171 consolidated pursuant to this section, any rate differentials may
172 continue for the period of bonded indebtedness incurred prior
173 to consolidation. The districts may not enter into any agree-
174 ment, contract or covenant that infringes upon, impairs,
175 abridges or usurps the duties, rights or powers of the county
176 commission, as set forth in this article, or conflicts with any
177 provision of this article.

178 (h) A list of all districts and their current board members
179 shall be filed by the county commission with the Secretary of
180 State and the Public Service Commission by the first day of
181 July of each year.

CHAPTER 196

(S. B. 749 — By Senators Helmick, Sharpe, Chafin, Plymale, Prezioso, Edgell, Love, Bailey, Bowman, McCabe, Unger, Minear, Boley, Facemyer, Yoder, Guills and Sprouse)

[Passed April 8, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §16-13A-4 of the Code of West Virginia, 1931, as amended, authorizing a change in the official name of a public service district in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §16-13A-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 13A. PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE, STORMWATER AND GAS SERVICES.

§16-13A-4. Board chairman; members' compensation; procedure; district name.

- 1 (a) The chairman shall preside at all meetings of the board
- 2 and may vote as any other member of the board. If the
- 3 chairman is absent from any meeting, the remaining members
- 4 may select a temporary chairman and if the member selected as
- 5 chairman resigns as such or ceases for any reason to be a
- 6 member of the board, the board shall select one of its members
- 7 as chairman to serve until the next annual organization meet-
- 8 ing.

9 (b) Salaries of the board members are:

10 (1) For districts with fewer than six hundred customers, up
11 to seventy-five dollars per attendance at regular monthly
12 meetings and fifty dollars per attendance at additional special
13 meetings, total salary not to exceed fifteen hundred dollars per
14 annum;

15 (2) For districts with six hundred customers or more but
16 fewer than two thousand customers, up to one hundred dollars
17 per attendance at regular monthly meetings and seventy-five
18 dollars per attendance at additional special meetings, total
19 salary not to exceed two thousand five hundred fifty dollars per
20 annum;

21 (3) For districts with two thousand customers or more, up
22 to one hundred twenty-five dollars per attendance at regular
23 monthly meetings and seventy-five dollars per attendance at
24 additional special meetings, total salary not to exceed three
25 thousand seven hundred fifty dollars per annum; and

26 (4) For districts with four thousand or more customers, up
27 to one hundred fifty dollars per attendance at regular monthly
28 meetings and one hundred dollars per attendance at additional
29 special meetings, total salary not to exceed five thousand four
30 hundred dollars per annum.

31 The public service district shall certify the number of
32 customers served to the Public Service Commission beginning
33 on the first day of July, one thousand nine hundred eighty-six,
34 and continue each fiscal year thereafter.

35 (c) Public service districts selling water to other water
36 utilities for resale may adopt the following salaries for its board
37 members:

38 (1) For districts with annual revenues of less than fifty
39 thousand dollars, up to seventy-five dollars per attendance at
40 regular monthly meetings and fifty dollars per attendance at
41 additional special meetings, total salary not to exceed fifteen
42 hundred dollars per annum;

43 (2) For districts with annual revenues of fifty thousand
44 dollars or more, but less than two hundred fifty thousand
45 dollars, up to one hundred dollars per attendance at regular
46 monthly meetings and seventy-five dollars per attendance at
47 special meetings, total salary not to exceed two thousand five
48 hundred fifty dollars per annum;

49 (3) For districts with annual revenues of two hundred fifty
50 thousand dollars or more, but less than five hundred thousand
51 dollars, up to one hundred twenty-five dollars per attendance
52 at regular monthly meetings and seventy-five dollars per
53 attendance at additional special meetings, total salary not to
54 exceed three thousand seven hundred fifty dollars per annum;
55 and

56 (4) For districts with annual revenues of five hundred
57 thousand dollars or more, up to one hundred fifty dollars per
58 attendance at regular monthly meetings and one hundred
59 dollars per attendance at additional special meetings, total
60 salary not to exceed five thousand four hundred dollars per
61 annum.

62 The public service district shall certify the number of
63 customers served and its annual revenue to the public service
64 commission beginning on the first day of July, two thousand,
65 and continue each fiscal year thereafter.

66 (d) Board members may be reimbursed for all reason-
67 able and necessary expenses actually incurred in the perfor-

68 mance of their duties as provided for by the rules of the
69 board.

70 (e) The board shall by resolution determine its own rules of
71 procedure, fix the time and place of its meetings and the
72 manner in which special meetings may be called. Public notice
73 of meetings shall be given in accordance with section three,
74 article nine-a, chapter six of this code. Emergency meetings
75 may be called as provided for by said section. A majority of
76 the members constituting the board also constitute a quorum to
77 do business.

78 (f) The members of the board are not personally liable
79 or responsible for any obligations of the district or the
80 board, but are answerable only for willful misconduct in the
81 performance of their duties. The county commission which
82 created a district or county commissions if more than one
83 created the district may, upon written request of the district,
84 adopt an order changing the official name of a public
85 service district: *Provided*, That such name change will not
86 be effective until approved by the public service commis-
87 sion of West Virginia and the owners of any bonds and
88 notes issued by the district, if any, shall have consented, in
89 writing, to the name change. If a district includes territory
90 located in more than one county, the county commission or
91 county commissions changing the name of the district shall
92 provide any county commission into which the district also
93 extends with a certified copy fo the order changing the name
94 of the district. The official name of any district created
95 under the provisions of this article may contain the name or
96 names of any city, incorporated town or other municipal
97 corporation included therein or the name of any county or
98 counties in which it is located.

CHAPTER 197

(S. B. 40 — By Senators Jenkins and Plymale)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §11A-3-20 of the Code of West Virginia, 1931, as amended, relating to a sheriff's tax on sale of real estate erroneously assessed or nonexistent; and modifying the method for a purchaser to recover the purchase money.

Be it enacted by the Legislature of West Virginia:

That §11A-3-20 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-20. Refund to purchaser of payment made at sheriff's sale where property is subject of an erroneous assessment or is otherwise nonexistent.

1 If, by the thirty-first day of December of the year following
2 payment of the amount bid at a sheriff's sale, the purchaser
3 discovers that the lien purchased at that sale is the subject of an
4 erroneous assessment or is otherwise nonexistent, the purchaser
5 shall submit the abstract or certificate of an attorney at law that
6 the property is the subject of an erroneous assessment or is
7 otherwise nonexistent. Upon receipt of the abstract or certifi-
8 cate, the sheriff shall cause the moneys so paid to be refunded.
9 Upon refund, the sheriff shall inform the assessor of the
10 erroneous assessment for the purpose of having the assessor

11 correct the error. For failure to meet this requirement, the
12 purchaser shall lose all benefits of his or her purchase.

CHAPTER 198

**(Com. Sub. for S. B. 716 — By Senators Chafin, Bailey,
Plymale, Yoder, Jenkins and Helmick)**

[Passed April 9, 2005; in effect July 1, 2005.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §31-20-10b; to amend and reenact §50-3-1, §50-3-2 and §50-3-4a of said code; and to amend and reenact §59-1-11 and §59-1-28a of said code, all relating to creating the Regional Jail Operations Partial Reimbursement Fund; calculation of reimbursement to counties and municipalities; providing duties of the State Treasurer; requiring report from the Regional Jail and Correctional Facility Authority; setting date for first reimbursement; and increasing court costs for criminal and civil proceedings.

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 §31-20-10b; that §50-3-1, §50-3-2 and §50-3-4a of said code be amended and reenacted; and that §59-1-11 and §59-1-28a of said code be amended and reenacted, all to read as follows:

Chapter

31. Corporations.

50. Magistrate Courts.

59. Fees, Allowances and Costs, Newspapers; Legal Advertisements.

CHAPTER 31. CORPORATIONS.

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

§31-20-10b. Regional Jail Operations Partial Reimbursement Fund.

1 (a) There is created in the State Treasury a new fund
2 designated the Regional Jail Operations Partial Reimbursement
3 Fund.

4 (b) Revenues deposited into this Fund shall be composed
5 of fees collected by magistrate courts pursuant to subsection
6 (g), section one and subdivision (3), subsection (a), section
7 two, article three, chapter fifty of this code and by circuit courts
8 pursuant to section eleven, article one, chapter fifty-nine of this
9 code.

10 (c) Revenues deposited into this Fund shall be used to
11 reimburse those counties and municipalities participating in the
12 regional jail system for the cost of incarceration.

13 (d) The State Treasurer shall, in cooperation with the
14 Regional Jail and Correctional Facility Authority, administer
15 the Fund. The State Treasurer shall determine the amount of
16 funds available for reimbursement and, upon receiving a report
17 from the Regional Jail and Correctional Facility Authority
18 which presents the total number of inmate days in the fiscal
19 year immediately concluded, the State Treasurer shall calculate
20 the reimbursement to each participant based upon a pro rata
21 share formula.

22 (e) A participant's share shall be comparable with its total
23 of inmate days, which shall consist of the number of inmates it
24 contributed to the regional jail system and the number of days
25 those inmates remained incarcerated.

26 (f) Within ninety days of the first day of July, two thousand
27 six, and annually thereafter, each participant shall receive its
28 reimbursement from this Fund.

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 3. COSTS, FINES AND RECORDS.

§50-3-1. Costs in civil actions.

§50-3-2. Costs in criminal proceedings.

§50-3-4a. Disposition of criminal costs and civil filing fees into State Treasury
account for Regional Jail and Prison Development Fund.

§50-3-1. Costs in civil actions.

1 The following costs shall be charged in magistrate courts
2 in civil actions and shall be collected in advance:

3 (a) For filing and trying any civil action and for all services
4 connected therewith, but excluding services regarding enforce-
5 ment of judgment, the following amounts dependent upon the
6 amount of damages sought in the complaint:

7 Where the action is for five hundred dollars
8 or less \$30.00

9 Where the action is for more than five hundred
10 dollars but not more than one thousand dollars \$35.00

11 Where the action is for more than one thousand
12 dollars but not more than two thousand dollars \$40.00

13 Where the action is for more than two thousand
14 dollars \$50.00

15 Where the action seeks relief other than money
16 damage \$30.00

17 Five dollars from each of the filing fees listed above shall
18 be deposited in the Court Security Fund created by the provi-

19 sions of section fourteen, article three, chapter fifty-one of this
20 code.

21 Five dollars from each of the filing fees listed above shall
22 be deposited in the Courthouse Facilities Improvement Fund
23 created by section six, article twenty-six, chapter twenty-nine
24 of this code.

25 (b) For each service regarding enforcement of
26 a judgment including execution, suggestion,
27 garnishment and suggestee execution \$5.00

28 (c) For each bond filed in a case \$1.00

29 (d) For taking deposition of witness
30 for each hour or portion thereof \$1.00

31 (e) For taking and certifying acknowledgment
32 of a deed or other writing or taking oath
33 upon an affidavit \$.50

34 (f) For mailing any matter required or
35 provided by law to be mailed by certified or
36 registered mail with return receipt \$1.00

37 (g) For filing and trying any civil action \$20.00

38 Costs incurred in a civil action shall be reflected in any
39 judgment rendered thereon. The provisions of section one,
40 article two, chapter fifty-nine of this code, relating to the
41 payment of costs by poor persons, shall be applicable to all
42 costs in civil actions.

§50-3-2. Costs in criminal proceedings.

1 (a) In each criminal case before a magistrate court in which
2 the defendant is convicted, whether by plea or at trial, there is

3 imposed, in addition to other costs, fines, forfeitures or
4 penalties as may be allowed by law: (1) Costs in the amount of
5 sixty dollars, of which five dollars of that amount shall be
6 deposited in the Courthouse Facilities Improvement Fund
7 created by section six, article twenty-six, chapter twenty-nine
8 of this code; (2) an amount equal to the one-day per diem
9 provided for in subsection (h), section ten, article twenty,
10 chapter thirty-one of this code; and (3) costs in the amount of
11 thirty dollars to be deposited in the Regional Jail Operations
12 Partial Reimbursement Fund created by section ten-b, article
13 twenty, chapter thirty-one of this code. A magistrate may not
14 collect costs in advance. Notwithstanding any other provision
15 of this code, a person liable for fines and court costs in a
16 criminal proceeding in which the defendant is confined in a jail
17 or prison and not participating in a work release program shall
18 not be held liable for the fines and court costs until ninety days
19 after completion of the term in jail or prison. A magistrate
20 court shall deposit five dollars from each of the criminal
21 proceedings fees collected pursuant to this section in the Court
22 Security Fund created in section fourteen, article three, chapter
23 fifty-one of this code. A magistrate court shall, on or before
24 the tenth day of the month following the month in which the
25 fees imposed in this section were collected, remit an amount
26 equal to the one-day per diem provided for in subsection (h),
27 section ten, article twenty, chapter thirty-one of this code from
28 each of the criminal proceedings in which the fees specified in
29 this section were collected to the magistrate court clerk or, if
30 there is no magistrate court clerk to the clerk of the circuit,
31 together with information as may be required by the rules of
32 the Supreme Court of Appeals and the rules of the Office of
33 Chief Inspector. These moneys are paid to the sheriff who
34 shall distribute the moneys solely in accordance with the
35 provisions of section fifteen, article five, chapter seven of this
36 code. Amendments made to this section during the regular
37 session of the Legislature, two thousand one, are effective after
38 the thirtieth day of June, two thousand one.

39 (b) A magistrate shall assess costs in the amount of two
40 dollars and fifty cents for issuing a sheep warrant and the
41 appointment and swearing appraisers and docketing the
42 proceedings.

43 (c) In each criminal case which must be tried by the circuit
44 court but in which a magistrate renders some service, costs in
45 the amount of ten dollars shall be imposed by the magistrate
46 court and is certified to the clerk of the circuit court in accor-
47 dance with the provisions of section six, article five, chapter
48 sixty-two of this code.

**§50-3-4a. Disposition of criminal costs and civil filing fees into
State Treasury account for Regional Jail and
Prison Development Fund.**

1 (a) The clerk of each magistrate court shall, at the end of
2 each month, pay into the Regional Jail and Prison Development
3 Fund in the State Treasury an amount equal to forty dollars of
4 the costs collected in each criminal proceeding and all but ten
5 dollars of the costs collected for the filing of each civil action.

6 (b) The clerk of each magistrate court shall, at the end of
7 each month, pay into the Regional Jail Operations Partial
8 Reimbursement Fund established in section ten-a, article
9 twenty, chapter thirty-one of this code the fees collected
10 pursuant to subsection (g), section one and subdivision (3),
11 subsection (a), section two of this article.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS, NEWS-
PAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.

§59-1-11. Fees to be charged by clerk of circuit court.

1 (a) The clerk of a circuit court shall charge and collect for
2 services rendered as such clerk the following fees and such fees
3 shall be paid in advance by the parties for whom such services
4 are to be rendered:

5 (1) For instituting any civil action under the rules of civil
6 procedure, any statutory summary proceeding, any extraordi-
7 nary remedy, the docketing of civil appeals or any other action,
8 cause, suit or proceeding, one hundred forty-five dollars, of
9 which thirty dollars of that amount shall be deposited in the
10 Courthouse Facilities Improvement Fund created by section
11 six, article twenty-six, chapter twenty-nine of this code and ten
12 dollars shall be deposited in the special revenue account
13 created in section six hundred three, article twenty-six, chapter
14 forty-eight of this code to provide legal services for domestic
15 violence victims;

16 (2) For instituting an action for medical professional
17 liability, two hundred sixty dollars, of which ten dollars of that
18 amount shall be deposited in the Courthouse Facilities Im-
19 provement Fund created by section six, article twenty-six,
20 chapter twenty-nine of this code;

21 (3) Beginning on and after the first day of July, one
22 thousand nine hundred ninety-nine, for instituting an action for
23 divorce, separate maintenance or annulment, one hundred
24 thirty-five dollars;

25 (4) For petitioning for the modification of an order
26 involving child custody, child visitation, child support or
27 spousal support, eighty-five dollars; and

28 (5) For petitioning for an expedited modification of a child
29 support order, thirty-five dollars.

30 (b) In addition to the foregoing fees, the following fees
31 shall likewise be charged and collected:

32 (1) For preparing an abstract of judgment, five dollars;

33 (2) For any transcript, copy or paper made by the clerk for
34 use in any other court or otherwise to go out of the office, for
35 each page, fifty cents;

36 (3) For action on suggestion, ten dollars;

37 (4) For issuing an execution, ten dollars;

38 (5) For issuing or renewing a suggestee execution, includ-
39 ing copies, postage, registered or certified mail fees and the fee
40 provided by section four, article five-a, chapter thirty-eight of
41 this code, three dollars;

42 (6) For vacation or modification of a suggestee execution,
43 one dollar;

44 (7) For docketing and issuing an execution on a transcript
45 of judgment from magistrate's court, three dollars;

46 (8) For arranging the papers in a certified question, writ of
47 error, appeal or removal to any other court, ten dollars, of
48 which five dollars of that amount shall be deposited in the
49 Courthouse Facilities Improvement Fund created by section
50 six, article twenty-six, chapter twenty-nine of this code;

51 (9) For postage and express and for sending or receiving
52 decrees, orders or records, by mail or express, three times the
53 amount of the postage or express charges;

54 (10) For each subpoena, on the part of either plaintiff or
55 defendant, to be paid by the party requesting the same, fifty
56 cents;

57 (11) For additional service (plaintiff or appellant) where
58 any case remains on the docket longer than three years, for
59 each additional year or part year, twenty dollars.

60 (c) The clerk shall tax the following fees for services in any
61 criminal case against any defendant convicted in such court:

62 (1) In the case of any misdemeanor, eighty-five dollars;
63 and

64 (2) In the case of any felony, one hundred five dollars, of
65 which ten dollars of that amount shall be deposited in the
66 Courthouse Facilities Improvement Fund created by section
67 six, article twenty-six, chapter twenty-nine of this code.

68 (d) The clerk of a circuit court shall charge and collect a fee
69 of twenty-five dollars per bond for services rendered by the
70 clerk for processing of criminal bonds and the fee shall be paid
71 at the time of issuance by the person or entity set forth below:

72 (1) For cash bonds, the fee shall be paid by the person
73 tendering cash as bond;

74 (2) For recognizance bonds secured by real estate, the fee
75 shall be paid by the owner of the real estate serving as surety;

76 (3) For recognizance bonds secured by a surety company,
77 the fee shall be paid by the surety company;

78 (4) For ten percent recognizance bonds with surety, the fee
79 shall be paid by the person serving as surety; and

80 (5) For ten percent recognizance bonds without surety, the
81 fee shall be paid by the person tendering ten percent of the bail
82 amount.

83 In instances in which the total of the bond is posted by
84 more than one bond instrument, the above fee shall be col-

85 lected at the time of issuance of each bond instrument pro-
86 cessed by the clerk and all fees collected pursuant to this
87 subsection (d) shall be deposited in the Courthouse Facilities
88 Improvement Fund created by section six, article twenty-six,
89 chapter twenty-nine of this code. Nothing in this subsection
90 may be construed as authorizing the clerk to collect the above
91 fee from any person for the processing of a personal recogni-
92 zance bond; and

93 (e) The clerk of a circuit court shall charge and collect a fee
94 of ten dollars for services rendered by the clerk for processing
95 of bailpiece and the fee shall be paid by the surety at the time
96 of issuance. All fees collected pursuant to this subsection (e)
97 shall be deposited in the Courthouse Facilities Improvement
98 Fund created by section six, article twenty-six, chapter twenty-
99 nine of this code.

100 (f) No such clerk shall be required to handle or accept for
101 disbursement any fees, cost or amounts, of any other officer or
102 party not payable into the county treasury, except it be on order
103 of the court or in compliance with the provisions of law
104 governing such fees, costs or accounts.

§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.

1 (a) Except for those payments to be made from amounts
2 equaling filing fees received for the institution of divorce
3 actions as prescribed in subsection (b) of this section, and
4 except for those payments to be made from amounts equaling
5 filing fees received for the institution of actions for divorce,
6 separate maintenance and annulment as prescribed in said
7 subsection, for each civil action instituted under the rules of
8 civil procedure, any statutory summary proceeding, any
9 extraordinary remedy, the docketing of civil appeals or any
10 other action, cause, suit or proceeding in the circuit court the

11 clerk of the court shall, at the end of each month, pay into the
12 funds or accounts described in this subsection an amount equal
13 to the amount set forth in this subsection of every filing fee
14 received for instituting the action as follows:

15 (1) Into the Regional Jail and Correctional Facility Author-
16 ity Fund in the State Treasury established pursuant to the
17 provisions of section ten, article twenty, chapter thirty-one of
18 this code the amount of sixty dollars;

19 (2) Into the Court Security Fund in the State Treasury
20 established pursuant to the provisions of section fourteen,
21 article three, chapter fifty-one of this code the amount of five
22 dollars; and

23 (3) Into the Regional Jail Operations Partial Reimburse-
24 ment Fund established pursuant to the provisions of section
25 ten-b, article twenty, chapter thirty-one of this code the amount
26 of twenty dollars.

27 (b) For each action for divorce, separate maintenance or
28 annulment instituted in the circuit court, the clerk of the court
29 shall, at the end of each month, report to the Supreme Court of
30 Appeals the number of actions filed by persons unable to pay
31 and pay into the funds or accounts in this subsection an amount
32 equal to the amount set forth in this subsection of every filing
33 fee received for instituting the divorce action as follows:

34 (1) Into the Regional Jail and Correctional Facility Author-
35 ity Fund in the State Treasury established pursuant to the
36 provisions of section ten, article twenty, chapter thirty-one of
37 this code the amount of ten dollars;

38 (2) Into the special revenue account of the State Treasury,
39 established pursuant to section six hundred four, article two,
40 chapter forty-eight of this code an amount of thirty dollars;

41 (3) Into the Family Court Fund established under section
42 twenty-two, article two-a, chapter fifty-one of this code an
43 amount of seventy dollars; and

44 (4) Into the Court Security Fund in the State Treasury,
45 established pursuant to the provisions of section fourteen,
46 article three, chapter fifty-one of this code the amount of five
47 dollars.

48 (c) Notwithstanding any provision of subsection (a) or (b)
49 of this section to the contrary, the clerk of the court shall, at the
50 end of each month, pay into the Family Court Fund established
51 under section twenty-two, article two-a, chapter fifty-one of
52 this code an amount equal to the amount of every fee received
53 for petitioning for the modification of an order involving child
54 custody, child visitation, child support or spousal support as
55 determined by subdivision (3), subsection (a), section eleven
56 of this article and for petitioning for an expedited modification
57 of a child support order as provided in subdivision (4) of said
58 subsection.

59 (d) The clerk of the court from which a protective order is
60 issued shall, at the end of each month, pay into the Family
61 Court Fund established under section twenty-two, article two-a,
62 chapter fifty-one of this code an amount equal to every fee
63 received pursuant to the provisions of section five hundred
64 eight, article twenty-seven, chapter forty-eight of this code.

65 (e) The clerk of each circuit court shall, at the end of each
66 month, pay into the Regional Jail and Correctional Facility
67 Authority Fund in the State Treasury an amount equal to forty
68 dollars of every fee for service received in any criminal case
69 against any respondent convicted in such court and shall pay an
70 amount equal to five dollars of every such fee into the Court
71 Security Fund in the State Treasury established pursuant to the
72 provisions of section fourteen, article three, chapter fifty-one
73 of this code.

74 (f) The clerk of the circuit court shall, at the end of each
75 month, pay into the Medical Liability Fund established under
76 article twelve-b, chapter twenty-nine of this code, an amount
77 equal to one hundred sixty-five dollars of every filing fee
78 received for instituting a medical professional liability action.

79 (g) The clerk of the circuit court shall, at the end of each
80 month, pay into the Courthouse Facilities Improvement Fund
81 created by section six, article twenty-six, chapter twenty-nine
82 of this code, those amounts received by the clerk which are
83 dedicated for deposit in the Fund.

84 (h) The clerk of each circuit court shall, at the end of each
85 month, pay into the Regional Jail Operations Partial Reim-
86 bursement Fund established in the State Treasury pursuant to
87 the provisions of section ten-b, article twenty, chapter thirty-
88 one of this code, those amounts received by the clerk which are
89 dedicated for deposit in the fund.

CHAPTER 199

**(Com. Sub. for S. B. 428 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to repeal §17-24-1, §17-24-2, §17-24-3, §17-24-4, §17-24-5,
§17-24-6, §17-24-7, §17-24-8, §17-24-9 and §17-24-10 of the
Code of West Virginia, 1931, as amended; to repeal §20-7-24,
§20-7-25, §20-7-26, §20-7-27 and §20-7-29 of said code; to
repeal §20-11-1, §20-11-2, §20-11-3, §20-11-4, §20-11-5, §20-

11-6, §20-11-7, §20-11-8, §20-11-9, §20-11-10, §20-11-11 and §20-11-12 of said code; to amend and reenact §7-1-3ff of said code; to amend and reenact §17-2A-21 of said code; to amend and reenact §17-23-2 of said code; to amend and reenact §17A-10-16 of said code; to amend and reenact §17C-14-14 of said code; to amend and reenact §22-15-2 and §22-15-21 of said code; to amend said code by adding thereto a new article, designated §22-15A-1, §22-15A-2, §22-15A-3, §22-15A-4, §22-15A-5, §22-15A-6, §22-15A-7, §22-15A-8, §22-15A-9, §22-15A-10, §22-15A-11, §22-15A-12, §22-15A-13, §22-15A-14, §22-15A-15, §22-15A-16, §22-15A-17, §22-15A-18, §22-15A-19, §22-15A-20, §22-15A-21, §22-15A-22 and §22-15A-23; to amend and reenact §22C-3-7 and §22C-3-24 of said code; to amend and reenact §22C-4-24 and §22C-4-25 of said code; to amend and reenact §31-15A-17a of said code; and to amend and reenact §49-5-13 and §49-5-13b of said code, all relating to the Rehabilitation Environmental Action Plan; consolidating litter control, open dump elimination and reclamation, waste tire clean up and recycling programs; defining certain terms; providing for litter control and recycling programs; providing additional duties of Secretary of the Department of Environmental Protection; transferring assets, contracts and personnel of the Litter Control Program; providing penalties for the unlawful disposal of litter; providing for litter control education; creating the Pollution Prevention and Open Dump Program; providing for assistance to solid waste authorities for litter and solid waste plans; prohibiting waste tires in certain places; providing for penalty for violations thereof; providing that the Department of Environmental Protection is to administer funds for waste tire remediation; authorizing the Secretary of the Department of Environmental Protection to promulgate rules; providing for the disposal of waste tires; providing for the continuation of the A. James Manchin Fund; establishing purposes for expenditure from the A. James Manchin Fund; providing that the Commissioner of the Division of Highways work with the Secretary of the Department of Environmental Protection in certain circumstances; establishing

remediation and liability for remediation; clarifying that Commissioner for Bureau for Public Health has the authority to regulate public health matters; establishing recycling goals and plans; establishing county recycling programs for solid waste; providing for a recycling assessment fee; providing for criminal penalties; establishing state recycling program for solid waste; providing for the procurement of recycled products; prohibiting the disposal of certain items; and exempting certain recycling facilities from regulation.

Be it enacted by the Legislature of West Virginia:

That §17-24-1, §17-24-2, §17-24-3, §17-24-4, §17-24-5, §17-24-6, §17-24-7, §17-24-8, §17-24-9 and §17-24-10 of the Code of West Virginia, 1931, as amended, be repealed; that §20-7-24, §20-7-25, §20-7-26, §20-7-27 and §20-7-29 of said code be repealed; that §20-11-1, §20-11-2, §20-11-3, §20-11-4, §20-11-5, §20-11-6, §20-11-7, §20-11-8, §20-11-9, §20-11-10, §20-11-11 and §20-11-12 of said code be repealed; that §7-1-3ff of said code be amended and reenacted; that §17-2A-21 of said code be amended and reenacted; that §17-23-2 of said code be amended and reenacted; that §17A-10-16 of said code be amended and reenacted; that §17C-14-14 of said code be amended and reenacted; that §22-15-2 and §22-15-21 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §22-15A-1, §22-15A-2, §22-15A-3, §22-15A-4, §22-15A-5, §22-15A-6, §22-15A-7, §22-15A-8, §22-15A-9, §22-15A-10, §22-15A-11, §22-15A-12, §22-15A-13, §22-15A-14, §22-15A-15, §22-15A-16, §22-15A-17, §22-15A-18, §22-15A-19, §22-15A-20, §22-15A-21, §22-15A-22 and §22-15A-23; that §22C-3-7 and §22C-3-24 of said code be amended and reenacted; that §22C-4-24 and §22C-4-25 of said code be amended and reenacted; that §31-15A-17a of said code be amended and reenacted; and that §49-5-13 and §49-5-13b of said code be amended and reenacted, all to read as follows:

Chapter

- 7. County Commissions and Officers.**
- 17. Roads and Highways.**

- 17A. Motor Vehicle Administration, Registration, Certificate of Title, and Antitheft Provisions.
- 17C. Traffic Regulations and Laws of the Road.
- 22. Environmental Resources.
- 22C. Environmental Resources: Boards, Authorities, Commissions and Compacts.
- 31. Corporations.
- 49. Child Welfare.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3ff. Authority of county commission to enact ordinances regulating the repair, alteration, improvement, vacating, closing, removal or demolition of unsafe or unsanitary structures and the clearance and removal of refuse, debris, overgrown vegetation, toxic spills or toxic seepage on private land; authority to create enforcement agency; procedure for complaints; promulgation of rules governing investigation and hearing of complaints; remedies for failure to comply with commission-ordered repairs or alterations; lien and sale of land to recover costs; entry on land to perform repairs and alterations or to satisfy lien; receipt of grants and subsidies.

1 (a) Plenary power and authority are hereby conferred upon
2 every county commission to adopt ordinances regulating the
3 repair, alteration or improvement, or the vacating and closing
4 or removal or demolition, or any combination thereof, of any
5 dwellings or other buildings, except for buildings utilized for
6 farm purposes on land actually being used for farming, unfit for
7 human habitation due to dilapidation, defects increasing the
8 hazard of fire, accidents or other calamities, lack of ventilation,
9 light or sanitary facilities or any other conditions prevailing in
10 any dwelling or building, whether used for human habitation or
11 not, which would cause the dwellings or other buildings to be

12 unsafe, unsanitary, dangerous or detrimental to the public safety
13 or welfare, whether the result of natural or manmade force or
14 effect.

15 (b) Plenary power and authority are hereby conferred upon
16 every county commission to adopt ordinances regulating the
17 removal and clean up of any accumulation of refuse or debris,
18 overgrown vegetation or toxic spillage or toxic seepage located
19 on private lands which is determined to be unsafe, unsanitary,
20 dangerous or detrimental to the public safety or welfare,
21 whether the result of natural or manmade force or effect.

22 (c) The county commission, in formally adopting ordi-
23 nances, shall designate an enforcement agency which shall
24 consist of the county engineer (or other technically qualified
25 county employee or consulting engineer), county health officer
26 or his or her designee, a fire chief from a county fire company,
27 the county litter control officer, if the commission chooses to
28 hire one, and two members at large selected by the county
29 commission to serve two-year terms. The county sheriff shall
30 serve as an ex officio member of the enforcement agency and
31 the county officer charged with enforcing the orders of the
32 county commission under this section.

33 (d) In addition to the powers and duties imposed by this
34 section, county litter control officers shall have authority to
35 issue citations for violations of the provisions of section four,
36 article fifteen-a, chapter twenty-two of this code after complet-
37 ing a training course offered by the West Virginia Department
38 of Environmental Protection. Nothing in this subsection
39 supercedes the authority or duty of other law-enforcement
40 officers to preserve law and order and enforce the litter control
41 program.

42 (e) Any ordinance adopted pursuant to the provisions of this
43 section shall provide fair and equitable rules of procedure and

44 any other standards considered necessary to guide the enforce-
45 ment agency, or its agents, in the investigation of dwelling or
46 building conditions, accumulation of refuse or debris, over-
47 grown vegetation or toxic spillage or toxic seepage and shall
48 provide for fair and equitable rules of procedure for instituting
49 and conducting hearings in the matters before the county
50 commission. Any entrance upon premises for the purpose of
51 making examinations shall be made in a manner as to cause the
52 least possible inconvenience to the persons in possession.

53 (f) Any county commission adopting ordinances authorized
54 by this section shall hear and determine complaints of the
55 enforcement agency. Complaints shall be initiated by citation
56 issued by the county litter control officer or petition of the
57 county engineer (or other technically qualified county employee
58 or consulting engineer) on behalf of and at the direction of the
59 enforcement agency, but only after that agency has investigated
60 and determined that any dwelling, building, accumulation of
61 refuse or debris, overgrown vegetation or toxic spillage or toxic
62 seepage is unsafe, unsanitary, dangerous or detrimental to the
63 public safety or welfare and should be repaired, altered,
64 improved, vacated, removed, closed, cleaned or demolished.
65 The county commission shall cause the owner or owners of the
66 private land in question to be served with a copy of the com-
67 plaint. Service shall be accomplished in the manner provided
68 in Rule 4 of the West Virginia Rules of Civil Procedure. The
69 complaint shall state the findings and recommendations of the
70 enforcement agency and that unless the owner or owners of the
71 property file with the clerk of the county commission a written
72 request for a hearing within ten days of receipt of the complaint,
73 an order will be issued by the county commission implementing
74 the recommendations of the enforcement agency. If the owner
75 or owners of the property file a request for a hearing, the county
76 commission shall issue an order setting this matter down for
77 hearing within twenty days. Hearings shall be recorded by
78 electronic device or by court reporter. The West Virginia rules

79 of evidence do not apply to the proceedings, but each party has
80 the right to present evidence and examine and cross-examine all
81 witnesses. The enforcement agency has the burden of proving
82 its allegation by a preponderance of the evidence and has the
83 duty to go forward with the evidence. At the conclusion of the
84 hearing the county commission shall make findings of fact,
85 determinations and conclusions of law as to whether the
86 dwelling or building: Is unfit for human habitation due to
87 dilapidation; has defects that increase the hazard of fire,
88 accidents or other calamities, lacks ventilation, light or sanitary
89 facilities; or any other conditions prevailing in the dwelling or
90 building, whether used for human habitation or not and whether
91 the result of natural or manmade force or effect, which would
92 cause such dwelling or other building to be unsafe, unsanitary,
93 dangerous or detrimental to the public safety or welfare; or
94 whether there is an accumulation of refuse or debris, overgrown
95 vegetation, toxic spillage or toxic seepage on private lands
96 which is determined to be unsafe, unsanitary, dangerous or
97 detrimental to the public safety or welfare, whether the result of
98 natural or manmade force or effect. The county commission
99 has authority to order the owner or owners thereof to repair,
100 alter, improve, vacate, remove, close, clean up or demolish the
101 dwelling or building in question or to remove or clean up any
102 accumulation of refuse or debris, overgrown vegetation or toxic
103 spillage or toxic seepage within a reasonable time and to
104 impose daily civil monetary penalties on the owner or owners
105 who fail to obey an order. Appeals from the county commis-
106 sion to the circuit court shall be in accordance with the provi-
107 sions of article three, chapter fifty-eight of this code.

108 (g) Upon the failure of the owner or owners of the private
109 land to perform the ordered duties and obligations as set forth
110 in the order of the county commission, the county commission
111 may advertise for and seek contractors to make the ordered
112 repairs, alterations or improvements or the ordered demolition,
113 removal or clean up. The county commission may enter into

114 any contract with any contractor to accomplish the ordered
115 repairs, alterations or improvements or the ordered demolition,
116 removal or clean up.

117 (h) A civil proceeding may be brought in circuit court by
118 the county commission against the owner or owners of the
119 private land which is the subject matter of the order of the
120 county commission to subject the private land in question to a
121 lien for the amount of the contractor's costs in making these
122 ordered repairs, alterations or improvements or ordered
123 demolition, removal or clean up, together with any daily civil
124 monetary penalty imposed and reasonable attorney fees and
125 court costs and to order and decree the sale of the private land
126 in question to satisfy the lien and to order and decree that the
127 contractor may enter upon the private land in question at any
128 and all times necessary to make improvements or ordered
129 repairs, alterations or improvements, or ordered demolition,
130 removal or clean up. In addition, the county commission shall
131 have the authority to institute a civil action in a court of
132 competent jurisdiction against the landowner or other responsi-
133 ble party for all costs incurred by the county with respect to the
134 property and for reasonable attorney fees and court costs
135 incurred in the prosecution of the action.

136 (i) County commissions have the power and authority to
137 receive and accept grants, subsidies, donations and services in
138 kind consistent with the objectives of this section.

CHAPTER 17. ROADS AND HIGHWAYS.

Article

2A. West Virginia Commissioner of Highways.

23. Salvage Yards.

ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

**§17-2A-21. Commissioner authorized to contract for implementa-
tion of litter control programs.**

1 In addition to all other powers granted and duties imposed
2 upon the Commissioner, he or she shall contract with the
3 Secretary of the Department of Environmental Protection and
4 expend moneys from the highway litter control fund to imple-
5 ment the litter control program and litter control maintenance
6 of the highways pursuant to article fifteen-a, chapter twenty-
7 two of this code.

ARTICLE 23. SALVAGE YARDS.

§17-23-2. Definitions.

1 As used in this article:

2 (a) "Abandoned salvage yard" means any unlicensed
3 salvage yard or any salvage yard that was previously licensed
4 but upon which the license has not been renewed for more than
5 one year.

6 (b) "Commissioner" means the Commissioner of the West
7 Virginia Division of Highways.

8 (c) "Fence" means an enclosure, barrier or screen con-
9 structed of materials or consisting of plantings, natural objects
10 or other appropriate means approved by the commissioner and
11 located, placed or maintained so as effectively to screen at all
12 times salvage yards and the salvage therein contained from the
13 view of persons passing upon the public roads of this state.

14 (d) "Occupied private residence" means a private residence
15 which is occupied for at least six months each year.

16 (e) "Owner or operator" includes an individual, firm,
17 partnership, association or corporation or the plural thereof.

18 (f) "Residential community" means an area wherein five or
19 more occupied private residences are located within any one
20 thousand-foot radius.

21 (g) "Salvage" means old or scrap brass, copper, iron, steel,
22 other ferrous or nonferrous materials, batteries or rubber and
23 any junked, dismantled or wrecked machinery, machines or
24 motor vehicles or any parts of any junked, dismantled or
25 wrecked machinery, machines or motor vehicles.

26 (h) "Salvage yard" means any place which is maintained,
27 operated or used for the storing, keeping, buying, selling or
28 processing of salvage, or for the operation and maintenance of
29 a motor vehicle graveyard: *Provided*, That no salvage yard
30 shall accept, store or process more than one hundred waste tires
31 unless it has all permits necessary to operate a monofill, waste
32 tire processing facility or solid waste facility. Any salvage yard
33 which currently has on its premises more than one hundred
34 waste tires not on a vehicle must establish a plan in conjunction
35 with the Department of Environmental Protection for the proper
36 disposal of the waste tires.

37 (i) "Waste tire" means any continuous solid or pneumatic
38 rubber covering designed to encircle the wheel of a vehicle but
39 which has been discarded, abandoned or is no longer suitable
40 for its original, intended purpose nor suitable for recapping, or
41 other beneficial use, as defined in section two, article fifteen-a,
42 chapter twenty-two of this code, because of wear, damage or
43 defect. A tire is no longer considered to be suitable for its
44 original intended purpose when it fails to meet the minimum
45 requirements to pass a West Virginia motor vehicle safety
46 inspection. Used tires located at a commercial recapping
47 facility or tire dealer for the purpose of being reused or re-
48 capped are not waste tires.

49 (j) "Waste tire monofill or monofill" means an approved
50 solid waste facility where waste tires not mixed with any other
51 waste are placed for the purpose of long term storage for
52 eventual retrieval for marketing purposes.

53 (k) "Waste tire processing facility" means a solid waste
54 facility or manufacturer that accepts waste tires generated by
55 sources other than the owner or operator of the facility for
56 processing by such means as cryogenics, pyrolysis,
57 pyroprocessing cutting, splitting, shredding, quartering, grinding
58 or otherwise breaking down waste tires for the purposes of
59 disposal, reuse, recycling or marketing.

**CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION,
REGISTRATION, CERTIFICATE OF TITLE, AND
ANTITHEFT PROVISIONS.**

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-16. Fee for the A. James Manchin Fund.

1 In addition to each fee provided for in this article, an
2 additional five-dollar fee shall be imposed on the issuance of
3 each certificate of title issued pursuant to article three of this
4 chapter. All money collected under this section shall be
5 deposited in the State Treasury and credited to the A. James
6 Manchin Fund to be established within the division of highways
7 for waste tire remediation in accordance to the provisions of
8 article fifteen-a, chapter twenty-two of this code. The Commis-
9 sioner is to work with the Secretary of the Department of
10 Environmental Protection to accomplish the goals of said
11 chapter. The additional fee provided herein shall be imposed
12 for each application for certificate and renewal thereof made on
13 or after the first day of July, two thousand: *Provided*, That no
14 further collections or deposits shall be made after the Commis-
15 sioner certifies to the Governor and the Legislature that the
16 remediation of all waste tire piles that were determined by the
17 Commissioner to exist on the first day of June, two thousand
18 one, has been completed.

**CHAPTER 17C. TRAFFIC REGULATIONS
AND LAWS OF THE ROAD.**

ARTICLE 14. MISCELLANEOUS RULES.

§17C-14-14. Unlawful to litter from motor vehicle; penalty; rule making.

1 (a) It is unlawful for any driver or passenger of a motor
2 vehicle or other conveyance to place, deposit, dump, throw or
3 cause to be placed, deposited, dumped or thrown, any litter
4 from a motor vehicle or other conveyance in or upon any public
5 or private highway, road, street or alley; any private property;
6 any public property; or the waters of the state or within one
7 hundred feet of the waters of this state, except in a proper litter
8 or other solid waste receptacle.

9 (b) For purposes of this section, "litter" means all waste
10 material including, but not limited to, any garbage, refuse,
11 trash, disposable package, container, can, bottle, paper, ashes,
12 cigarette or cigar butt, carcass of any dead animal or any part
13 thereof, or any other offensive or unsightly matter, but not
14 including the wastes of primary processes of mining, logging,
15 sawmilling, farming or manufacturing.

16 (c) In addition to any penalty imposed for littering under
17 the provisions of article fifteen-a, chapter twenty-two of this
18 code, any driver of a motor vehicle or other conveyance
19 convicted of violating this section shall have three points
20 assessed against his or her driver's license.

21 (d) The Commissioner shall assess points against the
22 driver's license of any driver of a motor vehicle or other
23 conveyance found guilty of violating this section upon receiv-
24 ing notice from a circuit clerk, magistrate court or municipal
25 court of this state of the conviction. Circuit clerks, magistrate
26 courts and municipal courts of this state shall promptly notify
27 the Commissioner of the convictions.

28 (e) When there is more than one occupant in a motor
29 vehicle or other conveyance and it cannot be determined which
30 occupant is responsible for violating this section, the driver
31 shall be presumed to be responsible for the violation.

32 (f) The Commissioner of the Division of Motor Vehicles
33 shall propose or amend legislative rules for promulgation, in
34 accordance with the provisions of article three, chapter twenty-
35 nine-a of this code, to effectuate the purposes of this section.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

Article

15. Solid Waste Management Act.

15A. The A. James Manchin Rehabilitation Environmental Action Plan.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-2. Definitions.

§22-15-21. Waste tire management.

§22-15-2. Definitions.

1 Unless the context clearly requires a different meaning, as
2 used in this article the terms:

3 (1) "Agronomic rate" means the whole sewage sludge
4 application rate, by dry weight, designed:

5 (A) To provide the amount of nitrogen needed by the food
6 crop, feed crop, fiber crop, cover crop or vegetation on the land;
7 and

8 (B) To minimize the amount of nitrogen in the sewage
9 sludge that passes below the root zone of the crop or vegetation
10 grown on the land to the groundwater.

11 (2) "Applicant" means the person applying for a commer-
12 cial solid waste facility permit or similar renewal permit and

13 any person related to such person by virtue of common owner-
14 ship, common management or family relationships as the
15 director may specify, including the following: Spouses, parents
16 and children and siblings.

17 (3) "Approved solid waste facility" means a solid waste
18 facility or practice which has a valid permit under this article.

19 (4) "Back hauling" means the practice of using the same
20 container to transport solid waste and to transport any substance
21 or material used as food by humans, animals raised for human
22 consumption or reusable item which may be refilled with any
23 substance or material used as food by humans.

24 (5) "Bulking agent" means any material mixed and com-
25 posted with sewage sludge.

26 (6) "Class A facility" means a commercial solid waste
27 facility which handles an aggregate of between ten thousand
28 and thirty thousand tons of solid waste per month. Class A
29 facility includes two or more Class B solid waste landfills
30 owned or operated by the same person in the same county, if the
31 aggregate tons of solid waste handled per month by such
32 landfills exceeds nine thousand nine hundred ninety-nine tons
33 of solid waste per month.

34 (7) "Commercial recycler" means any person, corporation
35 or business entity whose operation involves the mechanical
36 separation of materials for the purpose of reselling or recycling
37 at least seventy percent by weight of the materials coming into
38 the commercial recycling facility.

39 (8) "Commercial solid waste facility" means any solid
40 waste facility which accepts solid waste generated by sources
41 other than the owner or operator of the facility and does not
42 include an approved solid waste facility owned and operated by
43 a person for the sole purpose of the disposal, processing or

44 composting of solid wastes created by that person or such
45 person and other persons on a cost-sharing or nonprofit basis
46 and does not include land upon which reused or recycled
47 materials are legitimately applied for structural fill, road base,
48 mine reclamation and similar applications.

49 (9) "Compost" means a humus-like material resulting from
50 aerobic, microbial, thermophilic decomposition of organic
51 materials.

52 (10) "Composting" means the aerobic, microbial,
53 thermophilic decomposition of natural constituents of solid
54 waste to produce a stable, humus-like material.

55 (11) "Commercial composting facility" means any solid
56 waste facility processing solid waste by composting, including
57 sludge composting, organic waste or yard waste composting,
58 but does not include a composting facility owned and operated
59 by a person for the sole purpose of composting waste created by
60 that person or such person and other persons on a cost-sharing
61 or nonprofit basis and shall not include land upon which
62 finished or matured compost is applied for use as a soil amend-
63 ment or conditioner.

64 (12) "Cured compost" or "finished compost" means
65 compost which has a very low microbial or decomposition rate
66 which will not reheat or cause odors when put into storage and
67 that has been put through a separate aerated curing cycle stage
68 of thirty to sixty days after an initial composting cycle or
69 compost which meets all regulatory requirements after the
70 initial composting cycle.

71 (13) "Department" means the Department of Environmental
72 Protection.

73 (14) "Energy recovery incinerator" means any solid waste
74 facility at which solid wastes are incinerated with the intention

75 of using the resulting energy for the generation of steam,
76 electricity or any other use not specified herein.

77 (15) "Incineration technologies" means any technology that
78 uses controlled flame combustion to thermally break down solid
79 waste, including refuse-derived fuel, to an ash residue that
80 contains little or no combustible materials, regardless of
81 whether the purpose is processing, disposal, electric or steam
82 generation or any other method by which solid waste is
83 incinerated.

84 (16) "Incinerator" means an enclosed device using con-
85 trolled flame combustion to thermally break down solid waste,
86 including refuse-derived fuel, to an ash residue that contains
87 little or no combustible materials.

88 (17) "Landfill" means any solid waste facility for the
89 disposal of solid waste on or in the land for the purpose of
90 permanent disposal. Such facility is situated, for purposes of
91 this article, in the county where the majority of the spatial area
92 of such facility is located.

93 (18) "Materials recovery facility" means any solid waste
94 facility at which source-separated materials or materials
95 recovered through a mixed waste processing facility are
96 manually or mechanically shredded or separated for purposes
97 of reuse and recycling, but does not include a composting
98 facility.

99 (19) "Mature compost" means compost which has been
100 produced in an aerobic, microbial, thermophilic manner and
101 does not exhibit phytotoxic effects.

102 (20) "Mixed solid waste" means solid waste from which
103 materials sought to be reused or recycled have not been source-
104 separated from general solid waste.

105 (21) "Mixed waste processing facility" means any solid
106 waste facility at which materials are recovered from mixed
107 solid waste through manual or mechanical means for purposes
108 of reuse, recycling or composting.

109 (22) "Municipal solid waste incineration" means the
110 burning of any solid waste collected by any municipal or
111 residential solid waste disposal company.

112 (23) "Open dump" means any solid waste disposal which
113 does not have a permit under this article, or is in violation of
114 state law, or where solid waste is disposed in a manner that
115 does not protect the environment.

116 (24) "Person" or "persons" means any industrial user,
117 public or private corporation, institution, association, firm or
118 company organized or existing under the laws of this or any
119 other state or country; State of West Virginia; governmental
120 agency, including federal facilities; political subdivision;
121 county commission; municipal corporation; industry; sanitary
122 district; public service district; drainage district; soil conserva-
123 tion district; watershed improvement district; partnership; trust;
124 estate; person or individual; group of persons or individuals
125 acting individually or as a group; or any legal entity whatever.

126 (25) "Publicly owned treatment works" means any treat-
127 ment works owned by the state or any political subdivision
128 thereof, any municipality or any other public entity which
129 processes raw domestic, industrial or municipal sewage by any
130 artificial or natural processes in order to remove or so alter
131 constituents as to render the waste less offensive or dangerous
132 to the public health, comfort or property of any of the inhabit-
133 ants of this state before the discharge of the plant effluent into
134 any of the waters of this state, and which produces sewage
135 sludge.

136 (26) "Recycling facility" means any solid waste facility for
137 the purpose of recycling at which neither land disposal nor
138 biological, chemical or thermal transformation of solid waste
139 occurs: *Provided*, That mixed waste recovery facilities, sludge
140 processing facilities and composting facilities are not consid-
141 ered recycling facilities nor considered to be reusing or recy-
142 cling solid waste within the meaning of this article, article
143 fifteen-a of this chapter and article four, chapter twenty-two-c
144 of this code.

145 (27) "Sewage sludge" means solid, semisolid or liquid
146 residue generated during the treatment of domestic sewage in
147 a treatment works. Sewage sludge includes, but is not limited
148 to, domestic septage, scum or solids removed in primary,
149 secondary or advanced wastewater treatment processes and a
150 material derived from sewage sludge. "Sewage sludge" does
151 not include ash generated during the firing of sewage sludge in
152 a sewage sludge incinerator.

153 (28) "Secretary" means the Secretary of the Department of
154 Environmental Protection or such other person to whom the
155 Secretary has delegated authority or duties pursuant to article
156 one of this chapter.

157 (29) "Sewage sludge processing facility" is a solid waste
158 facility that processes sewage sludge for: (A) Land application;
159 (B) incineration; or (C) disposal at an approved landfill. Such
160 processes include, but are not limited to, composting, lime
161 stabilization, thermophilic, microbial and anaerobic digestion.

162 (30) "Sludge" means any solid, semisolid, residue or
163 precipitate, separated from or created by a municipal, commer-
164 cial or industrial waste treatment plant, water supply treatment
165 plant or air pollution control facility or any other such waste
166 having similar origin.

167 (31) "Solid waste" means any garbage, paper, litter, refuse,
168 cans, bottles, waste processed for the express purpose of
169 incineration; sludge from a waste treatment plant; water supply
170 treatment plant or air pollution control facility; and other
171 discarded materials, including offensive or unsightly matter,
172 solid, liquid, semisolid or contained liquid or gaseous material
173 resulting from industrial, commercial, mining or community
174 activities but does not include solid or dissolved material in
175 sewage or solid or dissolved materials in irrigation return flows
176 or industrial discharges which are point sources and have
177 permits under article five-a of this chapter, or source, special
178 nuclear or byproduct material as defined by the Atomic Energy
179 Act of 1954, as amended, including any nuclear or byproduct
180 material considered by federal standards to be below regulatory
181 concern, or a hazardous waste either identified or listed under
182 article five-e of this chapter or refuse, slurry, overburden or
183 other wastes or material resulting from coal-fired electric power
184 or steam generation, the exploration, development, production,
185 storage and recovery of coal, oil and gas and other mineral
186 resources placed or disposed of at a facility which is regulated
187 under chapter twenty-two, twenty-two-a or twenty-two-b of this
188 code, so long as placement or disposal is in conformance with
189 a permit issued pursuant to such chapters.

190 (32) "Solid waste disposal" means the practice of disposing
191 of solid waste including placing, depositing, dumping or
192 throwing or causing any solid waste to be placed, deposited,
193 dumped or thrown.

194 (33) "Solid waste disposal shed" means the geographical
195 area which the solid waste management board designates and
196 files in the state register pursuant to section eight, article
197 twenty-six, chapter sixteen of this code.

198 (34) "Solid waste facility" means any system, facility, land,
199 contiguous land, improvements on the land, structures or other

200 appurtenances or methods used for processing, recycling or
201 disposing of solid waste, including landfills, transfer stations,
202 materials recovery facilities, mixed waste processing facilities,
203 sewage sludge processing facilities, commercial composting
204 facilities and other such facilities not herein specified, but not
205 including land upon which sewage sludge is applied in accor-
206 dance with section twenty of this article. Such facility shall be
207 deemed to be situated, for purposes of this article, in the county
208 where the majority of the spatial area of such facility is located:
209 *Provided*, That a salvage yard, licensed and regulated pursuant
210 to the terms of article twenty-three, chapter seventeen of this
211 code, is not a solid waste facility.

212 (35) "Solid waste facility operator" means any person or
213 persons possessing or exercising operational, managerial or
214 financial control over a commercial solid waste facility,
215 whether or not such person holds a certificate of convenience
216 and necessity or a permit for such facility.

217 (36) "Source-separated materials" means materials sepa-
218 rated from general solid waste at the point of origin for the
219 purpose of reuse and recycling but does not mean sewage
220 sludge.

§22-15-21. Waste tire management.

1 (a) No person, except those persons who have received and
2 maintained a valid permit or license from the state for the
3 operation of a solid waste facility, waste tire monofill, waste
4 tire processing facility, or other such permitted activities, shall
5 accumulate waste tires without obtaining a license or permit
6 from the Division: *Provided*, That persons who use waste tires
7 for beneficial uses may in the discretion of the Secretary of the
8 Department of Environmental Protection accumulate waste tires
9 without a permit.

10 (b) No person shall dispose of waste tires in or upon any
11 public or private land, any site or facility other than a site or
12 facility which holds a valid permit issued by the Department for
13 such disposal or usage.

14 (c) No person shall knowingly transport or knowingly allow
15 waste tires under his or her control to be transported to a site or
16 facility that does not have a valid permit or license to accept
17 waste tires.

18 (d) No person shall engage in the open burning of waste
19 tires.

20 (e) Persons who violate this article are subject to all
21 enforcement actions available to the Secretary under the
22 provisions of section fifteen, article fifteen, chapter twenty-two
23 of this code.

24 (f) Except as otherwise provided in subsection (g) of this
25 section, each retailer is required to accept one tire of compara-
26 ble size for each new tire sold at retail. The retailer may charge
27 a disposal fee to cover the actual costs of lawful waste tire
28 disposal. No retail tire dealer may deliver any waste tire, or
29 part thereof, to a person not authorized by the state of West
30 Virginia to transport or accept waste tires.

31 (g) Any person purchasing a new tire from a retailer must
32 provide a used or waste tire for each tire purchased or sign a
33 waiver, provided to the tire retailer by the Department, ac-
34 knowledging that he or she is retaining the waste tire and that
35 he or she is legally responsible for proper disposal of each tire
36 retained. These forms are to be kept by the retailer for three
37 years. If the tire purchaser returns to the tire retailer with a
38 signed form given to the purchaser by that retailer, the retailer
39 must accept up to the total number of comparable size tires as
40 previously retained by the purchaser: *Provided*, That persons
41 having winter tires changed or buying new winter tires and

42 keeping usable summer tires for later installation are not
43 required to provide a used or waste tire or sign a waiver.

44 (h) Each tire retailer shall post in a conspicuous place a
45 written notice, provided by the Department, that bears the
46 following statements:

47 (1) "State law requires us to accept your (old) waste tires
48 for recycling or proper disposal if you purchase new tires from
49 us."

50 (2) "State law authorizes us to charge you no more than the
51 actual cost of disposal of your waste tires even if you do not
52 leave your tires with us."

53 (3) "It is a crime to burn, bury, abandon or throw away
54 waste tires without authorization and or permits from the
55 Department of Environmental Protection."

56 This notice must be at least eight and one-half inches wide
57 and eleven inches high.

58 (i) Solid waste facilities shall accept whole waste tires and
59 may charge a reasonable fee for acceptance of waste tires. All
60 waste tires except those disposed of in a landfill shall be
61 excluded from the calculation of monthly tonnage limits and
62 from any solid waste disposal assessment fees imposed by
63 section nineteen, article fifteen-a, chapter twenty-two; section
64 eleven, article fifteen, chapter twenty-two; section four, article
65 sixteen, chapter twenty-two; and section thirty, article four,
66 chapter twenty-two-c of this code.

67 (j) Solid waste facilities shall accept and dispose of whole
68 tires from state authorized tire remediation projects. All waste
69 tires from state authorized tire remediation projects except
70 those disposed of in a landfill shall be excluded from the
71 calculation of monthly tonnage limits and from any solid waste

72 disposal assessment fees imposed by section nineteen, article
 73 fifteen-a, chapter twenty-two; section eleven, article fifteen,
 74 chapter twenty-two; section four, article sixteen, chapter
 75 twenty-two; and section thirty, article four, chapter twenty-two-
 76 c of this code. For state-sponsored tire remediation projects,
 77 the state may negotiate with the solid waste facility for rates
 78 and charges for the disposal of waste tires regardless of the
 79 rates and charges established by the Public Service Commission
 80 pursuant to article one, chapter twenty-four of this code:
 81 *Provided*, That the disposal of whole tires in a solid waste
 82 facility is allowed only when the Department of Environmental
 83 Protection has determined there is no other reasonable alterna-
 84 tive available.

85 (k) The Department shall propose for legislative promulga-
 86 tion emergency and legislative rules to effectuate the purposes
 87 of this section.

**ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRON-
 MENTAL ACTION PLAN.**

- §22-15A-1. Legislative findings and purpose.
- §22-15A-2. Definitions.
- §22-15A-3. West Virginia litter control and recycling programs; transfer of programs and employees; additional duties of Secretary; grants to counties and municipalities; and rules relating thereto.
- §22-15A-4. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.
- §22-15A-5. Litter pickup and removal; education; government recycling responsibilities; monitoring and evaluation; study commission; repeal; report to Legislature.
- §22-15A-6. Assistance to solid waste authorities.
- §22-15A-7. Pollution prevention and open dumps.
- §22-15A-8. Waste tires prohibited in certain places; penalty.
- §22-15A-9. Creation of the A. James Manchin Fund; proceeds from sale of waste tires; fee on issuance of certificate of title.
- §22-15A-10. Department to administer funds for waste tire remediation; rules authorized; duties of Secretary.
- §22-15A-11. Disposal of waste tires.
- §22-15A-12. Remediation; liability for remediation and court costs.

- §22-15A-13. Injunctive relief; additional remedy.
- §22-15A-14. Authority of Commissioner of Bureau for Public Health.
- §22-15A-15. Continuation of waste tire remediation program.
- §22-15A-16. Recycling goals.
- §22-15A-17. Recycling plans.
- §22-15A-18. Establishment of county recycling programs for solid waste; petition for referendum; ballot contents; election procedure; effect of such election.
- §22-15A-19. Recycling assessment fee; regulated motor carriers; dedication of proceeds; criminal penalties.
- §22-15A-20. Establishment of state recycling program for solid waste.
- §22-15A-21. Procurement of recycled products.
- §22-15A-22. Prohibition on the disposal of certain items; plans for the proper handling of said items required.
- §22-15A-23. Recycling facilities exemption.

§22-15A-1. Legislative findings and purpose.

1 (a) The Legislature finds that litter is a public nuisance and
2 distracts from the beauty of the state and its natural resources.
3 It is therefore necessary to establish and implement a litter
4 control program to coordinate public and private litter control
5 efforts; to establish penalties for littering; to provide for litter
6 pickup programs; to create education programs; and to provide
7 assistance to local solid waste authority litter control efforts.

8 (b) The Legislature further finds that the improper manage-
9 ment of commercial and residential solid waste and the unlaw-
10 ful disposal of such waste creates open dumps that adversely
11 impacts the state's natural resources, public water supplies and
12 the public health, safety and welfare of the citizens of the state.
13 It is therefore necessary to establish a program to promote
14 pollution prevention and to eliminate and remediate open
15 dumps.

16 (c) The Legislature further finds that waste tire piles are a
17 direct product of state citizens use and enjoyment of state roads
18 and highways and proper tire waste disposal is a necessary
19 component of maintenance of the transportation system. The
20 accumulation of waste tires has also become a significant

21 environmental and public health hazard to the state and the
22 location and number of waste tires are directly related to the
23 efficiency of travel, by citizens, visitors and of commerce,
24 along public highways in West Virginia. In particular, the
25 Legislature recognizes that waste tires are widespread in
26 location and in number throughout the state; waste tires
27 physically touch and concern public highways, including, but
28 not limited to, state roads, county roads, park roads, secondary
29 routes and orphan roads, all of which interferes with the
30 efficiency of public highways; and further that the existence of
31 waste tires along and near public highways is sometimes
32 accompanied by other hazards and, in turn, adversely impacts
33 the proper maintenance and efficiency of public highways for
34 citizens.

35 (d) The Legislature also recognizes and declares that waste
36 tires are a public nuisance and hazard; that waste tires serve as
37 harborage and breeding places for rodents, mosquitoes, fleas,
38 ticks and other insects and pests injurious to the public health,
39 safety and general welfare; that waste tires collected in large
40 piles pose an excessive risk to public health, safety and welfare
41 from disease or fire; that the environmental, economic and
42 societal damage resulting from fires in waste tire piles can be
43 avoided by removing the piles; and that tire pile fires cause
44 extensive pollution of the air and surface and groundwater for
45 miles downwind and downstream from the fire.

46 (e) Therefore, in view of the findings relating to waste tires,
47 the Legislature declares it to be the public policy of the State of
48 West Virginia to eliminate the present danger resulting from
49 discarded or abandoned waste tires and to eliminate the visual
50 pollution resulting from waste tire piles and that in order to
51 provide for the public health, safety and welfare, quality of life
52 and to reverse the adverse impacts to the proper maintenance
53 and efficiency of public highways, it is necessary to enact

54 legislation to those ends by providing expeditious means and
55 methods for effecting the disposal of waste tires.

56 (f) The Legislature finds that many citizens desire a
57 recycling program in order to conserve limited natural re-
58 sources, reduce litter, recycle valuable materials, extend the
59 useful life of solid waste landfills, reduce the need for new
60 landfills, and create markets for recyclable materials. It is
61 therefore necessary to establish goals for recycling solid waste;
62 to require certain municipalities to implement recycling
63 programs; to authorize counties to adopt comprehensive
64 recycling programs; to encourage source separation of solid
65 waste; to increase the purchase of recycled products by the
66 various agencies and instrumentalities of government; and to
67 educate the public concerning the benefits of recycling.

68 (g) The Legislature finds that the effectiveness of litter
69 control, open dump, tire clean up programs and recycling
70 programs have been made less efficient by fragmented imple-
71 mentation of the various programs by different agencies. It is
72 therefore necessary to coordinate all such programs under one
73 program managed by the Department to ensure that all current
74 and future litter, open dump, waste tire and recycling issues are
75 managed and addressed efficiently and effectively.

76 (h) This article implements the A. James Manchin Rehabili-
77 tation Environmental Action Plan, a coordinated effort to
78 address litter, waste, open dump, tire clean up and recycling
79 programs.

§22-15A-2. Definitions.

1 Unless the context clearly indicates a different meaning or
2 defined elsewhere in this chapter, as used in this article:

3 (1) "Beneficial use" means the use or reuse of whole waste
4 tires or tire derived material which are reused in constructing

5 retaining walls, rebuilding highway shoulders and subbase,
6 building highway crash attenuation barriers, feed hopper or
7 watering troughs for livestock, other agricultural uses approved
8 by the Department of Environmental Protection, playground
9 equipment, boat or truck dock construction, house or building
10 construction, go-cart, motorbike or race track barriers, or
11 similar types of beneficial applications: *Provided*, That waste
12 tires may not be reused as fencing, as erosion control structures,
13 along stream banks or river banks or reused in any manner
14 where human health or the environment, as determined by the
15 Secretary of the Department of Environmental Protection, is put
16 at risk.

17 (2) "Collected for commercial purposes" means taking solid
18 waste for disposal from any person for remuneration regardless
19 of whether or not the person taking the solid waste is a common
20 carrier by motor vehicle governed by article two, chapter
21 twenty-four-a of this code.

22 (3) "Court" means any circuit, magistrate or municipal
23 court.

24 (4) "Department" means the Department of Environmental
25 Protection.

26 (5) "Litter" means all waste material including, but not
27 limited to, any garbage, refuse, trash, disposable package,
28 container, can, bottle, paper, ashes, cigarette or cigar butt,
29 carcass of any dead animal or any part thereof, or any other
30 offensive or unsightly matter, but not including the wastes of
31 primary processes of mining, logging, sawmilling, farming or
32 manufacturing.

33 (6) "Litter receptacle" means those containers suitable for
34 the depositing of litter at each respective public area designated
35 by the Secretary's rules promulgated pursuant to subsection (e),
36 section three of this article.

37 (7) "Person" means a natural person, corporation, firm,
38 partnership, association or society, and the plural as well as the
39 singular.

40 (8) "Public area" means an area outside of a municipality,
41 including public road and highway rights-of-way, parks and
42 recreation areas owned or controlled by this state or any county
43 of this state, or an area held open for unrestricted access by the
44 general public.

45 (9) "Remediate or Remediation" means to remove all litter,
46 solid waste, and tires located above grade at a site: *Provided,*
47 That remediation does not include clean up of hazardous waste.

48 (10) "Secretary" means the Secretary of the Department of
49 Environmental Protection.

50 (11) "Waste tire" means any continuous solid or pneumatic
51 rubber covering designed to encircle the wheel of a vehicle but
52 which has been discarded, abandoned or is no longer suitable
53 for its original, intended purpose nor suitable for recapping, or
54 other beneficial use because of wear, damage or defect. A tire
55 is no longer considered to be suitable for its original intended
56 purpose when it fails to meet the minimum requirements to pass
57 a West Virginia motor vehicle safety inspection. Used tires
58 located at a commercial recapping facility or tire dealer for the
59 purpose of being reused or recapped are not waste tires.

60 (12) "Waste tire monofill or monofill" means an approved
61 solid waste facility where no solid waste except waste tires are
62 placed for the purpose of long term storage for eventual
63 retrieval for marketing purposes.

64 (13) "Waste tire processing facility" means a solid waste
65 facility or manufacturer that accepts waste tires generated by
66 sources other than the owner or operator of the facility for
67 processing by such means as cryogenics, pyrolysis,

68 pyroprocessing cutting, splitting, shredding, quartering, grinding
69 or otherwise breaking down waste tires for the purposes of
70 disposal, reuse, recycling and/or marketing.

71 (14) "Waters of the state" means generally, without
72 limitation, natural or artificial lakes, rivers, streams, creeks,
73 branches, brooks, ponds, impounding reservoirs, springs, wells,
74 watercourses and wetlands.

**§22-15A-3. West Virginia litter control and recycling programs;
transfer of programs and employees; additional
duties of Secretary; grants to counties and mu-
nicipalities; and rules relating thereto.**

1 (a) On and after the first day of July, two thousand five, the
2 litter control and recycling programs heretofore operated and
3 managed by the Division of Natural Resources shall transfer to
4 the Department of Environmental Protection.

5 With the transfer of the West Virginia Litter Control and
6 Recycling Programs from the jurisdiction of the Division of
7 Natural Resources to the jurisdiction of the Department of
8 Environmental Protection, all records, assets and contracts,
9 along with rights and obligations thereunder, obtained or signed
10 on behalf of the Litter Control and Recycling Programs are
11 hereby transferred and assigned to the Department of Environ-
12 mental Protection.

13 (b) The Commissioner of the Division of Natural Resources
14 and the Secretary of the Department of Environmental Protec-
15 tion shall determine which employees of the Division of
16 Natural Resources will be transferred to the Department of
17 Environmental Protection. All employees including administra-
18 tors of the litter control and recycling programs are subject to
19 being transferred to the Department of Environmental Protec-
20 tion. Employees in the classified service who have gained
21 permanent status as of the effective date of this article, enacted

22 during the two thousand five regular session of the Legislature,
23 will not be subject to further qualifying examination in their
24 respective classifications by reason of the transfer required by
25 the provisions of this section. Nothing contained in this section
26 may be construed to either abridge the rights of employees
27 within the classified service of the state to the procedures and
28 protections set forth in article six, chapter twenty-nine of this
29 code or to preclude the reclassification or reallocation of
30 positions in accordance with procedures set forth in said article.
31 The Division of Personnel shall work with the Commission and
32 Secretary to efficiently transfer employees from the Division of
33 Natural Resources to the Department of Environmental
34 Protection.

35 (c) In addition to all other powers, duties and responsibili-
36 ties granted and assigned to the Secretary of the Department of
37 Environmental Protection in this chapter and elsewhere by law,
38 the Secretary, in the administration of the West Virginia Litter
39 Control Program created by this section, shall:

40 (1) Coordinate all industry and business organizations
41 seeking to aid in the litter control and recycling effort;

42 (2) Cooperate with all local governments to accomplish
43 coordination of local litter control and recycling efforts;

44 (3) Encourage, organize, coordinate and increase public
45 awareness of and participation in all voluntary litter control and
46 recycling campaigns, including citizen litter watch programs,
47 seeking to focus the attention of the public on the litter control
48 and recycling programs of the state and local governments and
49 of private recycling centers;

50 (4) Recommend to local governing bodies that they adopt
51 ordinances similar to the provisions of section four of this
52 article;

53 (5) Investigate the methods and success of techniques of
54 litter control, removal and disposal utilized in other states, and
55 develop, encourage, organize and coordinate local litter control
56 programs funded by grants awarded pursuant to subsection (d)
57 of this section utilizing such successful techniques;

58 (6) Investigate the availability of, and apply for, funds
59 available from any and all private or public sources to be used
60 in the litter control program created by this section;

61 (7) Attract to the state persons or industries that purchase,
62 process or use recyclable materials; and

63 (8) Contract for the development, production and broadcast
64 of radio and television messages promoting the West Virginia
65 Litter Control Program. The messages should increase public
66 awareness of and promote citizen responsibility toward the
67 reduction of litter.

68 (d) All authority to promulgate rules pursuant to article
69 three, chapter twenty-nine-a of this code establishing criteria for
70 awarding direct or matching grants for the study of available
71 research and development in the fields of litter control, removal
72 and disposal, methods for the implementation of such research
73 and development, and the development of public educational
74 programs concerning litter control is hereby transferred from
75 the Division of Natural Resources to the Secretary of the
76 Department of Environmental Protection as of the effective date
77 of enactment of this section and article during the two thousand
78 five session of the Legislature: *Provided*, That any rule
79 promulgated by the Division of Natural Resources relating to
80 such grants shall remain in force and effect as though promul-
81 gated by the Department of Environmental Protection until the
82 Secretary amends the rules in accordance with the provisions of
83 article three, chapter twenty-nine-a of this code.

84 (e) All authority to promulgate rules pursuant to article
85 three, chapter twenty-nine-a of this code designating public
86 areas where litter receptacles shall be placed and the minimum
87 number of litter receptacles in accordance with subsection (g),
88 section four of this article is hereby transferred from the
89 Division of Natural Resources to the Secretary of the Depart-
90 ment of Environmental Protection as of the effective date of
91 enactment of this section and article during the two thousand
92 five session of the Legislature. Any rule promulgated by the
93 Division of Natural Resources relating to littering receptacles
94 shall remain in effect as if promulgated by the Secretary until
95 amended by the Secretary.

96 (f) Commencing on the first day of July, two thousand five,
97 the Secretary shall expend annually at least fifty percent of the
98 moneys credited to the Litter Control Fund in the previous
99 fiscal year for matching grants to counties and municipalities
100 for the initiation and administration of litter control programs.
101 The Secretary shall promulgate rules pursuant to article three,
102 chapter twenty-nine-a of this code establishing criteria for the
103 awarding of matching grants.

104 (g) The Secretary of the Department of Environmental
105 Protection in cooperation with the Commissioner of Highways,
106 the Department of Commerce, the West Virginia State Police,
107 the United States Forestry Service and other local, state and
108 federal law-enforcement agencies shall be responsible for the
109 administration and enforcement of all laws and rules relating to
110 the maintenance of cleanliness and improvement of appear-
111 ances on and along highways, roads, streets, alleys and any
112 other private or public areas of the state. These other agencies
113 shall make recommendations to the Secretary, from time to
114 time, concerning means and methods of accomplishing litter
115 control consistent with the provisions of this chapter. Such
116 cooperation shall include, but not be limited to, contracts with

117 the Commissioner of Highways to operate a litter control
118 program.

119 (h) All other state agencies and local governments shall
120 cooperate with the Secretary in effecting the purposes of the
121 litter control program.

§22-15A-4. Unlawful disposal of litter; civil and criminal penalty; litter control fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

1 (a) (1) No person shall place, deposit, dump, throw or cause
2 to be placed, deposited, dumped or thrown any litter as defined
3 in section two of this article, in or upon any public or private
4 highway, road, street or alley; any private property; any public
5 property; or the waters of the state or within one hundred feet
6 of the waters of this state, except in a proper litter or other solid
7 waste receptacle.

8 (2) It is unlawful for any person to place, deposit, dump,
9 throw or cause to be placed, deposited, dumped or thrown any
10 litter from a motor vehicle or other conveyance or to perform
11 any act which constitutes a violation of the motor vehicle laws
12 contained in section fourteen, article fourteen, chapter
13 seventeen-c of this code.

14 (3) If any litter is placed, deposited, dumped, discharged,
15 thrown or caused to be placed, deposited, dumped or thrown
16 from a motor vehicle, boat, airplane or other conveyance, it is
17 prima facie evidence that the owner or the operator of the motor
18 vehicle, boat, airplane or other conveyance intended to violate
19 the provisions of this section.

20 (4) Any person who violates the provisions of this section
21 by placing, depositing, dumping or throwing or causing to be
22 placed, deposited, dumped or thrown any litter, not collected for

23 commercial purposes, in an amount not exceeding one hundred
24 pounds in weight or twenty-seven cubic feet in size, is guilty of
25 a misdemeanor. Upon conviction, he or she is subject to a fine
26 of not less than fifty dollars nor more than one thousand dollars,
27 or in the discretion of the court, sentenced to perform commu-
28 nity service by cleaning up litter from any public highway,
29 road, street, alley or any other public park or public property, or
30 waters of the state, as designated by the court, for not less than
31 eight nor more than sixteen hours, or both.

32 (5) Any person who violates the provisions of this section
33 by placing, depositing, dumping or throwing or causing to be
34 placed, deposited, dumped or thrown any litter, not collected for
35 commercial purposes, in an amount greater than one hundred
36 pounds in weight or twenty-seven cubic feet in size, but less
37 than five hundred pounds in weight or two hundred sixteen
38 cubic feet in size is guilty of a misdemeanor. Upon conviction
39 he or she is subject to a fine of not less than five hundred
40 dollars nor more than two thousand dollars, or in the discretion
41 of the court, may be sentenced to perform community service
42 by cleaning up litter from any public highway, road, street,
43 alley or any other public park or public property, or waters of
44 the state, as designated by the court, for not less than sixteen
45 nor more than thirty-two hours, or both.

46 (6) Any person who violates the provisions of this section
47 by placing, depositing, dumping or throwing or causing to be
48 placed, deposited, dumped or thrown any litter in an amount
49 greater than five hundred pounds in weight or two hundred
50 sixteen cubic feet in size or any amount which had been
51 collected for commercial purposes is guilty of a misdemeanor.
52 Upon conviction, the person is subject to a fine not less than
53 twenty-five hundred dollars or not more than twenty-five
54 thousand dollars, or confinement in a county or regional jail for
55 not more than one year or both. In addition, the violator may be
56 guilty of creating or contributing to an open dump as defined in

57 section two, article fifteen, chapter twenty-two of this code and
58 subject to the enforcement provisions of section fifteen of said
59 article.

60 (7) Any person convicted of a second or subsequent
61 violation of this section is subject to double the authorized
62 range of fines and community service for the subsection
63 violated.

64 (8) The sentence of litter clean up shall be verified by
65 environmental inspectors from the Department of Environmen-
66 tal Protection. Any defendant receiving the sentence of litter
67 clean up shall provide, within a time to be set by the court,
68 written acknowledgment from an environmental inspector that
69 the sentence has been completed and the litter has been dis-
70 posed of lawfully.

71 (9) Any person who has been found by the court to have
72 willfully failed to comply with the terms of a litter clean up
73 sentence imposed by the court pursuant to this section is subject
74 to, at the discretion of the court, double the amount of the
75 original fines and community service penalties originally
76 ordered by the court.

77 (10) All law-enforcement agencies, officers and environ-
78 mental inspectors shall enforce compliance with this section
79 within the limits of each agency's statutory authority.

80 (11) No portion of this section restricts an owner, renter or
81 lessee in the lawful use of his or her own private property or
82 rented or leased property or to prohibit the disposal of any
83 industrial and other wastes into waters of this state in a manner
84 consistent with the provisions of article eleven, chapter
85 twenty-two of this code. But if any owner, renter or lessee,
86 private or otherwise, knowingly permits any such materials or
87 substances to be placed, deposited, dumped or thrown in such
88 location that high water or normal drainage conditions will

89 cause any such materials or substances to wash into any waters
90 of the state, it is prima facie evidence that the owner, renter or
91 lessee intended to violate the provisions of this section:
92 *Provided*, That if a landowner, renter or lessee, private or
93 otherwise, reports any placing, depositing, dumping or throwing
94 of these substances or materials upon his or her property to the
95 prosecuting attorney, county commission, the Division of
96 Natural Resources or the Department of Environmental
97 Protection, the landowner, renter or lessee will be presumed to
98 not have knowingly permitted the placing, depositing, dumping
99 or throwing of the materials or substances.

100 (b) Any indication of ownership found in litter shall be
101 prima facie evidence that the person identified violated the
102 provisions of this section: *Provided*, That no inference may be
103 drawn solely from the presence of any logo, trademark, trade
104 name or other similar mass reproduced things of identifying
105 character appearing on the found litter.

106 (c) Every person who is convicted of or pleads guilty to
107 disposing of litter in violation of subsection (a) of this section
108 shall pay a civil penalty in the sum of not less than one hundred
109 dollars nor more than one thousand dollars as costs for clean up,
110 investigation and prosecution of the case, in addition to any
111 other court costs that the court is otherwise required by law to
112 impose upon a convicted person.

113 The clerk of the circuit court, magistrate court or municipal
114 court in which these additional costs are imposed shall, on or
115 before the last day of each month, transmit fifty percent of a
116 civil penalty received pursuant to this section to the State
117 Treasurer for deposit in the State Treasury to the credit of a
118 special revenue fund to be known as the Litter Control Fund
119 which is hereby continued and transferred to the Department of
120 Environmental Protection. Expenditures for purposes set forth
121 in this section are not authorized from collections but are to be

122 made only in accordance with appropriation and in accordance
123 with the provisions of article three, chapter twelve of this code
124 and upon fulfillment of the provisions set forth in article two,
125 chapter five-a of this code. Amounts collected which are found
126 from time to time to exceed the funds needed for the purposes
127 set forth in this article may be transferred to other accounts or
128 funds and designated for other purposes by appropriation of the
129 Legislature.

130 (d) The remaining fifty percent of each civil penalty
131 collected pursuant to this section shall be transmitted to the
132 county or regional solid waste authority in the county where the
133 litter violation occurred. Moneys shall be expended by the
134 county or regional solid waste authority for the purpose of litter
135 prevention, clean up and enforcement. The county commission
136 shall cooperate with the county or regional solid waste authority
137 serving the respective county to develop a coordinated litter
138 control program pursuant to section eight, article four, chapter
139 twenty-two-c of this code.

140 (e) The Commissioner of the Division of Motor Vehicles,
141 upon registering a motor vehicle or issuing an operator's or
142 chauffeur's license, shall issue to the owner or licensee, as the
143 case may be, a summary of this section and section fourteen,
144 article fourteen, chapter seventeen-c of the code.

145 (f) The Commissioner of the Division of Highways shall
146 cause appropriate signs to be placed at the state boundary on
147 each primary and secondary road, and at other locations
148 throughout the state, informing those entering the state of the
149 maximum penalty provided for disposing of litter in violation
150 of subsection (a) of this section.

151 (g) Any state agency or political subdivision that owns,
152 operates or otherwise controls any public area as may be
153 designated by the Secretary by rule promulgated pursuant to

154 subdivision (8), subsection (a), section three of this article shall
155 procure and place litter receptacles at its own expense upon its
156 premises and shall remove and dispose of litter collected in the
157 litter receptacles. After receiving two written warnings from
158 any law-enforcement officer or officers to comply with this
159 subsection or the rules of the Secretary, any state agency or
160 political subdivision that fails to place and maintain the litter
161 receptacles upon its premises in violation of this subsection or
162 the rules of the Secretary shall be fined fifteen dollars per day
163 of the violation.

§22-15A-5. Litter pickup and removal; education; government recycling responsibilities; monitoring and evaluation; study commission; repeal; report to Legislature.

1 (a) *Litter pickup and removal.* —

2 (1) Each county commission and the Regional Jail Author-
3 ity may establish a jail or prison inmate program including a
4 regular litter pickup work regimen under proper supervision
5 pursuant to section four, article fifteen, chapter seventeen of
6 this code. Funding for these programs shall be from the Litter
7 Control Fund. Funding requirements may include salaries for
8 additional personnel needed for the program. The program may
9 include the cooperative help of the Division of Highways or any
10 other voluntary state, local, private, civic or public agency for
11 personnel, equipment or materials in establishing a county or
12 regionwide, continual program of inmate litter pickup. Upon
13 final approval of the projected cost of the program for a given
14 fiscal year, the Secretary shall disburse the approved amount to
15 the county or Regional Jail Authority. The funds will be used
16 by the Authority to reimburse the county commission or
17 Regional Jail Authority for its expenses related to the program
18 and to pay other costs related to the use of inmates for litter
19 pickup. Nothing contained herein shall preclude a county or

20 counties from expending whatever additional funds its commis-
21 sion or commissions may deem appropriate from any other
22 revenue source in furtherance of said program.

23 (2) All persons involved with litter pickup may separate
24 identifiable recyclable materials from other litter collected. The
25 funds resulting from the sale of those recyclable materials shall
26 be returned to the Litter Control Fund.

27 (3) The county or regional solid waste authority may also
28 contract with local governments, civic organizations or chief
29 correctional officers in any county to implement litter pickup
30 and removal pursuant to this act when the state offender work
31 force is not available. In such cases, the contract provisions
32 shall require that identifiable recyclable materials shall be
33 separated from other litter collected, with resulting funds
34 returned to the Litter Control Fund. Priority shall be given to
35 those contracts that maximize the use of community service
36 hours by inmates and youth employment programs.

37 (b) *Education.* —

38 (1) The Department of Education in cooperation with the
39 Department of Environmental Protection shall distribute
40 educational materials to the schools based on the goals of litter
41 clean up and proper solid waste disposal, the rationale for the
42 goals and how primary and secondary school students can
43 contribute to the achievement of the goals. The Department of
44 Education shall further incorporate this information into the
45 curriculum of the public school system as appropriate.

46 (2) The Division of Highways and local governments shall
47 conduct public awareness programs to notify the public of the
48 provisions of this law and how they can participate, to inform
49 them as to the rationale behind the provisions of this law, to
50 advise them of other avenues for achievement of the noted
51 goals and to encourage their participation.

52 (3) The Department of Environmental Protection and the
53 Solid Waste Management Board shall provide technical
54 assistance to local governments in the implementation of this
55 law.

56 (c) *Government recycling responsibilities.* —

57 (1) All state agencies and regional planning councils may
58 establish and implement aluminum container, glass and paper
59 recycling programs at their public facilities. To the extent
60 practicable, programs for other metals, plastics, rubber and
61 other recyclable materials may be established and implemented.
62 The moneys collected from the sale of such materials shall be
63 deposited and accounted for in the Litter Control Fund pursuant
64 to the authority of section four of this article.

65 (2) To further promote recycling and reduction of the waste
66 stream, county and municipal governments shall consider the
67 establishment of recycling programs as provided in this section
68 in the operation of their facilities and shall evaluate the cost-
69 effectiveness of:

70 (A) Procedures that separate identifiable recyclable
71 materials from solid waste collected; and

72 (B) Programs that provide for:

73 (i) The establishment of a collection place for recyclables
74 at all landfills and other interim solid waste collection sites and
75 arrangements for the material collected to be recycled;

76 (ii) Public notification of such places and encouragement to
77 participate;

78 (iii) The use of rate differentials at landfills to facilitate
79 public participation in on-site recycling programs.

80 (d) Each affected agency and local government shall
81 monitor and evaluate the programs implemented pursuant to
82 this law.

83 (e) The Secretary shall submit a report to the Speaker of the
84 House and the President of the Senate not later than the first day
85 of March, two thousand six, and every five years thereafter
86 regarding the effectiveness of the programs authorized by this
87 law.

§22-15A-6. Assistance to solid waste authorities.

1 The Secretary may expend funds from the Litter Control
2 Fund established pursuant to section four of this article to assist
3 county and regional solid waste authorities in the formulation
4 of their comprehensive litter and solid waste control plans
5 pursuant to section eight, article four, chapter twenty-two-c of
6 this code and in the construction and maintenance of approved
7 commercial solid waste facilities authorities which would in the
8 opinion of the Secretary be unable to construct or maintain an
9 approved commercial solid waste facility without grant funds.

§22-15A-7. Pollution prevention and open dumps.

1 (a) The Secretary shall establish the Pollution Prevention
2 and Open Dump (PPOD) Program to encourage the proper
3 disposal of commercial and residential solid waste and to
4 undertake all reclamation, clean up and remedial actions
5 necessary to minimize or mitigate damage to the environment,
6 natural resources, public water supplies, water resources and the
7 public health, safety and welfare which may result from open
8 dumps or solid waste not disposed of in a proper or lawful
9 manner. The program shall seek to eliminate open dumps,
10 which often include waste tires and to recycle as many items as
11 possible from these reclamation efforts. This program shall be
12 funded through the Solid Waste Reclamation and Environmen-

13 tal Response Fund established in section eleven, article fifteen
14 of this chapter.

15 (b) Authorized representatives of the Department have the
16 right, upon presentation of proper identification, to enter upon
17 any property for the purpose of conducting studies or explor-
18 atory work to determine the existence of adverse effects of an
19 open dump, to determine the feasibility of the reclamation or
20 prevention of such adverse effects and to conduct reclamation
21 activities provided herein. Such entry is an exercise of the
22 police power of the state and for the protection of public health,
23 safety and general welfare and is not an act of condemnation of
24 property or trespass thereon. Nothing contained in this section
25 eliminates any obligation to follow any process that may be
26 required by law.

§22-15A-8. Waste tires prohibited in certain places; penalty.

1 The Waste Tire Remediation Program heretofore under the
2 jurisdiction of the Division of Highways is transferred to the
3 Department of Environmental Protection effective upon
4 enactment of this article by the Legislature during the regular
5 session of two thousand five.

6 (a) No person shall, within this state, place, deposit or
7 abandon any waste tire or part thereof upon the right-of-way of
8 any public highway or upon any other public property nor
9 deposit or abandon any waste tire or part thereof upon any
10 private property unless it is at a licensed monofill, solid waste
11 facility or at any other business authorized by the Department
12 of Environmental Protection to accept, process, manufacture or
13 remanufacture waste tires: *Provided*, That the Secretary may
14 temporarily accumulate as many waste tires as he or she deems
15 necessary at any location or locations necessary to effectuate
16 the purposes of this article.

17 (b) No person, except those persons who have received and
18 maintain a valid permit or license from the state for the opera-
19 tion of a solid waste facility, waste tire monofill, waste tire
20 processing facility, or other such permitted activities, shall
21 accumulate more than one hundred waste tires for beneficial
22 use without obtaining a license or permit from the Department
23 of Environmental Protection.

24 (c) Any person who violates any provision of this section
25 shall be guilty of creating an open dump and subject to enforce-
26 ment actions or prosecution under the provisions of article
27 fifteen of this chapter.

**§22-15A-9. Creation of the A. James Manchin Fund; proceeds
from sale of waste tires; fee on issuance of certifi-
cate of title.**

1 (a) There is continued in the State Treasury a special
2 revenue fund known as the A. James Manchin Fund. All
3 moneys appropriated, deposited or accrued in this Fund shall be
4 used exclusively for remediation of waste tire piles as required
5 by this article, for the tire disposal program established under
6 section ten of this article or for the purposes of subsection (h),
7 section ten of this article or for the purposes of subsection (c),
8 section eleven of this article. The Commissioner of the
9 Division of Highways shall work with and may use moneys in
10 the fund to contract with the Secretary of the Department of
11 Environmental Protection to accomplish the remediation of
12 waste tire piles. The Fund consists of the proceeds from the
13 sale of waste tires; fees collected by the Division of Motor
14 Vehicles as provided in section sixteen, article ten, chapter
15 seventeen-a of this code; any federal, state or private grants;
16 legislative appropriations; loans; and any other funding source
17 available for waste tire remediation. Any unprogrammed
18 balance remaining in the Fund at the end of any state fiscal year
19 shall be transferred to the State Road Fund.

20 (b) No further collections or deposits shall be made after
21 the Commissioner of the Division of Highways certifies to the
22 Governor and the Legislature that the remediation of all waste
23 tire piles that were determined by the Commissioner to exist on
24 the first day of July, two thousand one, has been completed and
25 that all infrastructure bonds issued by the Water Development
26 Authority pursuant to section seventeen-a, article fifteen-a,
27 chapter thirty-one of this code have been paid in full or legally
28 defeased.

29 (c) If infrastructure bonds are not issued by the Water
30 Development Authority pursuant to section seventeen-a, article
31 fifteen-a, chapter thirty-one of this code to finance infrastruc-
32 ture projects relating to waste tire processing facilities located
33 in this state on or before the thirty-first day of December, two
34 thousand six, all further collections and deposits to the A. James
35 Manchin Fund which are not programmed for remediation or
36 disposal shall be transferred to the state road fund at the end of
37 each fiscal year.

**§22-15A-10. Department to administer funds for waste tire
remediation; rules authorized; duties of Secretary.**

1 (a) The Department shall administer all funds made
2 available to the Department by legislative appropriation or by
3 funds made available by the Division of Highways, as well as
4 federal, state or private grants for remediation of waste tire piles
5 and for the proper disposal of waste tires removed from waste
6 tire piles.

7 (b) All authority to promulgate legislative rules necessary
8 to implement the provisions of this article is hereby transferred
9 from the Division of Highways to the Secretary of the Depart-
10 ment of Environmental Protection as of the effective date of
11 enactment of this section and article during the two thousand

12 five session of the Legislature. Any legislative rules promul-
13 gated by the Commissioner of the Division of Highways in
14 furtherance of the waste tire remediation program established
15 in former article twenty-four, chapter seventeen of this code
16 shall remain in force and effect as if promulgated by the
17 Secretary until they are amended in accordance with the
18 provisions of article three, chapter twenty-nine-a of this code.

19 (c) The Secretary also has the following powers:

20 (1) To apply and carry out the provisions of this article and
21 the rules promulgated under this article.

22 (2) To investigate, from time to time, the operation and
23 effect of this article and of the rules promulgated under this
24 article and to report his or her findings and recommendations to
25 the Legislature and the Governor.

26 (d) On or before the first day of July, two thousand six, the
27 Secretary shall determine the location, approximate size and
28 potential risk to the public of all waste tire piles in the state and
29 establish, in descending order, a waste tire remediation list.

30 (e) The Secretary may contract with the Department of
31 Health and Human Resources or the Division of Corrections, or
32 both, to remediate or assist in remediation of waste tire piles
33 throughout the state. Use of available Department of Health
34 and Human Resources and the Division of Corrections work
35 programs shall be given priority status in the contract process
36 so long as such programs prove a cost-effective method of
37 remediating waste tire piles.

38 (f) Waste tire remediation shall be stopped upon the
39 discovery of any potentially hazardous material at a
40 remediation site. The Department shall respond to the discov-
41 ery in accordance with the provisions of article nineteen of this
42 chapter.

43 (g) The Secretary may establish a tire disposal program
44 within the Department to provide for a cost effective and
45 efficient method to accept passenger car and light truck waste
46 tires at locations designated by the Department that have
47 sufficient space for temporary storage of waste tires and
48 personnel to accept and handle waste tires. The Secretary may
49 pay a fee for each tire an individual West Virginia resident or
50 West Virginia business brings to the Department. The Secre-
51 tary may establish a limit on the number of tires an individual
52 or business may be paid for during any calendar month. The
53 Secretary may in his or her discretion authorize commercial
54 businesses to participate in the collection program: *Provided,*
55 That no person or business who has a waste tire pile subject to
56 remediation under this article may participate in this program.

57 (h) The Commissioner of the Division of Highways may
58 pledge not more than two and one-half million dollars annually
59 of the moneys appropriated, deposited or accrued in the A.
60 James Manchin Fund created by section nine of this article to
61 the payment of debt service, including the funding of reason-
62 able reserves, on bonds issued by the Water Development
63 Authority pursuant to section seventeen-a, article fifteen-a,
64 chapter thirty-one of this code to finance infrastructure projects
65 relating to waste tire processing facilities located in this state:
66 *Provided,* That a waste tire processing facility shall be deter-
67 mined by the Solid Waste Management Board, established
68 pursuant to the provisions of article three, chapter twenty-two-c
69 of this code, to meet all applicable federal and state environ-
70 mental laws and rules and to aid the state in efforts to promote
71 and encourage recycling and use of constituent component parts
72 of waste tires in an environmentally sound manner: *Provided,*
73 *however,* That the waste tire processing facility shall have a
74 capital cost of not less than three hundred million dollars and
75 the council for community and economic development shall
76 determine that the waste tire processing facility is a viable
77 economic development project of benefit to the state's econ-
78 omy.

§22-15A-11. Disposal of waste tires.

1 (a) The Department may sell waste tires collected during
2 remediation of waste tire piles at public auction or to a waste
3 tire monofill, waste tire processing facility or business autho-
4 rized by the Department of Environmental Protection to accept,
5 store, use or process waste tires.

6 (b) If there is no market in West Virginia for the sale of
7 waste tires the Department may sell them at any available
8 market.

9 (c) If there is no market for the sale of waste tires the
10 Department may dispose of them in any lawful manner.

§22-15A-12. Remediation; liability for remediation and court costs.

1 (a) Any person who has, prior or subsequent to the effective
2 date of this act, illegally disposed of waste tires or has waste
3 tires illegally disposed on his or her property shall be liable for:

4 (1) All costs of removal or remedial action incurred by the
5 Department;

6 (2) Any other necessary costs of remediation, including
7 properly disposing of waste tires and damage to adjacent
8 property owners; and

9 (3) All costs incurred in bringing civil actions under this
10 article.

11 (b) The Department shall notify any person who owns real
12 property or rights to property where a waste tire pile is located
13 that remediation of the waste tire pile is necessary. The
14 Department shall make and enter an order directing such person
15 or persons to remove and properly dispose of the waste tires.

16 The Department shall set a time limit for completion of the
17 remediation. The order shall be served by registered or
18 certified mail, return receipt requested, or by a county sheriff or
19 deputy sheriff.

20 (c) If the remediation is not completed within the time limit
21 or the person cannot be located or the person notifies the
22 Department that he or she is unable to comply with the order,
23 the Department may expend funds, as provided herein, to
24 complete the remediation. Any amounts so expended shall be
25 promptly repaid by the person or persons responsible for the
26 waste tire pile. Any person owing remediation costs or
27 damages shall be liable at law until such time as all costs or
28 damages are fully paid.

29 (d) Authorized representatives of the Department have the
30 right, upon presentation of proper identification, to enter upon
31 any property for the purpose of conducting studies or explor-
32 atory work to determine the existence of adverse effects of a
33 waste tire pile, to determine the feasibility of the remediation or
34 prevention of such adverse effects and to conduct remediation
35 activities provided herein. Such entry is an exercise of the
36 police power of the state and for the protection of public health,
37 safety and general welfare and is not an act of condemnation of
38 property or trespass thereon. Nothing contained in this section
39 eliminates any obligation to follow any process that may be
40 required by law.

41 (e) There is hereby created a statutory lien upon all real
42 property and rights to the property from which a waste tire pile
43 was remediated for all reclamation costs and damages incurred
44 by the Department. The lien created by this section shall arise
45 at the later of the following:

46 (1) The time costs are first incurred by the Department; or

47 (2) The time the person is provided, by certified or regis-
48 tered mail or personal service, written notice as required by this
49 section.

50 The lien shall continue until the liability for the costs or
51 judgment against the property is satisfied.

52 (f) Any person, who is a bona fide purchaser of real
53 property prior to the first day of July, two thousand one, who
54 did not cause, permit or profit from the illegal disposal of waste
55 tires on the property is only liable for the costs of remediation
56 to the extent that the fair market value of the property, when
57 remediation is completed, exceeds the fair market value of the
58 property that existed on the first day of July, two thousand one.
59 The Department shall have a cause of action against any
60 previous owner who caused, permitted, contributed or profited
61 from the illegal disposal of waste tires on the property for the
62 difference in the amount recovered from the purchaser and the
63 cost of remediation.

64 (g) Liens created by this section shall be duly recorded in
65 the office of the clerk of the county commission in the county
66 where the real property is located and be liens of equal dignity,
67 rank and priority with the lien on such premises of state,
68 county, school and municipal taxes for the amount thereof upon
69 the real property served. The Department shall have the power
70 and authority to enforce such liens in a civil action to recover
71 the money due for remediation costs and damages plus court
72 fees and costs and reasonable attorney's fees.

73 (h) The Department may foreclose upon the premises by
74 bringing a civil action, in the circuit court of the county where
75 the property is located, for foreclosure and an order to sell the
76 property to satisfy the lien.

77 (i) Any proceeds from any sale of property obtained as a
78 result of execution of a lien or judgment under this section for

79 remediation costs, excluding costs of obtaining judgment and
80 perfecting the lien, shall be deposited into the A. James
81 Manchin Fund of the State Treasury.

82 (j) The provisions of this section do not apply and no lien
83 may attach to the right-of-way, easement or other property
84 interest of a utility, whether electric, gas, water, sewer, tele-
85 phone, television cable or other public service, unless the utility
86 contributed to the illegal tire pile.

87 (k) Upon determining the existence of a waste tire pile, the
88 Department shall file a notice of the location of the waste tire
89 pile in the office of the county clerk in the county where
90 property containing a waste tire pile is situate. The Department
91 shall immediately file the notice for all property known to have
92 waste tire piles as of the day the Legislature enacted the
93 amendment to this section during the two thousand five
94 legislative session. The notice shall contain the property
95 owner's name, a location and description of the property and
96 the waste tire pile and the potential liability for remediation.
97 The county clerk shall record the notice in the same manner as
98 a lien and index the notice by the name of the property owner.

§22-15A-13. Injunctive relief; additional remedy.

1 In addition to all other remedies provided in this article, the
2 Attorney General of this state, the Department, the prosecuting
3 attorney of any county where any violation of any provision of
4 this article occurs, or any citizen, resident or taxpayer of the
5 county where any violation of any provision of this article
6 occurs, may apply to the circuit court, or the judge thereof in
7 vacation, of the county where the alleged violation occurred, for
8 an injunction to restrain, prevent or abate the maintenance and
9 storage of waste tires in violation of any provision of this
10 article, or the violation of any other provision of this article. In
11 seeking an injunction, it is not necessary for the Secretary or

12 any state agency seeking an injunction under this section to post
13 bond.

§22-15A-14. Authority of Commissioner of Bureau for Public Health.

1 Although the Secretary is primarily responsible for
2 remediation of waste tire piles under the provisions of this
3 article, the Commissioner of the Bureau for Public Health may
4 enforce the public health laws in any instance where the
5 Commissioner of the Bureau for Public Health determines there
6 is an imminent and substantial endangerment to the public
7 health.

§22-15A-15. Continuation of waste tire remediation program.

1 The waste tire remediation program shall continue to exist,
2 pursuant to the provisions of article ten, chapter four of this
3 code until the first day of July, two thousand six, unless sooner
4 terminated, continued or reestablished pursuant to the provi-
5 sions of that article.

§22-15A-16. Recycling goals.

1 By the first day of January, two thousand ten, it is the goal
2 of this state to reduce the disposal of municipal solid waste by
3 fifty percent of the amount of per capita solid waste disposed of
4 in one thousand nine hundred ninety-one.

§22-15A-17. Recycling plans.

1 (a) Each county or regional solid waste authority, as part of
2 the comprehensive litter and solid waste control plan required
3 pursuant to the provisions of section eight, article four, chapter
4 twenty-two-c of this code, shall prepare and adopt a compre-
5 hensive recycling plan to assist in the implementation of the
6 recycling goals in section sixteen of this article.

7 (b) Each recycling plan required by this section shall
8 include, but not be limited to:

9 (1) Designation of the recyclable materials that can be most
10 effectively source separated in the region or county, which shall
11 include at least three recyclable materials; and

12 (2) Designation of potential strategies for the collection,
13 marketing and disposition of designated source separated
14 recyclable materials in each region or county.

**§22-15A-18. Establishment of county recycling programs for
solid waste; petition for referendum; ballot
contents; election procedure; effect of such
election.**

1 (a) On or before the eighteenth day of October, one
2 thousand nine hundred ninety-two, each municipality described
3 in subsection (b) of this section shall submit a proposal to the
4 Solid Waste Management Board, consistent with the provisions
5 of this section, describing the establishment and implementa-
6 tion of the mandatory recycling program. The Solid Waste
7 Management Board shall review the submitted plans for
8 consistency with the criteria provided in this section, the county
9 or regional solid waste management plan and the statewide
10 management plan. The Solid Waste Management Board may
11 make suggested changes to the plan and shall provide technical
12 assistance to the municipalities in the development of the plans.

13 (b) On or before the eighteenth day of October, one
14 thousand nine hundred ninety-three, each municipality with a
15 population of ten thousand or more people, as determined by
16 the most recent decennial census by the Bureau of the Census
17 of the United States Department of Commerce, shall establish
18 and commence implementation of a source separation and
19 curbside collection program for recyclable materials. Imple-

20 mentation shall be phased in by the first day of July, one
21 thousand nine hundred ninety-five. Such program shall include,
22 at a minimum, the following:

23 (1) An ordinance adopted by the governing body of the
24 municipality requiring that each person, partnership, corpora-
25 tion or other entity in the municipality shall separate at least
26 three recyclable materials, as deemed appropriate by the
27 municipality, from other solid waste: *Provided*, That the list of
28 recyclables to be separated may be adjusted according to
29 whether the generator is residential, commercial or other type
30 of establishment.

31 (2) A scheduled day, at least one per month, during which
32 separated materials are to be placed at the curbside, or similar
33 location, for collection.

34 (3) A system that collects recyclable materials from the
35 curbside, or similar location, at least once per month: *Provided*,
36 That to encourage full participation, the program shall, to the
37 maximum extent possible, provide for the collection of
38 recyclables at the same rate of frequency, and simultaneous
39 with, the regular collection of solid waste.

40 (4) Provisions to ensure compliance with the ordinance,
41 including incentives and penalties.

42 (5) A comprehensive public information and education
43 program covering the importance and benefits of recycling, as
44 well as the specific features and requirements of the recycling
45 program. As part of the education program, each municipality
46 shall, at a minimum, notify all persons occupying residential,
47 commercial, institutional or other premises within its bound-
48 aries of the requirements of the program, including how the
49 system will operate, the dates of collection, the responsibilities
50 of persons within the municipality and incentives and penalties.

51 (6) Consultation with the county or regional solid waste
52 authority in which the municipality is located to avoid duplica-
53 tion, ensure coordination of solid waste programs and maximize
54 the market for recyclables.

55 (c) Notwithstanding the provisions of subsection (b) of this
56 section, a comprehensive recycling program for solid waste
57 may be established in any county of this state by action of a
58 county commission in accordance with the provisions of this
59 section. Such program shall require:

60 (1) That, prior to collection at its source, all solid waste
61 shall be segregated into separate identifiable recyclable
62 materials by each person, partnership, corporation and govern-
63 mental agency subscribing to a solid waste collection service in
64 the county or transporting solid waste to a commercial solid
65 waste facility in the county;

66 (2) Each person engaged in the commercial collection,
67 transportation, processing or disposal of solid waste within the
68 county shall accept only solid waste from which recyclable
69 materials in accordance with the county's comprehensive
70 recycling program have been segregated; and

71 (3) That the provisions of the recycling plan prepared
72 pursuant to section seventeen of this article shall, to the extent
73 practicable, be incorporated in the county's comprehensive
74 recycling program.

75 (d) For the purposes of this article, recyclable materials
76 shall include, but not be limited to, steel and bimetallic cans,
77 aluminum, glass, paper and such other solid waste materials as
78 may be specified by either the municipality or county commis-
79 sion with the advice of the county or regional solid waste
80 authority.

81 (e) A comprehensive recycling program for solid waste may
82 be established in any county of this state by: (1) A petition filed
83 with the county commission bearing the signatures of registered
84 voters of the county equal to not less than five percent of the
85 number of votes cast within the county for Governor at the
86 preceding gubernatorial election; and (2) approval by a majority
87 of the voters in a subsequent referendum on the issue. A
88 referendum to determine whether it is the will of the voters of
89 a county that a comprehensive recycling program for solid
90 waste be established in the county may be held at any regular
91 primary or general election or in conjunction with any other
92 countywide election. Any election at which the question of
93 establishing a policy of comprehensive recycling for solid waste
94 is voted upon shall be held at the voting precincts established
95 for holding primary or general elections. All of the provisions
96 of the general election laws, when not in conflict with the
97 provisions of this article, shall apply to voting and elections
98 hereunder, insofar as practicable. The Secretary of State shall
99 prescribe the form of the petition which shall include the
100 printed name, address and date of birth of each person whose
101 signature appears on the petition. Upon verification of the
102 required number of signatures on the petition, the county
103 commission shall, not less than seventy days before the
104 election, order that the issue be placed on the ballot and
105 referendum held at the next primary, general or special election
106 to determine whether it is the will of the voters of the county
107 that a policy of comprehensive recycling of solid waste be
108 established in the county: *Provided*, That the petition bearing
109 the necessary signatures has been filed with the county commis-
110 sion at least one hundred days prior to the election.

111 The ballot, or the ballot labels where voting machines
112 are used, shall have printed thereon substantially the follow-
113 ing:

114 "Shall the County Commission be required to establish a
115 comprehensive recycling program for solid waste in
116 _____ County, West Virginia?

117 For Recycling

118 Against Recycling

119 (Place a cross mark in the square opposite your choice.)"

120 If a majority of legal votes cast upon the question be for the
121 establishment of a policy of comprehensive recycling of solid
122 waste, the county commission shall, after the certification of the
123 results of the referendum, thereafter adopt an ordinance, within
124 one hundred eighty days of certification, establishing a compre-
125 hensive recycling program for solid waste in the county:
126 *Provided*, That such program shall be implemented and
127 operational no later than twelve months following certification.
128 If a majority of the legal votes cast upon the question be against
129 the establishment of a policy of comprehensive recycling of
130 solid waste, the policy shall not take effect, but the question
131 may again be submitted to a vote at any subsequent election in
132 the manner herein provided.

133 (f) A comprehensive recycling program for solid waste
134 established by petition and referendum may be rescinded only
135 pursuant to the procedures set out herein to establish the
136 program.

137 To rescind the program, the ballot, or the ballot labels
138 where voting machines are used, shall have printed thereon
139 substantially the following:

140 "Shall the County Commission be required to terminate the
141 comprehensive recycling program for solid waste in
142 _____ County, West Virginia?

143 Continue Recycling

144 End Recycling

145 (Place a cross mark in the square opposite your choice.)”

146 (g) If a majority of legal votes cast upon the question be for
147 the termination of a policy of comprehensive recycling of solid
148 waste previously established in the county, the county commis-
149 sion shall, after the certification of the results of the referen-
150 dum, thereafter rescind by ordinance the comprehensive
151 recycling program for solid waste in the county within ninety
152 days of certification. If a majority of the legal votes cast upon
153 the question be for the continuation of the policy of comprehen-
154 sive recycling of solid waste, the ordinance shall not be
155 rescinded, but the question may again be submitted to a vote at
156 any subsequent election in the manner herein provided.

157 (h) In the case of any municipality having a population
158 greater than thirty thousand persons, as indicated by the most
159 recent decennial census conducted by the United States, the
160 governing body of such municipality may by ordinance
161 establish a materials recovery facility in lieu of or in addition to
162 the mandatory recycling program required under the provisions
163 of this section: *Provided*, That a materials recovery facility
164 shall be subject to approval by both the Public Service Commis-
165 sion and the Solid Waste Management Board upon a finding by
166 both the Public Service Commission and the Solid Waste
167 Management Board that the establishment of a materials
168 recovery facility will not hinder, and will be consistent with, the
169 purposes of this article.

**§22-15A-19. Recycling assessment fee; regulated motor carriers;
dedication of proceeds; criminal penalties.**

1 (a) *Imposition.* -- A recycling assessment fee is hereby
2 levied and imposed upon the disposal of solid waste at all solid

3 waste disposal facilities in this state, to be collected at the rate
4 of two dollars per ton or part of a ton of solid waste. The fee
5 imposed by this section is in addition to all other fees levied by
6 law.

7 (b) *Collection, return, payment and records.* — The person
8 disposing of solid waste at the solid waste disposal facility shall
9 pay the fee imposed by this section, whether or not that person
10 owns the solid waste, and the fee shall be collected by the
11 operator of the solid waste facility who shall remit it to the Tax
12 Commissioner:

13 (1) The fee imposed by this section accrues at the time the
14 solid waste is delivered to the solid waste disposal facility;

15 (2) The operator shall remit the fee imposed by this section
16 to the Tax Commissioner on or before the fifteenth day of the
17 month next succeeding the month in which the fee accrued.
18 Upon remittance of the fee, the operator shall file returns on
19 forms and in the manner as prescribed by the Tax Commis-
20 sioner;

21 (3) The operator shall account to the state for all fees
22 collected under this section and shall hold them in trust for the
23 state until they are remitted to the Tax Commissioner;

24 (4) If any operator fails to collect the fee imposed by this
25 section, he or she is personally liable for the amount that he or
26 she failed to collect, plus applicable additions to tax, penalties
27 and interest imposed by article ten, chapter eleven of this code;

28 (5) Whenever any operator fails to collect, truthfully
29 account for, remit the fee or file returns with the fee as required
30 in this section, the Tax Commissioner may serve written notice
31 requiring the operator to collect the fees which become collect-
32 ible after service of the notice, to deposit the fees in a bank
33 approved by the Tax Commissioner, in a separate account, in

34 trust for and payable to the Tax Commissioner, and to keep the
35 amount of the fees in the account until remitted to the Tax
36 Commissioner. The notice remains in effect until a notice of
37 cancellation is served on the operator or owner by the Tax
38 Commissioner;

39 (6) Whenever the owner of a solid waste disposal facility
40 leases the solid waste facility to an operator, the operator is
41 primarily liable for collection and remittance of the fee imposed
42 by this section and the owner is secondarily liable for remit-
43 tance of the fee imposed by this section. However, if the
44 operator fails, in whole or in part, to discharge his or her
45 obligations under this section, the owner and the operator of the
46 solid waste facility are jointly and severally responsible and
47 liable for compliance with the provisions of this section;

48 (7) If the operator or owner responsible for collecting the
49 fee imposed by this section is an association or corporation, the
50 officers of the association or corporation are liable, jointly and
51 severally, for any default on the part of the association or
52 corporation, and payment of the fee and any additions to tax,
53 penalties and interest imposed by article ten, chapter eleven of
54 this code may be enforced against them and against the associa-
55 tion or corporation which they represent; and

56 (8) Each person disposing of solid waste at a solid waste
57 disposal facility and each person required to collect the fee
58 imposed by this section shall keep complete and accurate
59 records in the form required by the Tax Commissioner in
60 accordance with the rules of the Tax Commissioner.

61 (c) *Regulated motor carriers.* — The fee imposed by this
62 section is a necessary and reasonable cost for motor carriers of
63 solid waste subject to the jurisdiction of the Public Service
64 Commission under chapter twenty-four-a of this code. Not-
65 withstanding any provision of law to the contrary, upon the
66 filing of a petition by an affected motor carrier, the Public

67 Service Commission shall, within fourteen days, reflect the cost
68 of the fee in the motor carrier's rates for solid waste removal
69 service. In calculating the amount of the fee to the motor
70 carrier, the Commission shall use the national average of
71 pounds of waste generated per person per day as determined by
72 the United States Environmental Protection Agency.

73 (d) *Definition.* — For purposes of this section, “Solid waste
74 Disposal Facility” means any approved solid waste facility or
75 open dump in this state and includes a transfer station when the
76 solid waste collected at the transfer station is not finally
77 disposed of at a solid waste facility within this state that collects
78 the fee imposed by this section.

79 Nothing in this section authorizes in any way the creation
80 or operation of or contribution to an open dump.

81 (e) *Exemptions.* — The following transactions are exempt
82 from the fee imposed by this section:

83 (1) Disposal of solid waste at a solid waste facility by the
84 person who owns, operates or leases the solid waste disposal
85 facility if it is used exclusively to dispose of waste originally
86 produced by that person in his or her regular business or
87 personal activities or by persons utilizing the facility on a
88 cost-sharing or nonprofit basis;

89 (2) Reuse or recycling of any solid waste; and

90 (3) Disposal of residential solid waste by an individual not
91 in the business of hauling or disposing of solid waste on the
92 days and times designated by the Secretary by rule as exempt
93 from the fee imposed pursuant to section eleven, article fifteen,
94 chapter twenty-two of this code.

95 (f) *Procedure and administration.* — Notwithstanding
96 section three, article ten, chapter eleven of this code, each and

97 every provision of the West Virginia Tax Procedure and
98 Administration Act set forth in article ten, chapter eleven of this
99 code applies to the fee imposed by this section with like effect
100 as if the act were applicable only to the fee imposed by this
101 section and were set forth in extenso in this section.

102 (g) *Criminal penalties.* — Notwithstanding section two,
103 article nine, chapter eleven of this code, sections three through
104 seventeen, article nine, chapter eleven of this code apply to the
105 fee imposed by this section with like effect as if the sections
106 were the only fee imposed by this section and were set forth in
107 extenso in this section.

108 (h) *Dedication of proceeds.* — The proceeds of the fee
109 collected pursuant to this section shall be deposited by the Tax
110 Commissioner, at least monthly, in a special revenue account
111 designated as the Recycling Assistance Fund which is hereby
112 continued and transferred to the Department of Environmental
113 Protection. The Secretary shall allocate the proceeds of the
114 fund as follows:

115 (1) Fifty percent of the total proceeds shall be provided in
116 grants to assist municipalities, counties and other interested
117 parties in the planning and implementation of recycling
118 programs, public education programs and recycling market
119 procurement efforts, established pursuant to this article. The
120 Secretary shall promulgate rules, in accordance with chapter
121 twenty-nine-a of this code, containing application procedures,
122 guidelines for eligibility, reporting requirements and other
123 matters considered appropriate: *Provided*, That persons
124 responsible for collecting, hauling or disposing of solid waste
125 who do not participate in the collection and payment of the
126 solid waste assessment fee imposed by this section in addition
127 to all other fees and taxes levied by law for solid waste gener-
128 ated in this state which is destined for disposal, shall not be
129 eligible to receive grants under the provisions of this article;

130 (2) Twelve and one-half percent of the total proceeds shall
131 be expended for personal services and benefit expenses of full-
132 time salaried conservation officers;

133 (3) Twelve and one-half percent of the total proceeds shall
134 be directly allocated to the solid waste planning fund;

135 (4) Twelve and one-half percent of the total proceeds shall
136 be transferred to the solid waste reclamation and environmental
137 response fund, established pursuant to section eleven, article
138 fifteen, chapter twenty-two of this code, to be expended by the
139 Department of Environmental Protection to assist in the funding
140 of the pollution prevention and open dumps program (PPOD)
141 which encourages recycling, reuse, waste reduction and
142 clean-up activities; and

143 (5) Twelve and one-half percent of the total proceeds shall
144 be deposited in the hazardous waste emergency response fund
145 established in article nineteen of this chapter.

§22-15A-20. Establishment of state recycling program for solid waste.

1 (a) In the absence of either a municipal or a comprehensive
2 county recycling plan pursuant to section eighteen of this
3 article, all agencies and instrumentalities of the state, all
4 primary and secondary schools, where practicable, and private
5 colleges and universities shall implement programs to recycle
6 solid waste. To carry out the purposes of this section, any
7 affected party may be eligible to receive grants pursuant to
8 subdivision (1), subsection (h), section nineteen of this article.
9 Such programs shall include, but not be limited to, the follow-
10 ing:

11 (1) Source separation of at least two recyclable materials;
12 and

13 (2) In the absence of either a municipal program or a
14 comprehensive county recycling plan pursuant to section
15 eighteen of this article, collection and transportation of source
16 separated recycled materials to an appropriate location.

17 (b) For purposes of this section, the Department shall be
18 designated the lead agency to ensure proper compliance and
19 coordination of any such recycling program.

§22-15A-21. Procurement of recycled products.

1 (a) It is the policy of the State of West Virginia that, to the
2 maximum extent possible, all agencies and instrumentalities of
3 the state purchase recycled products. The goal of the state is to
4 achieve a recycled product mix on future purchases.

5 (b) In furtherance of the aforesaid goal, the Secretary of the
6 Department of Administration in consultation with the Secre-
7 tary shall develop a comprehensive procurement program for
8 recycled products. The program shall include, but not be
9 limited to:

10 (1) A review, and subsequent revision, of existing procure-
11 ment procedures and bid specifications to remove language that
12 discriminates against recycled products;

13 (2) A review, and subsequent revision, of existing procure-
14 ment procedures and bid specifications to ensure that, to the
15 maximum extent possible, all agencies and instrumentalities of
16 the state purchase recycled products: *Provided*, That recycled
17 paper products shall be given a price preference of ten percent:
18 *Provided, however*, That priority shall be given to paper
19 products with the highest postconsumer content;

20 (3) A plan to eliminate, to the maximum extent possible,
21 the use of disposable and single-use products; and

22 (4) A requirement that all agencies and instrumentalities of
23 the state use compost in all land maintenance and landscaping
24 activities: *Provided*, That the use of composted or deep stacked
25 poultry litter products, certified by the Commissioner of
26 Agriculture as being free from organisms that are not found in
27 poultry litter produced in this state, have priority unless
28 determined to be economically unfeasible by the agency or
29 instrumentality.

30 (c) The Secretary shall prepare and submit an annual report
31 on the thirty-first day of January of each year summarizing the
32 program's accomplishments, prospects for the future, and any
33 recommendations. The report shall be submitted to the Gover-
34 nor, Speaker of the House of Delegates and President of the
35 Senate.

**§22-15A-22. Prohibition on the disposal of certain items; plans
for the proper handling of said items required.**

1 (a) Effective the first day of June, one thousand nine
2 hundred ninety-four, it shall be unlawful to dispose of lead-acid
3 batteries in a solid waste landfill in West Virginia; effective the
4 first day of June, one thousand nine hundred ninety-six, it shall
5 be unlawful to dispose of tires in a solid waste landfill in West
6 Virginia except for waste tires collected as part of the Depart-
7 ment's waste tire remediation projects or other collection
8 efforts in accordance with the provisions of this article or the
9 pollution prevention program and open dump program or other
10 state-authorized remediation or clean up programs: *Provided*,
11 That waste tires may be disposed of in solid waste landfills only
12 when the state agency authorizing the remediation or clean up
13 program has determined there is no reasonable alternative
14 available.

15 (b) Effective the first day of January, one thousand nine
16 hundred ninety-seven, it shall be unlawful to dispose of yard

17 waste, including grass clippings and leaves, in a solid waste
18 facility in West Virginia: *Provided*, That such prohibitions do
19 not apply to a facility designed specifically to compost such
20 yard waste or otherwise recycle or reuse such items: *Provided*,
21 *however*, That reasonable and necessary exceptions to such
22 prohibitions may be included as part of the rules promulgated
23 pursuant to subsection (d) of this section.

24 (c) No later than the first day of May, one thousand nine
25 hundred ninety-five, the Solid Waste Management Board shall
26 design a comprehensive program to provide for the proper
27 handling of yard waste and lead-acid batteries. No later than
28 the first day of May, one thousand nine hundred ninety-four, a
29 comprehensive plan shall be designed in the same manner to
30 provide for the proper handling of tires.

31 (d) No later than the first day of August, one thousand nine
32 hundred ninety-five, the Department shall promulgate rules, in
33 accordance with chapter twenty-nine-a of this code, as
34 amended, to implement and enforce the program for yard waste
35 and lead-acid batteries designed pursuant to subsection (c) of
36 this section. No later than the first day of August, two thou-
37 sand, the Department shall promulgate rules, in accordance with
38 chapter twenty-nine-a of said code, as amended, to implement
39 and enforce the program for tires designed pursuant to subsec-
40 tion (c) of this section.

41 (e) For the purposes of this section, "yard waste" means
42 grass clippings, weeds, leaves, brush, garden waste, shrub or
43 tree prunings and other living or dead plant tissues, except that
44 such materials which, due to inadvertent contamination or
45 mixture with other substances which render the waste unsuit-
46 able for composting, shall not be considered to be yard waste:
47 *Provided*, That the same or similar waste generated by commer-
48 cial agricultural enterprises is excluded.

49 (f) In promulgating the rules required by subsections (c)
50 and (d) of this section, yard waste, as described in subsection
51 (e) of this section, the Department shall provide for the disposal
52 of yard waste in a manner consistent with one or any combina-
53 tion of the following:

54 (1) Disposal in a publicly or privately operated commercial
55 or noncommercial composting facility.

56 (2) Disposal by composting on the property from which
57 domestic yard waste is generated or on adjoining property or
58 neighborhood property if consent is obtained from the owner of
59 the adjoining or neighborhood property.

60 (3) Disposal by open burning where such activity is not
61 prohibited by this code, rules promulgated hereunder or
62 municipal or county codes or ordinances.

63 (4) Disposal in a publicly or privately operated landfill,
64 only where none of the foregoing options are available. Such
65 manner of disposal will involve only small quantities of
66 domestic yard waste generated only from the property of the
67 participating resident or tenant.

§22-15A-23. Recycling facilities exemption.

1 Recycling facilities, as defined in section two, article fifteen
2 of this chapter, whose only function is to accept free-of-charge,
3 buy or transfer source-separated material or recycled material
4 for resale or transfer for further processing are exempt from the
5 provisions of said article and article four of chapter
6 twenty-two-c and sections one-c and one-f, article two, chapter
7 twenty-four of this code.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES;
BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.**

Article

3. Solid Waste Management Board.

4. County and Regional Solid Waste Authorities.

ARTICLE 3. SOLID WASTE MANAGEMENT BOARD.

§22C-3-7. Development of state solid waste management plan.

§22C-3-24. Cooperation of board and enforcement agencies in collecting and disposing of abandoned household appliances and motor vehicles, etc.

§22C-3-7. Development of state solid waste management plan.

1 On or before the first day of January, one thousand nine
2 hundred ninety-three, the solid waste management board shall
3 prepare an overall state plan for the proper management of solid
4 waste: *Provided*, That such plan shall be consistent with the
5 findings and purposes of article four of this chapter and articles
6 fifteen and fifteen-a, chapter twenty-two of this code: *Pro-*
7 *vided, however*, That such plan shall incorporate the county or
8 regional plans developed pursuant to sections eight and twenty-
9 four, article four of this chapter, as amended: *Provided further*,
10 That such plan shall be updated every two years following its
11 initial preparation.

**§22C-3-24. Cooperation of board and enforcement agencies in
collecting and disposing of abandoned household
appliances and motor vehicles, etc.**

1 The provisions of this article are complementary to those
2 contained in article twenty-four, chapter fifteen-a of this code
3 and do not alter or diminish the authority of any enforcement
4 agency, as defined in section two thereof, to collect and dispose
5 of abandoned household appliances and motor vehicles,
6 inoperative household appliances and junked motor vehicles
7 and parts thereof, including tires. The board and such enforce-
8 ment agencies shall cooperate fully with each other in collect-
9 ing and disposing of such solid waste.

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§22C-4-24. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by solid waste management board; effect on facility siting; public hearings; rules.

§22C-4-25. Siting approval for solid waste facilities; effect on facilities with prior approval.

§22C-4-24. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by solid waste management board; effect on facility siting; public hearings; rules.

1 (a) On or before the first day of July, one thousand nine
2 hundred ninety-one, each county or regional solid waste
3 authority shall prepare and complete a commercial solid waste
4 facilities siting plan for the county or counties within its
5 jurisdiction: *Provided*, That the Solid Waste Management
6 Board may authorize any reasonable extension of up to one year
7 for the completion of the said siting plan by any county or
8 regional solid waste authority. The siting plan shall identify
9 zones within each county where siting of the following facilities
10 is authorized or prohibited:

11 (1) Commercial solid waste facilities which may accept an
12 aggregate of more than ten thousand tons of solid waste per
13 month.

14 (2) Commercial solid waste facilities which shall accept
15 only less than an aggregate of ten thousand tons of solid waste
16 per month.

17 (3) Commercial solid waste transfer stations or commercial
18 facilities for the processing or recycling of solid waste.

19 The siting plan shall include an explanation of the rationale
20 for the zones established therein based on the criteria estab-
21 lished in subsection (b) of this section.

22 (b) The county or regional solid waste authority shall
23 develop the siting plan authorized by this section based upon
24 the consideration of one or more of the following criteria: The
25 efficient disposal of solid waste, including, but not limited to,
26 all solid waste which is disposed of within the county or region
27 regardless of its origin, economic development, transportation
28 infrastructure, property values, groundwater and surface waters,
29 geological and hydrological conditions, aesthetic and environ-
30 mental quality, historic and cultural resources, the present or
31 potential land uses for residential, commercial, recreational,
32 environmental conservation or industrial purposes and the
33 public health, welfare and convenience. The initial plan shall
34 be developed based upon information readily available. Due to
35 the limited funds and time available, the initial plan need not be
36 an exhaustive and technically detailed analysis of the criteria set
37 forth above. Unless the information readily available clearly
38 establishes that an area is suitable for the location of a commer-
39 cial solid waste facility or not suitable for such a facility, the
40 area shall be designated as an area in which the location of a
41 commercial solid waste facility is tentatively prohibited. Any
42 person making an application for the redesignation of a
43 tentatively prohibited area shall make whatever examination is
44 necessary and submit specific detailed information in order to
45 meet the provision established in subsection (g) of this section.

46 (c) Prior to completion of the siting plan, the county or
47 regional solid waste authority shall complete a draft siting plan
48 and hold at least one public hearing in each county encom-
49 passed in said draft siting plan for the purpose of receiving
50 public comment thereon. The authority shall provide notice of
51 such public hearings and encourage and solicit other public
52 participation in the preparation of the siting plan as required by
53 the rules promulgated by the Solid Waste Management Board
54 for this purpose. Upon completion of the siting plan, the county
55 or regional solid waste authority shall file said plan with the
56 Solid Waste Management Board.

57 (d) The siting plan takes effect upon approval by the Solid
58 Waste Management Board pursuant to the rules promulgated
59 for this purpose. Upon approval of the plan, the Solid Waste
60 Management Board shall transmit a copy thereof to the Secre-
61 tary of the Department of Environmental Protection and to the
62 clerk of the county commission of the county encompassed by
63 said plan which county clerk shall file the plan in an appropriate
64 manner and shall make the plan available for inspection by the
65 public.

66 (e) Effective upon approval of the siting plan by the Solid
67 Waste Management Board, it is unlawful for any person to
68 establish, construct, install or operate a commercial solid waste
69 facility at a site not authorized by the siting plan: *Provided,*
70 That an existing commercial solid waste facility which, on the
71 eighth day of April, one thousand nine hundred eighty-nine,
72 held a valid solid waste permit or compliance order issued by
73 the Division of Natural Resources pursuant to the former
74 provisions of article five-f, chapter twenty of this code may
75 continue to operate, but may not expand the spatial land area of
76 the said facility beyond that authorized by said solid waste
77 permit or compliance order and may not increase the aggregate
78 monthly solid waste capacity in excess of ten thousand tons
79 monthly unless such a facility is authorized by the siting plan.

80 (f) The county or regional solid waste authority may, from
81 time to time, amend the siting plan in a manner consistent with
82 the requirements of this section for completing the initial siting
83 plan and the rules promulgated by the Solid Waste Management
84 Board for the purpose of such amendments.

85 (g) Notwithstanding any provision of this code to the
86 contrary, upon application from a person who has filed a
87 presiting notice pursuant to section thirteen, article fifteen,
88 chapter twenty-two of this code, the county or regional solid
89 waste authority or county commission, as appropriate, may

90 amend the siting plan by redesignating a zone that has been
91 designated as an area where a commercial solid waste facility
92 is tentatively prohibited to an area where one is authorized. In
93 such case, the person seeking the change has the burden to
94 affirmatively and clearly demonstrate, based on the criteria set
95 forth in subsection (b) of this section, that a solid waste facility
96 could be appropriately operated in the public interest at such
97 location. The Solid Waste Management Board shall provide,
98 within available resources, technical support to a county or
99 regional solid waste authority, or county commission as
100 appropriate, when requested by such authority or commission
101 to assist it in reviewing an application for any such amendment.

102 (h) The Solid Waste Management Board shall prepare and
103 adopt a siting plan for any county or regional solid waste
104 authority which does not complete and file with the said state
105 authority a siting plan in compliance with the provisions of this
106 section and the rules promulgated thereunder. Any siting plan
107 adopted by the Solid Waste Management Board pursuant to this
108 subsection shall comply with the provisions of this section, and
109 the rules promulgated thereunder, and has the same effect as a
110 siting plan prepared by a county or regional solid waste
111 authority and approved by the Solid Waste Management Board.

112 (i) The siting plan adopted pursuant to this section shall
113 incorporate the provisions of the litter and solid waste control
114 plan, as approved by the Solid Waste Management Board
115 pursuant to section eight of this article, regarding collection and
116 disposal of solid waste and the requirements, if any, for
117 additional commercial solid waste facility capacity.

118 (j) The solid waste management board is authorized and
119 directed to promulgate rules specifying the public participation
120 process, content, format, amendment, review and approval of
121 siting plans for the purposes of this section.

122 (k) To the extent that current solid waste plans approved by
123 the board are approved as provided for in this section, and in
124 place on the effective date of this article, provisions which limit
125 approval for new or expanded solid waste facilities based solely
126 on local solid waste disposal needs without consideration for
127 national waste disposal needs are disallowed as being in
128 conflict with the public policy of this article: *Provided*, That all
129 other portions of the solid waste management plans as estab-
130 lished in the litter and solid waste control plan as provided for
131 in this section and the comprehensive recycling plan as pro-
132 vided for in section seventeen, article fifteen-a, chapter twenty-
133 two of this code are continued in full force and effect to the
134 extent that those provisions do not conflict with the provisions
135 of this article.

§22C-4-25. Siting approval for solid waste facilities; effect on facilities with prior approval.

1 (a) It is the intent of the Legislature that all commercial
2 solid waste facilities operating in this state must receive site
3 approval at the local level, except for recycling facilities, as
4 defined in section twenty-three, article fifteen-a, chapter
5 twenty-two of this code, that are specifically exempted by
6 section twelve, article eleven, chapter twenty of this code.
7 Notwithstanding said intent, facilities which obtained such
8 approval from either a county or regional solid waste authority,
9 or from a county commission, under any prior enactment of this
10 code, and facilities which were otherwise exempted from local
11 site approval under any prior enactment of this code, shall be
12 deemed to have satisfied such requirement. All other facilities,
13 including facilities which received such local approval but
14 which seek to expand spatial area or to convert from a Class B
15 facility to a Class A facility, shall obtain such approval only in
16 the manner specified in sections twenty-six, twenty-seven and
17 twenty-eight of this article.

18 (b) In considering whether to issue or deny the certificate
19 of site approval as specified in sections twenty-six, twenty-
20 seven and twenty-eight of this article, the county or regional
21 solid waste authority shall base its determination upon the
22 following criteria: The efficient disposal of solid waste antici-
23 pated to be received or processed at the facility, including solid
24 waste generated within the county or region, economic develop-
25 ment, transportation infrastructure, property values, groundwa-
26 ter and surface waters, geological and hydrological conditions,
27 aesthetic and environmental quality, historic or cultural
28 resources, the present or potential land uses for residential,
29 commercial, recreational, industrial or environmental conserva-
30 tion purposes and the public health, welfare and convenience.

31 (c) The county or regional solid waste authority shall
32 complete findings of fact and conclusions relating to the criteria
33 authorized in subsection (b) of this section which support its
34 decision to issue or deny a certificate of site approval.

35 (d) The siting approval requirements for composting
36 facilities, materials recovery facilities and mixed waste process-
37 ing facilities shall be the same as those for other solid waste
38 facilities.

CHAPTER 31. CORPORATIONS.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-17a. Infrastructure revenue bonds payable from A. James Manchin Fund.

1 Notwithstanding any other provision of this code to the
2 contrary, the Water Development Authority may issue, in
3 accordance with the provisions of section seventeen of this
4 article, infrastructure revenue bonds payable from the A. James
5 Manchin Fund created by section nine, article fifteen-a, chapter

6 twenty-two of this code and such other sources as may be
7 legally pledged for such purposes other than the West Virginia
8 Infrastructure Revenue Debt Service Fund created by section
9 seventeen of this article.

CHAPTER 49. CHILD WELFARE.

ARTICLE 5. JUVENILE PROCEEDINGS.

§49-5-13. Disposition of juvenile delinquents; appeal.

§49-5-13b. Authority of the courts to order fines; revocation of vehicle privileges and restitution.

§49-5-13. Disposition of juvenile delinquents; appeal.

1 (a) In aid of disposition of juvenile delinquents, the juvenile
2 probation officer assigned to the court shall, upon request of the
3 court, make an investigation of the environment of the juvenile
4 and the alternative dispositions possible. The court, upon its
5 own motion, or upon request of counsel, may order a psycho-
6 logical examination of the juvenile. The report of such exami-
7 nation and other investigative and social reports shall not be
8 made available to the court until after the adjudicatory hearing.
9 Unless waived, copies of the report shall be provided to counsel
10 for the petitioner and counsel for the juvenile no later than
11 seventy-two hours prior to the dispositional hearing.

12 (b) Following the adjudication, the court shall conduct the
13 dispositional proceeding, giving all parties an opportunity to be
14 heard. In disposition the court shall not be limited to the relief
15 sought in the petition and shall, in electing from the following
16 alternatives, consider the best interests of the juvenile and the
17 welfare of the public:

18 (1) Dismiss the petition;

19 (2) Refer the juvenile and the juvenile's parent or custodian
20 to a community agency for needed assistance and dismiss the
21 petition;

22 (3) Upon a finding that the juvenile is in need of ex-
23 tra-parental supervision: (A) Place the juvenile under the
24 supervision of a probation officer of the court or of the court of
25 the county where the juvenile has his or her usual place of
26 abode or other person while leaving the juvenile in custody of
27 his or her parent or custodian; and (B) prescribe a program of
28 treatment or therapy or limit the juvenile's activities under
29 terms which are reasonable and within the child's ability to
30 perform, including participation in the litter control program
31 established pursuant to section three, article fifteen-a, chapter
32 twenty-two of this code or other appropriate programs of
33 community service;

34 (4) Upon a finding that a parent or custodian is not willing
35 or able to take custody of the juvenile, that a juvenile is not
36 willing to reside in the custody of his parent or custodian or that
37 a parent or custodian cannot provide the necessary supervision
38 and care of the juvenile, the court may place the juvenile in
39 temporary foster care or temporarily commit the juvenile to the
40 department or a child welfare agency. The court order shall
41 state that continuation in the home is contrary to the best
42 interest of the juvenile and why; and whether or not the
43 department made a reasonable effort to prevent the placement
44 or that the emergency situation made such efforts unreasonable
45 or impossible. Whenever the court transfers custody of a youth
46 to the department, an appropriate order of financial support by
47 the parents or guardians shall be entered in accordance with
48 section five, article seven of this chapter and guidelines
49 promulgated by the Supreme Court of Appeals;

50 (5) Upon a finding that the best interests of the juvenile or
51 the welfare of the public require it, and upon an adjudication of
52 delinquency pursuant to subdivision (1), section four, article
53 one of this chapter, the court may commit the juvenile to the
54 custody of the Director of the Division of Juvenile Services for
55 placement in a juvenile services facility for the treatment,

56 instruction and rehabilitation of juveniles: *Provided*, That the
57 court maintains discretion to consider alternative sentencing
58 arrangements. Notwithstanding any provision of this code to
59 the contrary, in the event that the court determines that it is in
60 the juvenile's best interests or required by the public welfare to
61 place the juvenile in the custody of the Division of Juvenile
62 Services, the court shall provide the Division of Juvenile
63 Services with access to all relevant court orders and records
64 involving the underlying offense or offenses for which the
65 juvenile was adjudicated delinquent, including sentencing and
66 presentencing reports and evaluations, and provide the Division
67 with access to school records, psychological reports and
68 evaluations, medical reports and evaluations or any other such
69 records as may be in the court's possession as would enable the
70 Division of Juvenile Services to better assess and determine the
71 appropriate counseling, education and placement needs for the
72 juvenile offender. Commitments shall not exceed the maxi-
73 mum term for which an adult could have been sentenced for the
74 same offense and any such maximum allowable sentence to be
75 served in a juvenile correctional facility may take into account
76 any time served by the juvenile in a detention center pending
77 adjudication, disposition or transfer. The order shall state that
78 continuation in the home is contrary to the best interests of the
79 juvenile and why; and whether or not the state department made
80 a reasonable effort to prevent the placement or that the emer-
81 gency situation made such efforts unreasonable or impossible;
82 or

83 (6) After a hearing conducted under the procedures set out
84 in subsections (c) and (d), section four, article five, chapter
85 twenty-seven of this code, commit the juvenile to a mental
86 health facility in accordance with the juvenile's treatment plan;
87 the Director of the mental health facility may release a juvenile
88 and return him or her to the court for further disposition. The
89 order shall state that continuation in the home is contrary to the
90 best interests of the juvenile and why; and whether or not the

91 state department made a reasonable effort to prevent the
92 placement or that the emergency situation made such efforts
93 unreasonable or impossible.

94 (c) The disposition of the juvenile shall not be affected by
95 the fact that the juvenile demanded a trial by jury or made a
96 plea of denial. Any dispositional order is subject to appeal to
97 the Supreme Court of Appeals.

98 (d) Following disposition, the court shall inquire whether
99 the juvenile wishes to appeal and the response shall be tran-
100 scribed; a negative response shall not be construed as a waiver.
101 The evidence shall be transcribed as soon as practicable and
102 made available to the juvenile or his or her counsel, if the same
103 is requested for purposes of further proceedings. A judge may
104 grant a stay of execution pending further proceedings.

105 (e) Notwithstanding any other provision of this code to the
106 contrary, if a juvenile charged with delinquency under this
107 chapter is transferred to adult jurisdiction and there tried and
108 convicted, the court may make its disposition in accordance
109 with this section in lieu of sentencing such person as an adult.

**§49-5-13b. Authority of the courts to order fines; revocation of
vehicle privileges and restitution.**

1 (a) In addition to the methods of disposition provided in
2 section thirteen of this article, the court may enter an order
3 imposing one or more of the following penalties, conditions and
4 limitations:

5 (1) Impose a fine not to exceed one hundred dollars upon
6 such child;

7 (2) Require the child to make restitution or reparation to the
8 aggrieved party or parties for actual damages or loss caused by
9 the offense for which the child was found to be delinquent, or

10 if the child does not make full restitution, require the custodial
11 parent or parents, as defined in section two, article seven-a,
12 chapter fifty-five, of the child to make partial or full restitution
13 to the victim to the extent the child fails to make full restitution;

14 (3) Require the child to participate in a public service
15 project under such conditions as the court prescribes, including
16 participation in the litter control program established pursuant
17 to the authority of section three, article fifteen-a, chapter
18 twenty-two of this code;

19 (4) When the child is fifteen years of age or younger and
20 has been adjudged delinquent, the court may order that the child
21 is not eligible to be issued a junior probationary operator's
22 license or when the child is between the ages of sixteen and
23 eighteen years and has been adjudged delinquent, the court may
24 order that the child is not eligible to operate a motor vehicle in
25 this state, and any junior or probationary operator's license
26 shall be surrendered to the court. Such child's driving privi-
27 leges shall be suspended for a period not to exceed two years,
28 and the clerk of the court shall notify the Commissioner of the
29 Division of Motor Vehicles of such order.

30 (b) Nothing herein stated shall limit the discretion of the
31 court in disposing of a juvenile case: *Provided*, That the
32 juvenile shall not be denied probation or any other disposition
33 pursuant to this article because the juvenile is financially unable
34 to pay a fine or make restitution or reparation: *Provided*,
35 *however*, That all penalties, conditions and limitations imposed
36 under this section shall be based upon a consideration by the
37 court of the seriousness of the offense, the child's ability to pay
38 and a program of rehabilitation consistent with the best interests
39 of the child.

40 (c) Notwithstanding any other provisions of this code to the
41 contrary, in the event a child charged with delinquency under

42 this chapter is transferred to adult jurisdiction and there
43 convicted, the court may nevertheless, in lieu of sentencing
44 such person as an adult, make its disposition in accordance with
45 this section.

CHAPTER 200

**(H. B. 2891 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to repeal §5-1B-1, §5-1B-2, §5-1B-3, §5-1B-4, §5-1B-5, §5-1B-6, §5-1B-7 and §5-1B-8 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §5A-6-1, §5A-6-2, §5A-6-3, §5A-6-4, §5A-6-5, §5A-6-6, §5A-6-7 and §5A-6-8; to amend and reenact §5A-7-4 of said code; to amend and reenact §5A-8-15 of said code; to amend and reenact §5B-1-2 of said code; to amend and reenact §5B-3-4 and §5B-3-5 of said code; to amend and reenact §5F-2-1 and §5F-2-2 of said code; to amend and reenact §10-5-2 of said code; to amend said code by adding thereto a new section, designated §10-5-5a; to amend and reenact §11-10A-6 and §11-10A-7 of said code; to amend and reenact §17-16A-3 and §17-16A-10 of said code; and to amend and reenact §49-9-15 of said code, all relating to the reorganization of the executive branch of state government; transferring the Office of Technology from the Office of the Governor to the Department of Administration; providing that the Director of Information Services and Communications Division shall report to the Chief Technology Officer; providing that the Director of Information Services and Communications Division shall develop and maintain an information systems disaster

recovery system; modifying membership of the Records Management and Preservation Board to include a county sheriff and a county assessor; limiting the time period for department secretaries to transfer funds within their respective departments; requiring secretaries of departments to cooperate with the Office of the Pharmaceutical Advocate in purchasing prescription drugs; transferring the Bureau of Employment Programs to the Department of Commerce; providing that the Governor will chair the Educational Broadcasting Authority for a limited term; providing that the Governor will appoint to Executive Director of the Educational Broadcasting Authority to serve for a limited term; modifying the term of the chief administrative law judge of the Office of Tax Appeals; providing that the Governor has the authority to appoint two administrative law judges to the Office of Tax Appeals; providing for Governor to chair the West Virginia Parkways, Economic Development and Tourism Authority; authorizing the Governor to appoint an Executive Director of the Virginia Parkways, Economic Development and Tourism Authority and set salary annually; modifying membership of the Missing Children Information Clearinghouse; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §5-1B-1, §5-1B-2, §5-1B-3, §5-1B-4, §5-1B-5, §5-1B-6, §5-1B-7 and §5-1B-8 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new article, designated §5A-6-1, §5A-6-2, §5A-6-3, §5A-6-4, §5A-6-5, §5A-6-6, §5A-6-7 and §5A-6-8; that §5A-7-4 of said code be amended and reenacted; that §5A-8-15 of said code be amended and reenacted; that §5B-1-2 of said code be amended and reenacted; that §5B-3-4 and §5B-3-5 of said code be amended and reenacted; that §5F-2-1 and §5F-2-2 of said code be amended and reenacted; that §10-5-2 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §10-5-5a; that §11-10A-6 and §11-10A-7 of said code be amended and reenacted;

that §17-16A-3 and §17-16A-10 of said code be amended and reenacted; and that §49-9-15 of said code be amended and reenacted, all to read as follows:

Chapter

- 5A. Department of Administration.**
- 5B. Economic Development Act of 1985.**
- 5F. Reorganization of the Executive Branch of State Government.**
- 10. Public Libraries; Public Recreation; Athletic Establishments; Monuments and Memorials; Roster of Servicemen; Educational Broadcasting Authority.**
- 11. Taxation.**
- 17. Roads and Highways.**
- 49. Child Welfare.**

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

Article

- 6. Office Technology.**
- 7. Information Services and Communications division.**
- 8. Public Records Management and Preservation Act.**

ARTICLE 6. OFFICE OF TECHNOLOGY.

- §5A-6-1. Findings and purposes.
- §5A-6-2. Definitions.
- §5A-6-3. Office of Technology; Chief Technology Officer; appointment and qualifications.
- §5A-6-4. Powers and duties; professional staff.
- §5A-6-5. Notice of request for proposals by state spending units required to make purchases through the State Purchasing Division.
- §5A-6-6. Notice of request for proposals by state spending units exempted from submitting purchases to the State Purchasing Division.
- §5A-6-7. Biannual report.
- §5A-6-8. Exemptions.

§5A-6-1. Findings and purposes.

1 The Legislature finds and declares that information
2 technology is essential to finding practical solutions to the
3 everyday problems of government, and that the management
4 goals and purposes of government are furthered by the develop-
5 ment of compatible, linked information systems across govern-
6 ment. Therefore, it is the purpose of this article to create, as an
7 integral part of the Department of Administration, the Office of

- 8 Technology with the authority to advise and make recommen-
- 9 dations to all state spending units on their information systems.

§5A-6-2. Definitions.

1 As used in this article:

2 (a) "Information systems" means computer-based informa-
3 tion equipment and related services designed for the automated
4 transmission, storage, manipulation and retrieval of data by
5 electronic or mechanical means;

6 (b) "Information technology" means data processing and
7 telecommunications hardware, software, services, supplies,
8 personnel, maintenance and training, and includes the programs
9 and routines used to employ and control the capabilities of data
10 processing hardware;

11 (c) "Information equipment" includes central processing
12 units, front-end processing units, miniprocessors, microproces-
13 sors and related peripheral equipment, including data storage
14 devices, networking equipment, services, routers, document
15 scanners, data entry equipment, terminal controllers, data
16 terminal equipment, computer-based word processing systems
17 other than memory typewriters;

18 (d) "Related services" include feasibility studies, systems
19 design, software development and time-sharing services
20 whether provided by state employees or others;

21 (e) "Telecommunications" means any transmission,
22 emission or reception of signs, signals, writings, images or
23 sounds of intelligence of any nature by wire, radio or other
24 electromagnetic or optical systems. The term includes all
25 facilities and equipment performing those functions that are
26 owned, leased or used by the executive agencies of state
27 government;

28 (f) "Chief Technology Officer" means the person holding
29 the position created in section three of this article and vested
30 with authority to assist state spending units in planning and
31 coordinating information systems that serve the effectiveness
32 and efficiency of the individual state spending units, and further
33 the overall management goals and purposes of government; and

34 (g) "Experimental program to stimulate competitive
35 research" (EPSCoR) means the West Virginia component of the
36 national EPSCoR program which is designed to improve the
37 competitive research and development position of selected
38 states through investments in academic research laboratories
39 and laboratory equipment. The recognized West Virginia
40 EPSCoR, which is part of the Office of Technology, is the
41 responsible organization for the coordination and submission of
42 proposals to all federal agencies participating in the EPSCoR
43 program.

**§5A-6-3. Office of Technology; Chief Technology Officer; ap-
pointment and qualifications.**

1 The Office of Technology is created within the Department
2 of Administration. A Chief Technology Officer shall be
3 appointed by and shall serve at the will and pleasure of the
4 Governor. The Chief Technology Officer shall have knowledge
5 in the field of information technology, experience in the design
6 and management of information systems and an understanding
7 of the special demands upon government with respect to
8 budgetary constraints, the protection of privacy interests and
9 federal and state standards of accountability.

§5A-6-4. Powers and duties; professional staff.

1 (a) With respect to all state spending units the Chief
2 Technology Officer may:

3 (1) Develop an organized approach to information resource
4 management for this state;

5 (2) Provide, with the assistance of the Information Services
6 and Communications Division of the Department of Adminis-
7 tration, technical assistance to the administrators of the various
8 state spending units in the design and management of informa-
9 tion systems;

10 (3) Evaluate, in conjunction with the information services
11 and communications division, the economic justification,
12 system design and suitability of information equipment and
13 related services, and review and make recommendations on the
14 purchase, lease or acquisition of information equipment and
15 contracts for related services by the state spending units;

16 (4) Develop a mechanism for identifying those instances
17 where systems of paper forms should be replaced by direct use
18 of information equipment and those instances where applicable
19 state or federal standards of accountability demand retention of
20 some paper processes;

21 (5) Develop a mechanism for identifying those instances
22 where information systems should be linked and information
23 shared, while providing for appropriate limitations on access
24 and the security of information;

25 (6) Create new technologies to be used in government,
26 convene conferences and develop incentive packages to
27 encourage the utilization of technology;

28 (7) Engage in any other activities as directed by the
29 Governor; and

30 (8) Charge a fee to the state spending units for evaluations
31 performed and technical assistance provided under the provi-
32 sions of this section. All fees collected by the Chief Technology
33 Officer shall be deposited in a special account in the State
34 Treasury to be known as the "Chief Technology Officer
35 Administration Fund". Expenditures from the fund shall be

36 made by the Chief Technology Officer for the purposes set
37 forth in this article and are not authorized from collections but
38 are to be made only in accordance with appropriation by the
39 Legislature and in accordance with the provisions of article
40 three, chapter twelve of this code and upon the fulfillment of
41 the provisions set forth in article two, chapter eleven-b of this
42 code. Amounts collected which are found to exceed the funds
43 needed for purposes set forth in this article may be transferred
44 to other accounts or funds and redesignated for other purposes
45 by appropriation of the Legislature.

46 (b) With respect to executive agencies, the Chief Technol-
47 ogy Officer may:

48 (1) Develop a unified and integrated structure for informa-
49 tion systems for all executive agencies;

50 (2) Establish, based on need and opportunity, priorities and
51 time lines for addressing the information technology require-
52 ments of the various executive agencies of state government;

53 (3) Exercise the authority inherent to the chief executive of
54 the state as the Governor may, by executive order, delegate, to
55 overrule and supersede decisions made by the administrators of
56 the various executive agencies of government with respect to
57 the design and management of information systems and the
58 purchase, lease or acquisition of information equipment and
59 contracts for related services;

60 (4) Draw upon staff of other executive agencies for advice
61 and assistance in the formulation and implementation of
62 administrative and operational plans and policies; and

63 (5) Recommend to the Governor transfers of equipment and
64 human resources from any executive agency and the most
65 effective and efficient uses of the fiscal resources of executive
66 agencies, to consolidate or centralize information-processing
67 operations.

68 (c) The Chief Technology Officer may employ the person-
69 nel necessary to carry out the work of the Office of Technology
70 and may approve reimbursement of costs incurred by employ-
71 ees to obtain education and training.

**§5A-6-5. Notice of request for proposals by state spending units
required to make purchases through the State
Purchasing Division.**

1 Any state spending unit that is required to submit a request
2 for proposal to the State Purchasing Division prior to purchas-
3 ing goods or services shall notify the Chief Technology Officer,
4 in writing, of any proposed purchase of goods or services
5 related to its information and telecommunication systems. The
6 notice shall contain a brief description of the goods and services
7 to be purchased. The state spending unit shall provide the notice
8 to the Chief Technology Officer at the same time it submits its
9 request for proposal to the State Purchasing Division.

**§5A-6-6. Notice of request for proposals by state spending units
exempted from submitting purchases to the State
Purchasing Division.**

1 (a) Any state spending unit that is not required to submit a
2 request for proposal to the State Purchasing Division prior to
3 purchasing goods or services shall notify the Chief Technology
4 Officer, in writing, of any proposed purchase of goods or
5 services related to its information or telecommunication
6 systems. The notice shall contain a detailed description of the
7 goods and services to be purchased. The state spending unit
8 shall provide the notice to the Chief Technology Officer a
9 minimum of ten days prior to the time it requests bids on the
10 provision of the goods or services.

11 (b) If the Chief Technology Officer evaluates the suitability
12 of the information and telecommunication equipment and
13 related services under the provisions of subdivision (3),

14 subsection (a), section four of this article and determines that
15 the goods or services to be purchased are not suitable, he or she
16 shall, within ten days of receiving the notice from the state
17 spending unit, notify the state spending unit, in writing, of any
18 recommendations he or she has regarding the proposed pur-
19 chase of the goods or services. If the state spending unit
20 receives a written notice from the Chief Technology Officer
21 within the time period required by this section, the state
22 spending unit shall not put the goods or services out for bid less
23 than fifteen days following receipt of the notice from the Chief
24 Technology Officer.

§5A-6-7. Biannual report.

1 The Chief Technology Officer shall report biannually to the
2 Legislative Joint Committee on Government and Finance on the
3 activities of his or her office.

§5A-6-8. Exemptions.

1 The provisions of this article do not apply to the Legislature
2 or the Judiciary.

**ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS
DIVISION.**

**§5A-7-4. Powers and duties of division generally; professional
staff; telephone service.**

1 (a) The Division is responsible for providing technical
2 services and assistance to the various state spending units with
3 respect to developing and improving data processing and
4 telecommunications functions. The Division may provide
5 training and direct data processing services to the various state
6 agencies. The Division shall, upon request of the Chief Tech-
7 nology Officer, provide technical assistance in evaluating the
8 economic justification, system design and suitability of

9 equipment and systems used in state government. The Director
10 shall report to the Chief Technology Officer.

11 (b) The Director is responsible for the development of
12 personnel to carry out the technical work of the Division and
13 may approve reimbursement of costs incurred by employees to
14 obtain education and training.

15 (c) The Director may assess each state spending unit for the
16 cost of any evaluation of the economic justification, system
17 design and suitability of equipment and systems used by the
18 state spending unit or any other technical assistance that is
19 provided or performed by the Chief Technology Officer and the
20 Division under the provisions of section four, article six of this
21 chapter.

22 (d) The Director shall transfer any moneys received as a
23 result of the assessments that he or she makes under subsection
24 (c) of this section to the Office of Technology. The Director
25 shall report quarterly to the Joint Committee on Government
26 and Finance on all assessments made pursuant to subsection (c)
27 of this section.

28 (e) The Director shall maintain an accounting system for all
29 telephone service to the state.

30 (f) The provisions of this article do not apply to the
31 Legislature or the Judiciary.

32 (g) In consultation with the Adjutant General, Chairman of
33 the Public Service Commission, the Superintendent of the State
34 Police and the Director of the Division of Homeland Security
35 and Emergency Management, the Director is responsible for the
36 development and maintenance of an information systems
37 disaster recovery system for the State of West Virginia with
38 sites in one or more locations isolated from reasonably per-
39 ceived threats to the primary operation of state government. The

40 Director shall develop specifications, funding mechanisms and
41 participation requirements for all executive branch agencies to
42 protect the state's essential data, information systems and
43 critical government services in times of emergency, inopera-
44 tiveness, or disaster. Each executive branch agency shall assist
45 the Director in planning for its specific needs and provide to the
46 Director any information or access to information systems or
47 equipment that may be required in carrying out this purpose. No
48 state-wide or executive branch agency procurement of disaster
49 recovery services may be initiated, let or extended without the
50 expressed consent of the Director.

**ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION
ACT.**

**§5A-8-15. Records management and preservation of county
records; alternate storage of county records;
Records Management and Preservation Board;
qualifications and appointment of members;
reimbursement of expenses; staffing; rule-making
authority; study of records management needs of
state agencies; grants to counties.**

1 The Legislature finds that the use of electronic technology
2 and other procedures to manage and preserve public records by
3 counties should be uniform throughout the state where possible.

4 (a) The governing body and the chief elected official of a
5 county, hereinafter referred to as a county government entity,
6 whether organized and existing under a charter or under general
7 law, shall promote the principles of efficient records manage-
8 ment and preservation of local records. A county governing
9 entity may, as far as practical, follow the program established
10 for the uniform management and preservation of county records
11 as set out in a rules proposed for legislative approval in
12 accordance with the provisions of article three, chapter twenty-

13 nine-a of this code as proposed by the Records Management
14 and Preservation Board.

15 (b) In the event a county government entity decides to
16 destroy or otherwise dispose of a county record, the county
17 government entity may, prior to destruction or disposal thereof,
18 offer the record to the Director of the Section of Archives and
19 History of the Division of Culture and History for preservation
20 of the record as a document of historical value. Unless autho-
21 rized by the Supreme Court of Appeals, the records of courts of
22 record and magistrate courts are not affected by the provisions
23 of this section.

24 (c)(1) A preservation duplicate of a county government
25 entity record may be stored in any format approved by the
26 Board in which the image of the original record is preserved in
27 a form, including CD-ROM and optical image storage media,
28 in which the image is incapable of erasure or alteration and
29 from which a reproduction of the stored record may be retrieved
30 that truly and accurately depicts the image of the original
31 county government record.

32 (2) Except for those formats, processes and systems used
33 for the storage of records on the effective date of this section,
34 no alternate format for the storage of county government entity
35 records described in this section is authorized for the storage of
36 county government entity records unless the particular format
37 has been approved pursuant to a legislative rule promulgated by
38 the Board in accordance with the provisions of chapter twenty-
39 nine-a of this code. The Board may prohibit the use of any
40 format, process or system used for the storage of records upon
41 its determination that the same is not reasonably adequate to
42 preserve the records from destruction, alteration or decay.

43 (3) Upon creation of a preservation duplicate that stores an
44 original county government entity record in an approved format
45 that is incapable of erasure or alteration and that may be

46 retrieved in a format that truly and accurately depicts the image
47 of the original record, the county government entity may
48 destroy or otherwise dispose of the original in accordance with
49 the provisions of section seven-c, article one, chapter fifty-
50 seven of this code.

51 (d) A Records Management and Preservation Board for
52 county government entities is continued to be composed of nine
53 members.

54 (1) Three members shall serve ex officio. One member
55 shall be the Commissioner of the Division of Culture and
56 History or designee who shall be the chair of the Board. One
57 member shall be the Administrator of the Supreme Court of
58 Appeals or designee. One member shall be the Chief Technol-
59 ogy Officer or designee.

60 (2) The Governor shall appoint eight members of the Board
61 with the advice and consent of the Senate. Not more than five
62 appointments to the Board may be from the same political party
63 and not more than three members may be appointed from the
64 same congressional district. Of the eight members appointed by
65 the Governor:

66 (i) Five appointments shall be county elected officials, one
67 of whom shall be a clerk of a county commission, one of whom
68 shall be a circuit court clerk, one of whom shall be a county
69 commissioner, one of whom shall be a county sheriff, and one
70 of whom shall be a county assessor, to be selected from a list of
71 fifteen names. The names of three clerks of county commis-
72 sions and three circuit court clerks shall be submitted to the
73 Governor by the West Virginia Association of Counties. The
74 names of three county commissioners shall be submitted to the
75 Governor jointly by the West Virginia Association of Counties
76 and the West Virginia County Commissioners Association. The
77 names of three county sheriffs shall be submitted to the

78 Governor by the West Virginia Sheriff's Association. And the
79 names of three county assessors shall be submitted to the
80 Governor by the Association of West Virginia Assessors;

81 (ii) One appointment shall be a county prosecuting attorney
82 to be selected from a list of three names submitted by the West
83 Virginia Prosecuting Attorneys Institute;

84 (iii) One appointment shall be an attorney licensed in West
85 Virginia and in good standing as a member of the West Virginia
86 State Bar with experience in real estate and mineral title
87 examination, to be selected from a list of three names submitted
88 by the State Bar; and

89 (iv) One appointment shall be a representative of a local
90 historical or genealogical society.

91 (e) The members of the Board shall serve without compen-
92 sation but shall be reimbursed for all reasonable and necessary
93 expenses actually incurred in the performance of their duties as
94 members of the Board in a manner consistent with the guide-
95 lines of the Travel Management Office of the Department of
96 Administration. In the event the expenses are paid, or are to be
97 paid, by a third party, the member shall not be reimbursed by
98 the state.

99 (f) The staff of the Board shall consist of the Director of the
100 Archives and History Section of the Division of Culture and
101 History and any additional staff as needed.

102 (g) The Board shall propose rules for legislative approval
103 in accordance with the provisions of article three, chapter
104 twenty-nine-a of this code, to establish a system of records
105 management and preservation for county governments: *Pro-*
106 *vided*, That, for the retention and disposition of records of
107 courts of record and magistrate courts, the implementation of
108 the rule is subject to action by the Supreme Court of Appeals of

109 West Virginia. The proposed rules shall include provisions for
110 establishing a program of grants to county governments for
111 making records management and preservation uniform through-
112 out the state. The Board is not authorized to propose or promul-
113 gate emergency rules under the provisions of this section.

114 (h) In addition to the fees charged by the clerk of the county
115 commission under the provisions of section ten, article one,
116 chapter fifty-nine of this code, the clerk shall charge and collect
117 an additional one-dollar fee for every document containing less
118 than ten pages filed for recording and an additional one-dollar
119 fee for each additional ten pages of document filed for record-
120 ing. At the end of each month, the clerk of the county commis-
121 sion shall deposit into the Public Records and Preservation
122 Account as established in the State Treasury all fees collected:
123 *Provided*, That the clerk may retain not more than ten percent
124 of the fees for costs associated with the collection of the fees.
125 Clerks shall be responsible for accounting for the collection and
126 deposit in the State Treasury of all fees collected by the clerk
127 under the provisions of this section.

128 (i) There is hereby created in the State Treasury a special
129 account entitled the "Public Records and Preservation Revenue
130 Account". The account shall consist of all fees collected under
131 the provisions of this section, legislative appropriations, interest
132 earned from fees, investments, gifts, grants or contributions
133 received by the Board. Expenditures from the account shall be
134 for the purposes set forth in this article and are not authorized
135 from collections but are to be made only in accordance with
136 appropriation by the Legislature and in accordance with the
137 provisions of article three, chapter twelve of this code and upon
138 the fulfillment of the provisions set forth in article two, chapter
139 eleven-b of this code.

140 (j) Subject to the above provision, the Board may expend
141 the funds in the account to implement the provisions of this

142 article. In expending funds from the account, the Board shall
143 allocate not more than fifty percent of the funds for grants to
144 counties for records management, access and preservation
145 purposes. The Board shall provide for applications, set guide-
146 lines and establish procedures for distributing grants to counties
147 including a process for appealing an adverse decision on a grant
148 application. Expenditures from the account shall be for the
149 purposes set forth in this section, including the cost of addi-
150 tional staff of the Division of Archives and History.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

Article

1. **Department of Commerce.**
3. **West Virginia Economic Development Strategy: A Vision Shared.**

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the Department of Commerce.

1 The Department of Commerce consists of the following
2 agencies, boards, commissions, divisions and offices, including
3 all of the allied, advisory, affiliated or related entities, which are
4 incorporated in and administered as part of the Department of
5 Commerce:

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

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

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

12 (2) Office of Miners' Health, Safety and Training provided
13 in article one, chapter twenty-two-a of this code. The following
14 boards are transferred to the Office of Miners' Health, Safety

15 and Training for purposes of administrative support and liaison
16 with the Office of the Governor:

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

20 (B) Board of Miner Training, Education and Certification
21 provided in article seven, chapter twenty-two-a of this code;
22 and

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

25 (3) The West Virginia Development Office, which includes
26 the Division of Tourism and the Tourism Commission, pro-
27 vided in article two, chapter five-b of this code;

28 (4) Division of Natural Resources and Natural Resources
29 Commission provided in article one, chapter twenty of this
30 code;

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

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

35 (7) The Bureau of Employment Programs provided in
36 chapter twenty-one-a of this code.

**ARTICLE 3. WEST VIRGINIA ECONOMIC DEVELOPMENT STRATEGY:
A VISION SHARED.**

§5B-3-4. Commission review of procedural rules, interpretive rules and existing
legislative rules.

§5B-3-5. Joint Commission on Economic Development Studies.

§5B-3-4. Commission review of procedural rules, interpretive rules and existing legislative rules.

1 (a) The Joint Commission on Economic Development may
2 review any procedural rule, interpretive rule or existing
3 legislative rule and make recommendations concerning the
4 rules to the Legislature.

5 (b) The Development Office and the Tourism Commission
6 established pursuant to article two of this chapter, the Economic
7 Development Authority established pursuant to article fifteen,
8 chapter thirty-one of this code, the Bureau of Employment
9 Programs established pursuant to article four, chapter twenty-
10 one-a of this code, the Workers' Compensation Commission
11 established pursuant to article one, chapter twenty-three of this
12 code, the Workforce Investment Commission established
13 pursuant to article two-c of this chapter, West Virginia Jobs
14 Investment Trust, regional planning and development councils,
15 West Virginia Rural Development Council, Office of Technol-
16 ogy and West Virginia Clearinghouse for Workforce Education
17 shall each file a copy of its legislative rules with the Commis-
18 sion as provided for in this section. Each agency that proposes
19 legislative rules in accordance to the provisions of article three,
20 three-a or three-b, chapter twenty-nine-a of this code relating to
21 economic development or workforce development shall file the
22 rules with the Joint Commission at the time the rules are filed
23 with the Secretary of State prior to the public comment period
24 or public hearing required in said chapter.

§5B-3-5. Joint Commission on Economic Development Studies.

1 (a) The Joint Commission on Economic Development shall
2 study the following:

3 (1) The feasibility of establishing common regional
4 configurations for local workforce investment areas, regional
5 educational service agencies and for all other purposes the

6 Commission considers feasible. The study should review the
7 existing levels of cooperation between state and local economic
8 developers, complete an analysis of possible regional configura-
9 tions and outline examples of other successful regional systems
10 or networks found throughout the world. If the study determines
11 that the common regional configurations are feasible, the
12 Commission shall recommend legislation establishing common
13 regional designations for all feasible purposes. In making the
14 designation of regional areas, the study shall take into consider-
15 ation, but not be limited to, the following:

16 (A) Geographic areas served by local educational agencies
17 and intermediate educational agencies;

18 (B) Geographic areas served by post-secondary educational
19 institutions and area vocational education schools;

20 (C) The extent to which the local areas are consistent with
21 labor market areas;

22 (D) The distance that individuals will need to travel to
23 receive services provided in the local areas; and

24 (E) The resources of the local areas that are available to
25 effectively administer the activities or programs;

26 (2) The effectiveness and fiscal impact of incentives for
27 attracting and growing businesses, especially technology-
28 intensive companies; and

29 (3) A comprehensive review of West Virginia's existing
30 economic and community development resources and the
31 recommendation of an organizational structure, including, but
32 not limited to, the reorganization of the Department of Com-
33 merce and the Development Office that would allow the state
34 to successfully compete in the new global economy.

35 (b) In order to effectuate in the most cost-effective and
36 efficient manner the studies required in this article, it is
37 necessary for the Joint Commission to assemble and compile a
38 tremendous amount of information. The Development Office
39 will assist the Joint Commission in the collection and analysis
40 of this information. The Tourism Commission established
41 pursuant to article two of this chapter, the Economic Develop-
42 ment Authority established pursuant to article fifteen, chapter
43 thirty-one of this code, the Bureau of Employment Programs
44 established pursuant to article four, chapter twenty-one-a of this
45 code, the Workers' Compensation Commission established
46 pursuant to article one, chapter twenty-three of this code, the
47 Workforce Investment Commission established pursuant to
48 article two-c of this chapter, West Virginia Jobs Investment
49 Trust, Regional Planning and Development Councils, West
50 Virginia Rural Development Council, Office of Technology and
51 West Virginia Clearinghouse for Workforce Education shall
52 provide a copy of their annual reports as submitted to the
53 Governor in accordance with the requirements set forth in
54 section twenty, article one, chapter five of this code to the West
55 Virginia Development Office. The Development Office shall
56 review, analyze and summarize the data contained in the
57 reports, including its own annual report, and annually submit its
58 findings to the Joint Commission on or before the thirty-first
59 day of December.

60 (c) The Legislative Auditor shall provide to the Joint
61 Commission a copy of any and all reports on agencies listed in
62 subsection (b) of this section, which are required under article
63 ten, chapter four of this code.

64 (d) The Joint Commission shall complete the studies set
65 forth in this section and any other studies the Joint Commission
66 determines to undertake prior to the first day of December of
67 each year and may make recommendations, including recom-
68 mended legislation for introduction during the regular session
69 of the Legislature.

**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.

§5F-2-2. Power and authority of secretary of each department.

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

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

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

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

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

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

14 (5) Education and State Employees Grievance Board
15 provided for in article twenty-nine, chapter eighteen of this
16 code and article six-a, chapter twenty-nine of this code;

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

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

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

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

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

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

29 (b) The following agencies and boards, including all of the
30 allied, advisory, affiliated or related entities and funds associ-
31 ated with any agency or board, are incorporated in and adminis-
32 tered as a part of the Department of Commerce:

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

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

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

39 (2) Office of Miners' Health, Safety and Training provided
40 in article one, chapter twenty-two-a of this code. The following
41 boards are transferred to the Office of Miners' Health, Safety
42 and Training for purposes of administrative support and liaison
43 with the Office of the Governor:

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

47 (B) Board of Miner Training, Education and Certification
48 provided in article seven, chapter twenty-two-a of this code;
49 and

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

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

55 (4) Division of Natural Resources and Natural Resources
56 Commission provided in article one, chapter twenty of this
57 code;

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

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

62 (7) The Bureau of Employment Programs provided in
63 chapter twenty-one-a of this code.

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

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

70 (e) Workers' Compensation Commission provided in
71 article one, chapter twenty-three of this code is continued as an
72 independent agency within the executive branch.

73 (f) The following agencies and boards, including all of the
74 allied, advisory and affiliated entities, are transferred to the
75 Department of Environmental Protection for purposes of
76 administrative support and liaison with the Office of the
77 Governor:

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

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

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

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

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

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

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

92 (g) The following agencies and boards, including all of the
93 allied, advisory, affiliated or related entities and funds associ-
94 ated with any agency or board, are incorporated in and adminis-
95 tered as a part of the Department of Education and the Arts:

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

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

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

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

104 (h) The following agencies and boards, including all of the
105 allied, advisory, affiliated or related entities and funds associ-
106 ated with any agency or board, are incorporated in and adminis-
107 tered as a part of the Department of Health and Human Re-
108 sources:

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

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

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

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

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

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

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

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

125 (i) The following agencies and boards, including all of the
126 allied, advisory, affiliated or related entities and funds associ-
127 ated with any agency or board, are incorporated in and adminis-
128 tered as a part of the Department of Military Affairs and Public
129 Safety:

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

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

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

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

138 (5) Division of Homeland Security and Emergency Man-
139 agement and Disaster Recovery Board provided in article five,
140 chapter fifteen of this code and Emergency Response Commis-
141 sion provided in article five-a of said chapter;

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

144 (7) Division of Corrections provided in chapter twenty-five
145 of this code;

146 (8) Fire Commission provided in article three, chapter
147 twenty-nine of this code;

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

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

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

154 (j) The following agencies and boards, including all of the
155 allied, advisory, affiliated or related entities and funds associ-
156 ated with any agency or board, are incorporated in and adminis-
157 tered as a part of the Department of Revenue:

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

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

162 (3) Lottery Commission and position of Lottery Director
163 provided in article twenty-two, chapter twenty-nine of this
164 code;

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

167 (5) Office of Alcohol Beverage Control Commissioner
168 provided in article sixteen, chapter eleven of this code and
169 article two, chapter sixty of this code;

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

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

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

176 (9) The State Budget Office provided in article two of this
177 chapter;

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

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

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

184 (k) The following agencies and boards, including all of the
185 allied, advisory, affiliated or related entities and funds associ-
186 ated with any agency or board, are incorporated in and adminis-
187 tered as a part of the Department of Transportation:

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

190 (2) Parkways, Economic Development and Tourism
191 Authority provided in article sixteen-a, chapter seventeen of
192 this code;

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

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

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

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

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

203 (l) Except for powers, authority and duties that have been
204 delegated to the secretaries of the departments by the provisions
205 of section two of this article, the position of administrator and
206 the powers, authority and duties of each administrator and
207 agency are not affected by the enactment of this chapter.

208 (m) Except for powers, authority and duties that have been
209 delegated to the secretaries of the departments by the provisions
210 of section two of this article, the existence, powers, authority
211 and duties of boards and the membership, terms and qualifica-

212 tions of members of the boards are not affected by the enact-
213 ment of this chapter. All boards that are appellate bodies or are
214 independent decision makers shall not have their appellate or
215 independent decision-making status affected by the enactment
216 of this chapter.

217 (n) Any department previously transferred to and incorpo-
218 rated in a department by prior enactment of this section means
219 a division of the appropriate department. Wherever reference is
220 made to any department transferred to and incorporated in a
221 department created in section two, article one of this chapter,
222 the reference means a division of the appropriate department
223 and any reference to a division of a department so transferred
224 and incorporated means a section of the appropriate division of
225 the department.

226 (o) When an agency, board or commission is transferred
227 under a bureau or agency other than a department headed by a
228 secretary pursuant to this section, that transfer is solely for
229 purposes of administrative support and liaison with the Office
230 of the Governor, a department secretary or a bureau. Nothing in
231 this section extends the powers of department secretaries under
232 section two of this article to any person other than a department
233 secretary and nothing limits or abridges the statutory powers
234 and duties of statutory commissioners or officers pursuant to
235 this code.

§5F-2-2. Power and authority of secretary of each department.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, the secretary of each department shall have plenary
3 power and authority within and for the department to:

4 (1) Employ and discharge within the office of the secretary
5 employees as may be necessary to carry out the functions of the
6 secretary, which employees shall serve at the will and pleasure
7 of the secretary;

8 (2) Cause the various agencies and boards to be operated
9 effectively, efficiently and economically, and develop goals,
10 objectives, policies and plans that are necessary or desirable for
11 the effective, efficient and economical operation of the depart-
12 ment;

13 (3) Eliminate or consolidate positions, other than positions
14 of administrators or positions of board members, and name a
15 person to fill more than one position;

16 (4) Delegate, assign, transfer or combine responsibilities or
17 duties to or among employees, other than administrators or
18 board members;

19 (5) Reorganize internal functions or operations;

20 (6) Formulate comprehensive budgets for consideration by
21 the Governor, and transfer within the department funds appro-
22 priated to the various agencies of the department which are not
23 expended due to cost savings resulting from the implementation
24 of the provisions of this chapter: *Provided*, That no more than
25 twenty-five percent of the funds appropriated to any one agency
26 or board may be transferred to other agencies or boards within
27 the department: *Provided, however*, That no funds may be
28 transferred from a special revenue account, dedicated account,
29 capital expenditure account or any other account or funds
30 specifically exempted by the Legislature from transfer, except
31 that the use of appropriations from the State Road Fund
32 transferred to the Office of the Secretary of the Department of
33 Transportation is not a use other than the purpose for which the
34 funds were dedicated and is permitted: *Provided further*, That
35 if the Legislature by subsequent enactment consolidates
36 agencies, boards or functions, the secretary may transfer the
37 funds formerly appropriated to the agency, board or function in
38 order to implement consolidation. The authority to transfer

39 funds under this section shall expire on the thirtieth day of June,
40 two thousand five;

41 (7) Enter into contracts or agreements requiring the
42 expenditure of public funds, and authorize the expenditure or
43 obligation of public funds as authorized by law: *Provided*, That
44 the powers granted to the secretary to enter into contracts or
45 agreements and to make expenditures or obligations of public
46 funds under this provision shall not exceed or be interpreted as
47 authority to exceed the powers granted by the Legislature to the
48 various commissioners, directors or board members of the
49 various departments, agencies or boards that comprise and are
50 incorporated into each secretary's department under this
51 chapter;

52 (8) Acquire by lease or purchase property of whatever kind
53 or character and convey or dispose of any property of whatever
54 kind or character as authorized by law: *Provided*, That the
55 powers granted to the secretary to lease, purchase, convey or
56 dispose of such property shall not exceed or be interpreted as
57 authority to exceed the powers granted by the Legislature to the
58 various commissioners, directors or board members of the
59 various departments, agencies or boards that comprise and are
60 incorporated into each secretary's department under this
61 chapter;

62 (9) Conduct internal audits;

63 (10) Supervise internal management;

64 (11) Promulgate rules, as defined in section two, article
65 one, chapter twenty-nine-a of this code, to implement and make
66 effective the powers, authority and duties granted and imposed
67 by the provisions of this chapter in accordance with the
68 provisions of chapter twenty-nine-a of this code;

69 (12) Grant or withhold written consent to the proposal of
70 any rule, as defined in section two, article one, chapter
71 twenty-nine-a of this code, by any administrator, agency or
72 board within the department. Without written consent, no
73 proposal for a rule shall have any force or effect;

74 (13) Delegate to administrators the duties of the secretary
75 as the secretary may deem appropriate from time to time to
76 facilitate execution of the powers, authority and duties dele-
77 gated to the secretary; and

78 (14) Take any other action involving or relating to internal
79 management not otherwise prohibited by law.

80 (b) The secretaries of the departments hereby created shall
81 engage in a comprehensive review of the practices, policies and
82 operations of the agencies and boards within their departments
83 to determine the feasibility of cost reductions and increased
84 efficiency which may be achieved therein, including, but not
85 limited to, the following:

86 (1) The elimination, reduction and restriction of the state's
87 vehicle or other transportation fleet;

88 (2) The elimination, reduction and restriction of state
89 government publications, including annual reports, informa-
90 tional materials and promotional materials;

91 (3) The termination or rectification of terms contained in
92 lease agreements between the state and private sector for
93 offices, equipment and services;

94 (4) The adoption of appropriate systems for accounting,
95 including consideration of an accrual basis financial accounting
96 and reporting system;

97 (5) The adoption of revised procurement practices to
98 facilitate cost-effective purchasing procedures, including

99 consideration of means by which domestic businesses may be
100 assisted to compete for state government purchases; and

101 (6) The computerization of the functions of the state
102 agencies and boards.

103 (c) Notwithstanding the provisions of subsections (a) and
104 (b) of this section, none of the powers granted to the secretaries
105 herein shall be exercised by the secretary if to do so would
106 violate or be inconsistent with the provisions of any federal law
107 or regulation, any federal-state program or federally delegated
108 program or jeopardize the approval, existence or funding of any
109 program.

110 (d) The layoff and recall rights of employees within the
111 classified service of the state as provided in subsections (5) and
112 (6), section ten, article six, chapter twenty-nine of this code
113 shall be limited to the organizational unit within the agency or
114 board and within the occupational group established by the
115 classification and compensation plan for the classified service
116 of the agency or board in which the employee was employed
117 prior to the agency or board's transfer or incorporation into the
118 department: *Provided*, That the employee shall possess the
119 qualifications established for the job class. The duration of
120 recall rights provided in this subsection shall be limited to two
121 years or the length of tenure, whichever is less. Except as
122 provided in this subsection, nothing contained in this section
123 shall be construed to abridge the rights of employees within the
124 classified service of the state as provided in sections ten and
125 ten-a, article six, chapter twenty-nine of this code, or the right
126 of classified employees of the Board of Regents to the proce-
127 dures and protections set forth in article twenty-six-b, chapter
128 eighteen of this code.

129 (e) Notwithstanding any other provision of this code to the
130 contrary, the secretary of each department with authority over

131 programs which are payors for prescription drugs, including but
132 not limited to, the Public Employees Insurance Agency, the
133 Children's Health Insurance Program, the Division of Correc-
134 tions, the Division of Juvenile Services, the Regional Jail and
135 Correctional Facility Authority, the Workers' Compensation
136 Fund, state colleges and universities, public hospitals, state or
137 local institutions including nursing homes and veteran's homes,
138 the Division of Rehabilitation, public health departments, the
139 Bureau of Medical Services and other programs that are payors
140 for prescription drugs, shall cooperate with the Office of the
141 Pharmaceutical Advocate established pursuant to section four,
142 article sixteen-d, chapter five of this code for the purpose of
143 purchasing prescription drugs for any program over which they
144 have authority.

**CHAPTER 10. PUBLIC LIBRARIES; PUBLIC
RECREATION; ATHLETIC ESTABLISHMENTS; MONU-
MENTS AND MEMORIALS; ROSTER OF SERVICEMEN;
EDUCATIONAL BROADCASTING AUTHORITY.**

ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.

§10-5-2. West Virginia Educational Broadcasting Authority; members; organiza-
tion; officers; employees; meetings; expenses.

§10-5-5a. Advisory Committee on Journalistic and Editorial Integrity.

**§10-5-2. West Virginia Educational Broadcasting Authority;
members; organization; officers; employees; meet-
ings; expenses.**

1 (a) The West Virginia Educational Broadcasting Authority
2 is hereby continued as a public benefit corporation. The
3 Authority shall consist of eleven voting members, who shall be
4 residents of the state, including the Governor or designee, the
5 State Superintendent of Schools, one member of the West
6 Virginia Board of Education to be selected by it annually, and
7 one member of the West Virginia Higher Education Policy

8 Commission to be selected by it annually. The other seven
9 members shall be appointed by the Governor by and with the
10 advice and consent of the Senate for overlapping terms of seven
11 years, one term expiring each year. Not less than one appoint-
12 ive member shall come from each congressional district.
13 Employees of noncommercial broadcasting stations in West
14 Virginia are not eligible for appointment to the Authority. Any
15 vacancy among the appointive members shall be filled by the
16 Governor by appointment for the unexpired term.

17 (b) As of the effective date of the reenactment of this
18 section during the Regular Session of 2005, the Governor or
19 designee serves as chair, for a term not to exceed four years
20 unless extended by act of the Legislature. Thereafter, the
21 Authority shall select the chair. The Authority shall annually
22 select one of its public members as vice chair and shall appoint
23 a secretary who need not be a member of the Authority and who
24 shall keep records of its proceedings.

25 (c) As of the effective date of the reenactment of this
26 section during the Regular Session of 2005, the Governor shall
27 appoint an Executive Director, at a salary fixed by the Gover-
28 nor, to serve for a term not to exceed four years unless extended
29 by act of the Legislature. Thereafter the Authority shall appoint
30 the Executive Director and fix his or her salary. The Executive
31 Director is responsible for managing and administering the
32 daily functions of the Authority and for performing all other
33 functions necessary to the effective operation of the Authority.
34 The Authority is authorized to establish offices for the proper
35 performance of its duties.

36 (d) The Authority shall hold at least one annual meeting.
37 The time and place of the meetings shall be established upon its
38 own resolution or at the call of the chairperson of the Authority.
39 The members shall serve without compensation but may be
40 reimbursed for all reasonable and necessary expenses actually

41 incurred in the performance of their duties in a manner consis-
42 tent with the guidelines of the Travel Management Office of the
43 Department of Administration.

§10-5-5a. Advisory Committee on Journalistic and Editorial Integrity.

1 (a) The Authority shall appoint an Advisory Committee on
2 Journalistic and Editorial Integrity, which shall consist of five
3 qualified members to serve staggered terms of three years. The
4 Advisory Committee shall annually elect a chair, vice chair and
5 secretary.

6 (b) The Advisory Committee shall advise the Authority on
7 issues related to the journalistic independence and editorial
8 integrity of public education and public broadcasting stations,
9 which have the same constitutional protections as other
10 journalistic enterprises in West Virginia.

CHAPTER 11. TAXATION.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-6. Chief Administrative Law Judge; appointment, term and vacancy;
qualifications; compensation; conflicts of interest prohibited; removal.

§11-10A-7. Powers and duties of Chief Administrative Law Judge; all employees,
except Chief Administrative Law Judge, members of classified
service; qualifications of administrative law judges.

**§11-10A-6. Chief Administrative Law Judge; appointment, term
and vacancy; qualifications; compensation; con-
flicts of interest prohibited; removal.**

1 (a) The Governor, with the advice and consent of the
2 Senate, shall appoint the Chief Administrative Law Judge from
3 a list of three qualified nominees submitted to the Governor by
4 the Board of Governors of the West Virginia State Bar for a
5 four-year term. An appointment to fill a vacancy in the position
6 shall be for the unexpired term.

7 (b) Prior to appointment, the Chief Administrative Law
8 Judge shall be a citizen of the United States and a resident of
9 this state who is admitted to the practice of law in this state and
10 who has five years of full-time or equivalent part-time experi-
11 ence as an attorney with federal or state tax law expertise or as
12 a judge of a court of record.

13 (c) The salary of the Chief Administrative Law Judge shall
14 be set by the Secretary of the Department of Revenue created
15 in section two, article one, chapter five-f of this code. The
16 salary shall be within the salary range for comparable chief
17 administrative law judges as determined by the State Personnel
18 Board created by section six, article six, chapter twenty-nine of
19 this code.

20 (d) The Chief Administrative Law Judge during his or her
21 term shall:

22 (1) Devote his or her full time to the duties of the position;

23 (2) Not otherwise engage in the active practice of law or be
24 associated with any group or entity which is itself engaged in
25 the active practice of law: *Provided*, That nothing in this
26 paragraph may be construed to prohibit the Chief Administra-
27 tive Law Judge from being a member of a national, state or
28 local bar association or committee, or of any other similar
29 group or organization, or to prohibit the Chief Administrative
30 Law Judge from engaging in the practice of law by representing
31 himself, herself or his or her immediate family in their personal
32 affairs in matters not subject to this article.

33 (3) Not engage directly or indirectly in any activity,
34 occupation or business interfering or inconsistent with his or
35 her duties as Chief Administrative Law Judge;

36 (4) Not hold any other appointed public office or any
37 elected public office or any other position of public trust; and

38 (5) Not be a candidate for any elected public office, or
39 serve on or under any committee of any political party.

40 (e) The Governor may remove the Chief Administrative
41 Law Judge only for incompetence, neglect of duty, official
42 misconduct or violation of subsection (d) of this section, and
43 removal shall be in the same manner as that specified for
44 removal of elected state officials in section six, article six,
45 chapter six of this code.

**§11-10A-7. Powers and duties of Chief Administrative Law
Judge; all employees, except Chief Administrative
Law Judge, members of classified service; quali-
fications of administrative law judges.**

1 (a) The Chief Administrative Law Judge is the chief
2 executive officer of the Office of Tax Appeals and he or she
3 may employ one person to serve as executive director, one staff
4 attorney and other clerical personnel as necessary for the proper
5 administration of this article. The Chief Administrative Law
6 Judge may delegate administrative duties to other employees,
7 but the Chief Administrative Law Judge shall be responsible for
8 all official delegated acts.

9 (1) Upon the request of the Chief Administrative Law
10 Judge, the Governor may appoint up to two administrative law
11 judges as necessary for the proper administration of this article.

12 (2) All employees of the Office of Tax Appeals, except the
13 Chief Administrative Law Judge, shall be in the classified
14 service and shall be governed by the provisions of the statutes,
15 rules and policies of the classified service in accordance with
16 the provisions of article six, chapter twenty-nine of this code.

17 (3) Prior to employment by the Office of Tax Appeals, all
18 administrative law judges shall be admitted to the practice of
19 law in this state and have at least two years of full-time or

20 equivalent part-time experience as an attorney with federal or
21 state tax law expertise.

22 (4) The Chief Administrative Law Judge and all administra-
23 tive law judges shall be members of the public employees
24 retirement system and do not qualify as participants in the
25 judicial retirement system during their tenure with the Office of
26 Tax Appeals.

27 (b) The Chief Administrative Law Judge shall:

28 (1) Direct and supervise the work of the legal staff;

29 (2) Make hearing assignments;

30 (3) Maintain the records of the Office of Tax Appeals;

31 (4) Review and approve decisions of administrative law
32 judges as to legal accuracy, clarity and other requirements;

33 (5) Publish decisions in accordance with the provisions of
34 section sixteen of this article;

35 (6) Submit to the Legislature, on or before the fifteenth day
36 of February, an annual report summarizing the Office of Tax
37 Appeals' activities since the end of the last report period,
38 including a statement of the number and type of matters
39 handled by the Office of Tax Appeals during the preceding
40 fiscal year and the number of matters pending at the end of the
41 year; and

42 (7) Perform the other duties necessary and proper to carry
43 out the purposes of this article.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOP- MENT AND TOURISM AUTHORITY.

§17-16A-3. West Virginia Parkways, Economic Development and Tourism Authority generally.

§17-16A-10. Parkway revenue bonds generally.

§17-16A-3. West Virginia Parkways, Economic Development and Tourism Authority generally.

1 (a) The West Virginia Parkways, Economic Development
2 and Tourism Authority is continued as an agency of the state,
3 and the exercise by the Parkways Authority of the powers
4 conferred by this article in the construction, reconstruction,
5 improvement, operation and maintenance of parkway, eco-
6 nomic development and tourism projects shall be deemed an
7 essential governmental function of the state.

8 (b) The West Virginia Parkways, Economic Development
9 and Tourism Authority shall consist of seven members,
10 including the Governor or designee, the Transportation Secre-
11 tary and five public members appointed by the Governor, by
12 and with the advice and consent of the Senate. The appointed
13 members shall be residents of the state and shall have been
14 qualified electors for a period of at least one year next preced-
15 ing their appointment. Public members are appointed for eight-
16 year terms, which are staggered in accordance with the initial
17 appointments under prior enactment of this section. Any
18 member whose term has expired shall serve until his or her
19 successor has been duly appointed and qualified. Any person
20 appointed to fill a vacancy shall serve only for the unexpired
21 term. Any member shall be eligible for reappointment. Each
22 appointed member of the Parkways Authority before entering
23 upon his or her duties shall take an oath as provided by section
24 five, article IV of the Constitution of West Virginia.

25 (c) The Governor or designee shall serve as chair and the
26 Authority shall annually elect one of the appointed members as
27 vice chair, and shall also elect a secretary and treasurer who
28 need not be members of the Parkways Authority.

29 (d) The Governor appoints an Executive Director of the
30 Authority with the advice and consent of the Senate. The
31 Executive Director serves at the Governor's will and pleasure.
32 The Executive Director is responsible for managing and
33 administering the daily functions of the Authority and for
34 performing all other functions necessary to the effective
35 operation of the Authority. The compensation of the Executive
36 Director is annually fixed by the Governor.

37 (e) Four members of the Parkways Authority shall consti-
38 tute a quorum and the vote of a majority of members present
39 shall be necessary for any action taken by the Parkways
40 Authority. No vacancy in the membership of the Parkways
41 Authority shall impair the right of a quorum to exercise all the
42 rights and perform all the duties of the Parkways Authority. The
43 Parkways Authority shall meet at least monthly and either the
44 chair or any four members shall be empowered to call special
45 meetings for any purpose: *Provided*, That notice of any meeting
46 shall be given to all members of the Parkways Authority not
47 less than ten days prior to said special meetings.

48 (f) Before the issuance of any parkway revenue bonds or
49 revenue refunding bonds under the provisions of this article,
50 each appointed member of the Parkways Authority shall
51 execute a surety bond in the penal sum of twenty-five thousand
52 dollars and the secretary and treasurer shall execute a surety
53 bond in the penal sum of fifty thousand dollars, each surety
54 bond to be conditioned upon the faithful performance of the
55 duties of his or her office, to be executed by a surety company
56 authorized to transact business in West Virginia as surety and
57 to be approved by the Governor and filed in the Office of the
58 Secretary of State.

59 (g) The members of the Parkways Authority shall not be
60 entitled to compensation for their services, but shall be reim-
61 bursed for all reasonable and necessary expenses actually
62 incurred in the performance of their duties in a manner consis-

63 tent with guidelines of the Travel Management Office of the
64 Department of Administration.

65 (h) All expenses incurred in carrying out the provisions of
66 this article shall be payable solely from funds provided under
67 the authority of this article and no liability or obligation shall be
68 incurred by the Parkways Authority beyond the extent to which
69 moneys shall have been provided under the authority of this
70 article.

71 (i) Pursuant to the provisions of article ten, chapter four of
72 this code, the West Virginia Parkways, Economic Development
73 and Tourism Authority shall continue to exist until the first day
74 of July, two thousand seven.

§17-16A-10. Parkway revenue bonds generally.

1 (a) The Parkways Authority is authorized to provide by
2 resolution for the issuance of parkway revenue bonds of the
3 state for the purpose of paying all or any part of the cost of one
4 or more projects: *Provided*, That this section shall not be
5 construed as authorizing the issuance of parkway revenue bonds
6 for the purpose of paying the cost of the West Virginia Turn-
7 pike, which parkway revenue bonds may be issued only as
8 authorized under section eleven of this article. The principal of
9 and the interest on bonds shall be payable solely from the funds
10 provided for payment.

11 (b) The bonds of each issue shall be dated, shall bear
12 interest at a rate as may be determined by the Parkways
13 Authority in its sole discretion, shall mature at a time not
14 exceeding forty years from their date or of issue as may be
15 determined by the Parkways Authority, and may be made
16 redeemable before maturity, at the option of the Parkways
17 Authority at a price and under the terms and conditions as may
18 be fixed by the Parkways Authority prior to the issuance of the
19 bonds.

20 (c) The Parkways Authority shall determine the form of the
21 bonds, including any interest coupons to be attached thereto,
22 and shall fix the denomination of the bonds and the place of
23 payment of principal and interest, which may be at any bank or
24 trust company within or without the state.

25 (d) The bonds shall be executed by manual or facsimile
26 signature by the chair of the Parkways Authority, and the
27 official seal of the Parkways Authority shall be affixed to or
28 printed on each bond, and attested, manually or by facsimile
29 signature, by the secretary and treasurer of the Parkways
30 Authority. Any coupons attached to any bond shall bear the
31 manual or facsimile signature of the chair of the Parkways
32 Authority.

33 (e) In case any officer whose signature or a facsimile of
34 whose signature appears on any bonds or coupons shall cease
35 to be an officer before the delivery of the bonds, the signature
36 or facsimile shall nevertheless be valid and sufficient for all
37 purposes the same as if he had remained in office until delivery.
38 In case the seal of the Parkways Authority has been changed
39 after a facsimile has been imprinted on the bonds, then the
40 facsimile seal will continue to be sufficient for all purposes.

41 (f) All bonds issued under the provisions of this article shall
42 have all the qualities and incidents of negotiable instruments
43 under the negotiable instruments law of the state. The bonds
44 may be issued in coupon or in registered form, or both, as the
45 Parkways Authority may determine, and provision may be
46 made for the registration of any coupon bonds as to principal
47 alone and also as to both principal and interest, and for the
48 recorders into coupon bonds of any bonds registered as to both
49 principal and interest.

50 (g) The Parkways Authority may sell the bonds at a public
51 or private sale at a price it determines to be in the best interests
52 of the state.

53 (h) The proceeds of the bonds of each issue shall be used
54 solely for the payment of the cost of the parkway project or
55 projects for which the bonds were issued, and shall be disbursed
56 in a manner consistent with the resolution authorizing the
57 issuance of the bonds or in the trust agreement securing the
58 bonds.

59 (i) If the proceeds of the bonds of any issue, by error of
60 estimates or otherwise, shall be less than the cost, then addi-
61 tional bonds may in like manner be issued to provide the
62 amount of the deficit. Unless otherwise provided in the resolu-
63 tion authorizing the issuance of the bonds or in the trust
64 agreement securing the bonds, the additional bonds shall be
65 deemed to be of the same issue and shall be entitled to payment
66 from the same fund without preference or priority of the bonds
67 first issued.

68 (j) If the proceeds of the bonds of any issue exceed the cost
69 of the project or projects for which the bonds were issued, then
70 the surplus shall be deposited to the credit of the sinking fund
71 for the bonds.

72 (k) Prior to the preparation of definitive bonds, the Park-
73 ways Authority may, under like restrictions, issue interim
74 receipts or temporary bonds, with or without coupons, ex-
75 changeable for definitive bonds when the bonds have been
76 executed and are available for delivery. The Parkways Author-
77 ity may also provide for the replacement of any bonds that
78 become mutilated or are destroyed or lost.

79 (l) Bonds may be issued under the provisions of this article
80 without obtaining the consent of any department, division,
81 commission, board, bureau or agency of the state in accordance
82 with this article.

CHAPTER 49. CHILD WELFARE.

ARTICLE 9. MISSING CHILDREN INFORMATION ACT.

§49-9-15. Clearinghouse Advisory Council; members, appointments and expenses; appointment, duties and compensation of director.

1 (a) The Clearinghouse Advisory Council is continued as a
2 body corporate and politic, constituting a public corporation
3 and government instrumentality. The Council shall consist of
4 eleven members, who are knowledgeable about and interested
5 in issues relating to missing or exploited children, as follows:

6 (1) Six members to be appointed by the Governor, with the
7 advice and consent of the Senate, with not more than four
8 belonging to the same political party, three being from different
9 congressional districts of the state and, as nearly as possible,
10 providing broad state geographical distribution of members of
11 the Council, and at least one representing a nonprofit organiza-
12 tion involved with preventing the abduction, runaway or
13 exploitation of children or locating missing children;

14 (2) The Secretary of the Department of Health and Human
15 Resources or his or her designee;

16 (3) The Superintendent of the West Virginia State Police or
17 his or her designee;

18 (4) The State Superintendent of Schools or his or her
19 designee;

20 (5) The Director of the Criminal Justice and Highway
21 Safety Division or his or her designee; and

22 (6) The Executive Director of the Governor's Cabinet on
23 Children and Families.

24 (b) The Governor shall appoint the six Council members for
25 staggered terms. The terms of the members first taking office
26 on or after the effective date of this legislation shall expire as

27 designated by the Governor. Each subsequent appointment shall
28 be for a full three-year term. Any appointed member whose
29 term is expired shall serve until a successor has been duly
30 appointed and qualified. Any person appointed to fill a vacancy
31 shall serve only for the unexpired term. A member is eligible
32 for only one successive reappointment. A vacancy shall be
33 filled by the Governor in the same manner as the original
34 appointment was made.

35 (c) Members of the Council are not entitled to compensa-
36 tion for services performed as members but are entitled to
37 reimbursement for all reasonable and necessary expenses
38 actually incurred in the performance of their duties in a manner
39 consistent with the guidelines of the Travel Management Office
40 of the Department of Administration.

41 (d) A majority of serving members constitutes a quorum for
42 the purpose of conducting business. The chair of the Council
43 shall be designated by the Governor from among the appointed
44 Council members who represent nonprofit organizations
45 involved with preventing the abduction, runaway or exploita-
46 tion of children or locating missing children. The term of the
47 chair shall run concurrently with his or her term of office as a
48 member of the Council. The Council shall conduct all meetings
49 in accordance with the open governmental meetings law
50 pursuant to article nine-a, chapter six of this code.

51 (e) The employee of the West Virginia State Police who is
52 primarily responsible for the clearinghouse established by
53 section three of this article shall serve as the Executive Director
54 of the Council. He or she shall receive no additional compensa-
55 tion for service as the Executive Director of the Council but
56 shall be reimbursed for any reasonable and necessary expenses
57 actually incurred in the performance of his or her duties as
58 Executive Director in a manner consistent with the guidelines
59 of the Travel Management Office of the Department of Admin-
60 istration.

61 (f) The expenses of Council members and the Executive
62 Director shall be reimbursed from funds provided by foundation
63 grants, in-kind contributions or funds obtained pursuant to
64 subsection (b), section seventeen of this article.

65 (g) The Executive Director shall provide or obtain informa-
66 tion necessary to support the administrative work of the Council
67 and, to that end, may contract with one or more nonprofit
68 organizations or state agencies for research and administrative
69 support.

70 (h) The Executive Director of the Council shall be available
71 to the Governor and to the Speaker of the House of Delegates
72 and the President of the Senate to analyze and comment upon
73 proposed legislation and rules which relate to or materially
74 affect missing or exploited children.

75 (i) The Council shall prepare and publish an annual report
76 of its activities and accomplishments and submit it to the
77 Governor and to the Joint Committee on Government and
78 Finance on or before the fifteenth day of December of each
79 year.

CHAPTER 201

**(H. B. 2984 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §5-5-3 of the Code of West Virginia,
1931, as amended; to amend and reenact §5-10-2, §5-10-15, §5-

10-17, §5-10-21, §5-10-22, §5-10-23, §5-10-26, §5-10-27, §5-10-31 and §5-10-44 of said code; to amend said code by adding thereto a new section, designated §5-10-22h; to amend and reenact §5-10A-2 and §5-10A-3 of said code; to amend said code by adding thereto a new section, designated §5-10A-11; to amend and reenact §7-14D-5, §7-14D-7, §7-14D-13 and §7-14D-23 of said code; to amend and reenact §12-8-2, §12-8-3, §12-8-4, §12-8-5, §12-8-6, §12-8-7, §12-8-8 and §12-8-10 of said code; to amend said code by adding thereto a new section designated §12-8-15; to amend and reenact §15-2-26, §15-2-27, §15-2-27a, §15-2-28, §15-2-29, §15-2-30, §15-2-31, §15-2-32, §15-2-33, §15-2-34 and §15-2-37 of said code; to amend said code by adding thereto four new sections, designated §15-2-25b, §15-2-31a, §15-2-31b and §15-2-39a; to amend and reenact §15-2A-2, §15-2A-5, §15-2A-6, §15-2A-7, §15-2A-8, §15-2A-9, §15-2A-10, §15-2A-11, §15-2A-12, §15-2A-13, §15-2A-14 and §15-2A-19 of said code; to amend said code by adding thereto four new sections, designated §15-2A-11a, §15-2A-11b, §15-2A-21 and §15-2A-22; to amend and reenact §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-18, §18-7A-18a, §18-7A-23a, §18-7A-25, §18-7A-26 and §18-7A-34 of said code; to amend said code by adding thereto three new sections, designated §18-7A-28e, §18-7A-39 and §18-7A-40; to amend and reenact §18-7B-2, §18-7B-7, §18-7B-9, §18-7B-11, §18-7B-12a and §18-7B-16 of said code; to amend and reenact said code by adding thereto two new sections, designated §18-7B-7a and §18-7B-20; to amend said code by adding thereto a new article, designated §18-7C-1, §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12, §18-7C-13 and §18-7C-14; and to amend said code by adding thereto a new section, designated §51-9-6c, all relating to state pensions and retirement generally; providing comprehensive changes to certain plans administered by the Consolidated Public Retirement Board; enacting the Governor's Pension Reform Act of 2005; rights of members' unused, accrued leave in final average salary in the Public Employees Retirement System; limitations on benefit increases; bond pledges and

covenants regarding unfunded liabilities; limiting time for amortization; amending and adding definitions in the Public Employees Retirement System; clarifying use of restricted qualified military service credit to one retirement system; vesting of retirement benefits for those members of the armed forces accumulating nine or more years of credited service who are called from participating employment to compulsory military service or armed conflict and who die during, or as a result of, compulsory active service and prior to resumption of participating employment; setting time limit on application; restricting certain rights of members to select a plan beneficiary; establishing a cap on the amount certain persons may receive from the Public Employees Retirement System where that person is also receiving a pension from another pension or retirement system administered by the Consolidated Public Retirement Board; authorizing annual physician review and requiring an annual statement of earnings from certain persons receiving disability retirement payments; providing for suspension of benefits upon failure of disability retiree to furnish certain information; providing that interest is to be included in the calculation of terminal benefits payable as the result of death of retired participants; addressing the correction of employer errors; clarifying use of members' unused, accrued leave in final average salary; making technical corrections to the Public Employees Retirement System; amending the definitions of less than honorable service and retirement plan; increasing the time to issue notice to terminate benefits; requiring prosecuting attorneys to notify retirement board of any convictions or pleas to less than honorable service; declaring policy and making legislative findings regarding pension liability redemption; setting forth definitions; providing for issuance of bonds; method of bond issuance and sale of bonds; use of bond proceeds; continuation of Pension Liability Redemption Fund and disbursements therefrom; setting forth state pledges and covenants; operation of article; relating to the Deputy Sheriff Retirement System; concurrent contributions by members and employers; credit for nondeputy sheriff service in the Public Employees Retirement System prior

to transfer; treatment of withdrawals not repaid prior to transfer; providing that any person becoming a member of the Deputy Sheriff Retirement System after the first day of July, two thousand five, may not borrow from that plan; relating to the West Virginia State Police Death, Disability and Retirement Fund generally; adding general definitions to the West Virginia State Police Death, Disability and Retirement Fund; adding definitions of “law-enforcement officer”, “partially disabled”, “totally disabled” and “physical or mental impairment” to the West Virginia State Police Death, Disability and Retirement Fund; making technical changes in to the West Virginia State Police Death, Disability and Retirement Fund; providing for probable permanent disability status; specifying that total disability now is inability to perform any substantial gainful employment and that partial disability is inability to perform law enforcement duties; specifying limitation on compensation rendered to health care providers; providing that member receiving annuity for partial disability incurred in performance of duty may be employed as an elected sheriff or appointed chief of police if it is shown to the Board that such employment is not inconsistent with the partial disability; allowing application for disability to be made by person acting on member’s behalf; allowing Superintendent to petition Board for member’s disability when he or she deems the member disabled; authorizing rules; judicial review; allowing Board to withhold payment pending judicial review; requiring disability recipient to file annual statement of earnings and setting forth penalty for refusal or failure to do so; annual report of employer’s disability retirement experience in to the West Virginia State Police Death, Disability and Retirement Fund; limitation on benefit increases; relating to amending definitions in the West Virginia State Police Retirement System; determination of contributions; acquiring retirement credited service through member’s use of accrued annual or sick leave days in the West Virginia State Police Retirement System; establishing starting date for payment of annuity in the West Virginia State Police Retirement System; clarifying disability provisions and

technical corrections in the West Virginia State Police Retirement System; annual report of employer's disability retirement experience in to the West Virginia State Police Retirement System; limitation on benefit increases; amending provisions relating to the State Teachers Retirement System; amending, adding and alphabetizing the definitions; providing for the use of qualified military service in the State Teachers Retirement System; providing that in the case of deceased retired participants that interest is to be included in the calculation of terminal benefits payable and making other technical modifications in the State Teachers Retirement System; clarifying provisions for loan repayment in the State Teachers Retirement System; replacing earnable compensation with gross salary in the State Teachers Retirement System; clarifying maximum loan amount and making technical corrections in the State Teachers Retirement System; making technical corrections to the Teachers Retirement System; creating the Teachers Employers Contribution Collection Account; monies to be deposited and transfer of monies in account; continuing the Teachers Retirement System Fund; monies to be deposited and use of monies in fund; discontinuing the loan program participation of teachers and nonteachers who become members of the Teachers Retirement System on or after the first day of July, two thousand five; limitation on benefits; creating Employee Pension and Health Care Benefits Fund; moneys to be deposited; use of moneys in fund; amending certain definitions in the Teachers' Defined Contribution System; clarifying participation requirement in the Teachers' Defined Contribution System; providing employer deadlines for deposit of contributions in the Teachers Defined Contribution System; establishing when payments are to be made into and out of the suspension account in the Teachers Defined Contribution System; adding the Internal Revenue Service provisions concerning incidental death benefits in the Teachers Defined Contribution System; clarifying that all years of employee service will be counted for vesting purposes in the Teachers Defined Contribution System; prohibiting involuntary cash-outs effective the

thirtieth day of June, two thousand five; making technical corrections in the Teachers Defined Contribution System; requiring River Valley Child Development Services to offer pension plan for employees; allowing employees to withdraw from PERS; requiring notice; relating to the merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System generally; closing the Teachers Defined Contribution Retirement System to newly hired personnel; providing legislative findings and purpose; providing definitions; providing for merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System upon election; providing responsibilities of the Consolidated Public Retirement Board; setting forth dates and time periods for transition and election; requiring that increase of or new benefits to the Teachers Retirement System be amortized over a ten-year time period; providing for education about election and merger for members; requiring legal notice to members; providing for transfer of assets from the Teachers Defined Contribution Retirement System to the State Teachers Retirement System upon favorable vote for consolidation and merger; providing that the Teachers Defined Contribution Retirement System shall not exist upon favorable vote for consolidation and merger; setting forth terms of merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System; providing for service credit in the State Teachers Retirement; requiring members of Teachers Defined Contribution Plan to pay additional amount to receive credit upon merger; providing options and loans for members moving to the remaining plan; providing service credit for transferring member; addressing withdrawals and cash outs; providing for election on the question of merger and consolidation of the Teachers Defined Contribution Retirement System and the State Teachers Retirement System; setting forth requirements of election; allowing Consolidated Public Retirement Board to contract directly for professional services for purposes of performing its responsibilities related to the merger

and consolidation and conducting the election; permitting only one election; addressing qualified domestic relations orders; providing for vesting of members and minimum guarantees of benefits for them; providing for due process and right to appeal; providing for nonseverability of the new article; and limitation on benefit increases in Judges' Retirement System.

Be it enacted by the Legislature of West Virginia:

That §5-5-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5-10-2, §5-10-15, §5-10-17, §5-10-21, §5-10-22, §5-10-23, §5-10-26, §5-10-27, §5-10-31 and §5-10-44 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §5-10-22h; that §5-10A-2 and §5-10A-3 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §5-10A-11; that §7-14D-5, §7-14D-7, §7-14D-13 and §7-14D-23 of said code be amended and reenacted; that §12-8-2, §12-8-3, §12-8-4, §12-8-5, §12-8-6, §12-8-7, §12-8-8 and §12-8-10 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §12-8-15; that §15-2-26, §15-2-27, §15-2-27a, §15-2-28, §15-2-29, §15-2-30, §15-2-31, §15-2-32, §15-2-33, §15-2-34 and §15-2-37 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §15-2-25b, §15-2-31a, §15-2-31b and §15-2-39a; that §15-2A-2, §15-2A-5, §15-2A-6, §15-2A-7, §15-2A-8, §15-2A-9, §15-2A-10, §15-2A-11, §15-2A-12, §15-2A-13, §15-2A-14 and §15-2A-19 of said code be amended and reenacted; that said code be amended by adding thereto four new sections, designated §15-2A-11a, §15-2A-11b, §15-2A-21 and §15-2A-22; that §18-7A-3, §18-7A-14, §18-7A-17, §18-7A-18, §18-7A-18a, §18-7A-23a, §18-7A-25, §18-7A-26 and §18-7A-34 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §18-7A-28e, §18-7A-39 and §18-7A-40; that §18-7B-2, §18-7B-7, §18-7B-9, §18-7B-11, §18-7B-12a and §18-7B-16 of said code be amended and reenacted; that said code be further amended and reenacted by adding thereto two

new sections, designated §18-7B-7a and §18-7B-20; that said code be amended by adding thereto a new article, designated §18-7C-1, §18-7C-2, §18-7C-3, §18-7C-4, §18-7C-5, §18-7C-6, §18-7C-7, §18-7C-8, §18-7C-9, §18-7C-10, §18-7C-11, §18-7C-12, §18-7C-13 and §18-7C-14; and that said code be amended by adding thereto a new section, designated §51-9-6c, 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.**
7. **County Commissions and Officers.**
12. **Public Moneys and Securities.**
15. **Public Safety.**
18. **Education.**

**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.**
10. **West Virginia Public Employees Retirement Act.**
- 10A. **Disqualification for Public Retirement Plan Benefits.**

ARTICLE 5. SALARY INCREASE FOR STATE EMPLOYEES.

§5-5-3. Optional payment to employee in lump sum amount for accrued and unused leave at termination of employment; no withholding of any employee contribution deduction; exception.

1 Every eligible employee, as defined in section one of this
2 article, at the time his or her active employment ends due to
3 resignation, death, retirement or otherwise, may be paid in a
4 lump sum amount, at his or her option, for accrued and unused
5 annual leave at the employee's usual rate of pay at the time.

6 The lump sum payment shall be made by the time of what
7 would have been the employee's next regular payday had his or
8 her employment continued. In determining the amount of leave
9 entitlement, weekends, holidays or other periods of normal,
10 noncountable time shall be excluded, and no deductions may be
11 made for contributions toward retirement from lump sum
12 payments for unused, accrued leave of any kind or character,
13 since no period of service credit is granted in relation thereto;
14 however, lump sum payment for unused, accrued leave of any
15 kind or character may not be a part of final average salary
16 computation; and where any deduction of employee contribu-
17 tion may have been made previously, a refund of the amount
18 deducted shall be granted the former employee and made by the
19 head of the respective former employer spending unit: *Pro-*
20 *vided*, That the Superintendent of the West Virginia State Police
21 shall make deductions for retirement contributions of members
22 of the State Police Death, Disability and Retirement Fund
23 created and continued in section twenty-six, article two, chapter
24 fifteen of this code since retirement benefits are based on
25 cumulative earnings rather than period of service.

**ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT
ACT.**

§5-10-2. Definitions.

§5-10-15. Military service credit; qualified military service.

§5-10-17. Retirement system membership.

§5-10-21. Deferred retirement and early retirement.

§5-10-22. Retirement annuity.

§5-10-22h. Limitations on benefit increases.

§5-10-23. Terminal payment following retirement.

§5-10-26. Reexamination of disability retirants; reemployment; adjustment of
annuity for earnings.

§5-10-27. Preretirement death annuities.

§5-10-31. Employers accumulation fund; employers contributions.

§5-10-44. Correction of errors.

§5-10-2. Definitions.

1 Unless a different meaning is clearly indicated by the
2 context, the following words and phrases as used in this article,
3 have the following meanings:

4 (1) "Accumulated contributions" means the sum of all
5 amounts deducted from the compensations of a member and
6 credited to his or her individual account in the members'
7 deposit fund, together with regular interest on the contributions;

8 (2) "Accumulated net benefit" means the aggregate amount
9 of all benefits paid to or on behalf of a retired member;

10 (3) "Actuarial equivalent" means a benefit of equal value
11 computed upon the basis of a mortality table and regular
12 interest adopted by the board of trustees from time to time;

13 (4) "Annuity" means an annual amount payable by the
14 retirement system throughout the life of a person. All annuities
15 shall be paid in equal monthly installments, rounding to the
16 upper cent for any fraction of a cent;

17 (5) "Annuity reserve" means the present value of all
18 payments to be made to a retirant or beneficiary of a retirant on
19 account of any annuity, computed upon the basis of mortality
20 and other tables of experience, and regular interest, adopted by
21 the Board of Trustees from time to time;

22 (6) "Beneficiary" means any person, except a retirant, who
23 is entitled to, or will be entitled to, an annuity or other benefit
24 payable by the retirement system;

25 (7) "Board of Trustees" or "Board" means the Board of
26 Trustees of the West Virginia Consolidated Public Retirement
27 System;

28 (8) "Compensation" means the remuneration paid a
29 member by a participating public employer for personal

30 services rendered by the member to the participating public
31 employer. In the event a member's remuneration is not all paid
32 in money, his or her participating public employer shall fix the
33 value of the portion of the remuneration which is not paid in
34 money;

35 (9) "Contributing service" means service rendered by a
36 member within this state and for which the member made
37 contributions to a public retirement system account of this state,
38 to the extent credited him or her as provided by this article;

39 (10) "Credited service" means the sum of a member's prior
40 service credit, military service credit, workers' compensation
41 service credit and contributing service credit standing to his or
42 her credit as provided in this article;

43 (11) "Employee" means any person who serves regularly as
44 an officer or employee, full time, on a salary basis, whose
45 tenure is not restricted as to temporary or provisional appoint-
46 ment, in the service of, and whose compensation is payable, in
47 whole or in part, by any political subdivision, or an officer or
48 employee whose compensation is calculated on a daily basis
49 and paid monthly or on completion of assignment, including
50 technicians and other personnel employed by the West Virginia
51 National Guard whose compensation, in whole or in part, is
52 paid by the federal government: *Provided*, That an employee of
53 the Legislature whose term of employment is otherwise
54 classified as temporary and who is employed to perform
55 services required by the Legislature for its regular sessions or
56 during the interim between regular sessions and who has been
57 or is employed during regular sessions or during the interim
58 between regular sessions in seven or more consecutive calendar
59 years, as certified by the Clerk of the House in which the
60 employee served, is an employee, any provision to the contrary
61 in this article notwithstanding, and is entitled to credited service
62 in accordance with provisions of section fourteen, article ten,

63 chapter five of this code, and: *Provided however*, That members
64 of the legislative body of any political subdivision and judges
65 of the State Court of Claims are employees receiving one year
66 of service credit for each one year term served and pro rated
67 service credit for any partial term served, anything contained in
68 this article to the contrary notwithstanding. In any case of doubt
69 as to who is an employee within the meaning of this article, the
70 board of trustees shall decide the question;

71 (12) "Employer error" means an omission, misrepresenta-
72 tion, or violation of relevant provisions of the West Virginia
73 Code or of the West Virginia Code of State Regulations or the
74 relevant provisions of both the West Virginia Code and of the
75 West Virginia Code of State Regulations by the participating
76 public employer that has resulted in an underpayment or
77 overpayment of contributions required. A deliberate act
78 contrary to the provisions of this section by a participating
79 public employer does not constitute employer error.

80 (13) "Final average salary" means either:

81 (A) The average of the highest annual compensation
82 received by a member, (including a member of the Legislature
83 who participates in the retirement system in the year one
84 thousand nine hundred seventy-one or thereafter), during any
85 period of three consecutive years of credited service contained
86 within the member's ten years of credited service immediately
87 preceding the date his or her employment with a participating
88 public employer last terminated; or

89 (B) If the member has less than five years of credited
90 service, the average of the annual rate of compensation received
91 by the member during his or her total years of credited service;
92 and in determining the annual compensation, under either
93 paragraph (A) or (B) of this subdivision, of a member of the
94 Legislature who participates in the retirement system as a

95 member of the Legislature in the year one thousand nine
96 hundred seventy-one, or in any year thereafter, his or her actual
97 legislative compensation, (the total of all compensation paid
98 under sections two, three, four and five, article two-a, chapter
99 four of this code), in the year one thousand nine hundred
100 seventy-one, or in any year thereafter, plus any other compensa-
101 tion he or she receives in any year from any other participating
102 public employer including the State of West Virginia, without
103 any multiple in excess of one times his or her actual legislative
104 compensation and other compensation, shall be used: *Provided,*
105 That “final average salary” for any former member of the
106 Legislature or for any member of the Legislature in the year one
107 thousand nine hundred seventy-one, who, in either event, was
108 a member of the Legislature on the thirtieth day of November,
109 one thousand nine hundred sixty-eight, or the thirtieth day of
110 November, one thousand nine hundred sixty-nine, or the
111 thirtieth day of November, one thousand nine hundred seventy,
112 or on the thirtieth day of November in any one or more of those
113 three years and who participated in the retirement system as a
114 member of the Legislature in any one or more of those years
115 means: (i) Either (notwithstanding the provisions of this
116 subdivision preceding this proviso) one thousand five hundred
117 dollars multiplied by eight, plus the highest other compensation
118 the former member or member received in any one of the three
119 years from any other participating public employer including
120 the State of West Virginia; or (ii) “final average salary”
121 determined in accordance with paragraph (A) or (B) of this
122 subdivision, whichever computation produces the higher final
123 average salary (and in determining the annual compensation
124 under (ii) of this proviso, the legislative compensation of the
125 former member shall be computed on the basis of one thousand
126 five hundred dollars multiplied by eight, and the legislative
127 compensation of the member shall be computed on the basis set
128 forth in the provisions of this subdivision immediately preced-
129 ing this proviso or on the basis of one thousand five hundred

130 dollars multiplied by eight, whichever computation as to the
131 member produces the higher annual compensation);

132 (14) "Internal Revenue Code" means the Internal Revenue
133 Code of 1986, as amended, codified at Title 26 of the United
134 States Code;

135 (15) "Limited credited service" means service by employ-
136 ees of the West Virginia Educational Broadcasting Authority,
137 in the employment of West Virginia University, during a period
138 when the employee made contributions to another retirement
139 system, as required by West Virginia University, and did not
140 make contributions to the Public Employees Retirement
141 System: *Provided*, That while limited credited service can be
142 used for the formula set forth in subsection (e), section twenty-
143 one of this article, it may not be used to increase benefits
144 calculated under section twenty-two of this article;

145 (16) "Member" means any person who has accumulated
146 contributions standing to his or her credit in the members'
147 deposit fund;

148 (17) "Participating public employer" means the State of
149 West Virginia, any board, commission, department, institution
150 or spending unit, and includes any agency created by rule of the
151 Supreme Court of Appeals having full-time employees, which
152 for the purposes of this article is considered a department of
153 state government; and any political subdivision in the state
154 which has elected to cover its employees, as defined in this
155 article, under the West Virginia Public Employees Retirement
156 System;

157 (18) "Plan year" means the same as referenced in section
158 forty-two of this article;

159 (19) "Political subdivision" means the State of West
160 Virginia, a county, city or town in the state; a school corpora-

161 tion or corporate unit; any separate corporation or instrumental-
162 ity established by one or more counties, cities or towns, as
163 permitted by law; any corporation or instrumentality supported
164 in most part by counties, cities or towns; and any public
165 corporation charged by law with the performance of a govern-
166 mental function and whose jurisdiction is coextensive with one
167 or more counties, cities or towns: *Provided*, That any mental
168 health agency participating in the Public Employees Retirement
169 System before the first day of July, one thousand nine hundred
170 ninety-seven, is considered a political subdivision solely for the
171 purpose of permitting those employees who are members of the
172 Public Employees Retirement System to remain members and
173 continue to participate in the retirement system at their option
174 after the first day of July, one thousand nine hundred ninety-
175 seven: *Provided, however*, That the Regional Community
176 Policing Institute which participated in the Public Employees
177 Retirement System before the first day of July, two thousand,
178 is considered a political subdivision solely for the purpose of
179 permitting those employees who are members of the Public
180 Employees Retirement System to remain members and continue
181 to participate in the Public Employees Retirement System after
182 the first day of July, two thousand;

183 (20) "Prior service" means service rendered prior to the first
184 day of July, one thousand nine hundred sixty-one, to the extent
185 credited a member as provided in this article;

186 (21) "Regular interest" means the rate or rates of interest
187 per annum, compounded annually, as the board of trustees
188 adopts from time to time;

189 (22) "Required beginning date" means the first day of April
190 of the calendar year following the later of: (A) The calendar
191 year in which the member attains age seventy and one-half
192 years of age; or (B) the calendar year in which a member who
193 has attained the age seventy and one-half years of age and who

194 ceases providing service covered under this system to a
195 participating employer;

196 (23) "Retirant" means any member who commences an
197 annuity payable by the retirement system;

198 (24) "Retirement" means a member's withdrawal from the
199 employ of a participating public employer and the commence-
200 ment of an annuity by the retirement system;

201 (25) "Retirement system" or "system" means the West
202 Virginia Public Employees Retirement System created and
203 established by this article;

204 (26) "Retroactive service" means: (1) Service between the
205 first day of July, one thousand nine hundred sixty-one, and the
206 date an employer decides to become a participating member of
207 the Public Employees Retirement System; (2) service prior to
208 the first day of July, one thousand nine hundred sixty-one, for
209 which the employee is not entitled to prior service at no cost in
210 accordance with 162 CSR 5.13; and (3) service of any member
211 of a legislative body or employees of the State Legislature
212 whose term of employment is otherwise classified as temporary
213 for which the employee is eligible, but for which the employee
214 did not elect to participate at that time;

215 (27) "Service" means personal service rendered to a
216 participating public employer by an employee of a participating
217 public employer; and

218 (28) "State" means the State of West Virginia.

§5-10-15. Military service credit; qualified military service.

1 (a) (1) The Legislature recognizes the men and women of
2 this state who have served in the Armed Forces of the United
3 States during times of war, conflict and danger. It is the intent

4 of this section to confer military service credit upon persons
5 who are eligible at any time for public employees retirement
6 benefits for any time served in active duty in the Armed Forces
7 of the United States when the duty was during any period of
8 compulsory military service or during a period of armed
9 conflict, as defined in this section.

10 (2) In addition to any benefit provided by federal law, any
11 member of the retirement system who has previously served in
12 or enters the active service of the Armed Forces of the United
13 States during any period of compulsory military service or
14 during a period of armed conflict shall receive credited service
15 for the time spent in the Armed Forces of the United States, not
16 to exceed five years if the member:

17 (A) Has been honorably discharged from the Armed Forces;
18 and

19 (B) Substantiates by appropriate documentation or evidence
20 his or her active military service and entry into military service
21 during any period of compulsory military service or during
22 periods of armed conflict.

23 (3) Any member of the retirement system who enters the
24 active service of the Armed Forces of the United States during
25 any period of compulsory military service or during a period of
26 armed conflict shall receive the credit provided by this section
27 regardless of whether he or she was a public employee at the
28 time of entering the military service.

29 (4) If a member of the Public Employees Retirement
30 System enters the active service of the United States and serves
31 during any period of compulsory military service or during any
32 period of armed conflict, during the period of the armed service
33 and until the member's return to the employ of a participating
34 public employer, the member's contributions to the retirement
35 system is suspended and any credit balance remaining in the

36 member's deposit fund shall be accumulated at regular interest:
37 *Provided*, That notwithstanding any provision in this article to
38 the contrary, if an employee of a participating political subdivi-
39 sion serving in the military service during any period of
40 compulsory military service or armed conflict has accumulated
41 credited service prior to the last entry into military service, in
42 an amount that, added to the time in active military service
43 while an employee equals nine or more years, and the member
44 is unable to resume employment with a participating employer
45 upon completion of duty due to death during or as a result of
46 active service, all time spent in active military service, up to
47 and including a total of five years, is considered to be credited
48 service and death benefits are vested in the member: *Provided*,
49 *however*, That the active service during the time the member is
50 an employee must be as a result of an order or call to duty, and
51 not as a result of volunteering for assignment or volunteering to
52 extend the time in service beyond the time required by order or
53 call.

54 (5) No member may receive duplicate credit for service for
55 a period of compulsory military service which falls under a
56 period of armed conflict.

57 (6) In any case of doubt as to the period of service to be
58 credited a member under the provisions of this section, the
59 board of trustees have final power to determine the period.

60 (7) The Board may consider a petition by any member
61 whose tour of duty, in a territory that would reasonably be
62 considered hostile and dangerous, was extended beyond the
63 period in which an armed conflict was officially recognized, if
64 that tour of duty commenced during a period of armed conflict,
65 and the member was assigned to duty stations within the hostile
66 territory throughout the period for which service credit is being
67 sought. The Board has the authority to evaluate the facts and
68 circumstances peculiar to the petition, and rule on whether

69 granting service credit for the extended tour of duty is consis-
70 tent with the objectives of this article. In that determination, the
71 Board may grant full credit for the period under petition subject
72 to the limitations otherwise applicable, or to grant credit for any
73 part of the period as the board considers appropriate, or to deny
74 credit altogether.

75 (8) The Board of Trustees may propose legislative rules for
76 promulgation in accordance with the provisions of article three,
77 chapter twenty-nine-a of this code to administer the provisions
78 of this section.

79 (b) For purposes of this section, the following definitions
80 apply:

81 (1) "Period of armed conflict" means the Spanish-American
82 War, the Mexican border period, World War I, World War II,
83 the Korean conflict, the Vietnam era, the Persian Gulf War and
84 any other period of armed conflict by the United States,
85 including, but not limited to, those periods sanctioned by a
86 declaration of war by the United States Congress or by execu-
87 tive or other order of the President.

88 (2) "Spanish-American War" means the period beginning
89 on the twenty-first day of April, one thousand eight hundred
90 ninety-eight, and ending on the fourth day of July, one thousand
91 nine hundred two, and includes the Philippine Insurrection, the
92 Boxer Rebellion, and in the case of a veteran who served with
93 the United States military forces engaged in hostilities in the
94 Moro Province, means the period beginning on the twenty-first
95 day of April, one thousand eight hundred ninety-eight, and
96 ending on the fifteenth day of July, one thousand nine hundred
97 three.

98 (3) "The Mexican border period" means the period begin-
99 ning on the ninth day of May, one thousand nine hundred
100 sixteen, and ending on the fifth day of April, one thousand nine

101 hundred seventeen, in the case of a veteran who during the
102 period served in Mexico, on its borders or in the waters adjacent
103 to it.

104 (4) "World War I" means the period beginning on the sixth
105 day of April, one thousand nine hundred seventeen, and ending
106 on the eleventh day of November, one thousand nine hundred
107 eighteen, and in the case of a veteran who served with the
108 United States military forces in Russia, means the period
109 beginning on the sixth day of April, one thousand nine hundred
110 seventeen, and ending on the first day of April, one thousand
111 nine hundred twenty.

112 (5) "World War II" means the period beginning on the
113 seventh day of December, one thousand nine hundred forty-one,
114 and ending on the thirty-first day of December, one thousand
115 nine hundred forty-six.

116 (6) "Korean conflict" means the period beginning on the
117 twenty-seventh day of June, one thousand nine hundred fifty,
118 and ending on the thirty-first day of January, one thousand nine
119 hundred fifty-five.

120 (7) "The Vietnam era" means the period beginning on the
121 twenty-eighth day of February, one thousand nine hundred
122 sixty-one, and ending on the seventh day of May, one thousand
123 nine hundred seventy-five, in the case of a veteran who served
124 in the Republic of Vietnam during that period; and the fifth day
125 of August, one thousand nine hundred sixty-four, and ending on
126 the seventh day of May, one thousand nine hundred seventy-
127 five, in all other cases.

128 (8) "Persian Gulf War" means the period beginning on the
129 second day of August, one thousand nine hundred ninety, and
130 ending on the eleventh day of April, one thousand nine hundred
131 ninety-one.

132 (c) Notwithstanding the preceding provisions of this
133 section, contributions, benefits and service credit with respect
134 to qualified military service shall be provided in accordance
135 with Section 414(u) of the Internal Revenue Code. For purposes
136 of this section, "qualified military service" has the same
137 meaning as in Section 414(u) of the Internal Revenue Code. No
138 military service credit may be used in more than one retirement
139 system administered by the Consolidated Public Retirement
140 Board and once used in any system, may not be used again in
141 any other system. The Board is authorized to determine all
142 questions and make all decisions relating to this section and,
143 pursuant to the authority granted to the Board in section one,
144 article ten-d of this chapter, may promulgate rules relating to
145 contributions, benefits and service credit to comply with
146 Section 414(u) of the Internal Revenue Code.

§5-10-17. Retirement system membership.

1 The membership of the retirement system consists of the
2 following persons:

3 (a) All employees, as defined in section two of this article,
4 who are in the employ of a political subdivision the day
5 preceding the date it becomes a participating public employer
6 and who continue in the employ of the participating public
7 employer on and after that date shall become members of the
8 retirement system; and all persons who become employees of
9 a participating public employer on or after that date shall
10 thereupon become members of the system; except as provided
11 in subdivisions (b) and (c) of this section.

12 (b) The membership of the Public Employees Retirement
13 System shall not include any person who is an active contribut-
14 ing member of, or who has been retired by, any of the State
15 Teachers retirement systems, the Judges Retirement System,
16 any Retirement System of the West Virginia State Police, the

17 Deputy Sheriff Retirement System or any municipal retirement
18 system for either, or both, police or firefighter; and the Bureau
19 of Employment Programs, by the Commissioner of the Bureau,
20 may elect whether its employees will accept coverage under
21 this article or be covered under the authorization of a separate
22 enactment: *Provided*, That the exclusions of membership do not
23 apply to any member of the State Legislature, the Clerk of the
24 House of Delegates, the Clerk of the State Senate or to any
25 member of the legislative body of any political subdivision
26 provided he or she once becomes a contributing member of the
27 retirement system: *Provided, however*, That any retired member
28 of the State Police Death, Disability and Retirement Fund, the
29 West Virginia State Police Retirement System, the Deputy
30 Sheriff Retirement System and any retired member of any
31 municipal retirement system for either, or both, police or
32 firefighter may on and after the effective date of this section
33 become a member of the retirement system as provided in this
34 article, without receiving credit for prior service as a municipal
35 police officer or firefighter or as a member of the State Police
36 Death, Disability and Retirement Fund, the West Virginia State
37 Police Retirement System or the Deputy Sheriff Retirement
38 System: *Provided further*, That any retired member of the State
39 Police Death, Disability and Retirement Fund, the West
40 Virginia State Police Retirement System, the Deputy Sheriff
41 Retirement System and any retired member of any municipal
42 retirement system for either, or both, police or firefighters, who
43 begins participation in the retirement system established in this
44 article on or after the first day of July, two thousand five, may
45 not receive a combined retirement benefit in excess of one
46 hundred five percent of the member's highest annual salary
47 earned while either a member of the retirement system estab-
48 lished in this article or while a member of the other retirement
49 system or systems from which he or she previously retired
50 when adding the retirement benefit from the retirement system
51 created in this article to the retirement benefit received by that
52 member from the other retirement system or systems set forth

53 herein from which he or she previously retired: *And provided*
54 *further*, That the membership of the retirement system does not
55 include any person who becomes employed by the Pretera
56 Center for Mental Health Services, Valley Comprehensive
57 Mental Health Center, Westbrook Health Services or Eastern
58 Panhandle Mental Health Center on or after the first day of
59 July, one thousand nine hundred ninety-seven: *And provided*
60 *further*, That membership of the retirement system does not
61 include any person who becomes a member of the federal
62 railroad retirement act on or after the first day of July, two
63 thousand.

64 (c) Any member of the State Legislature, the Clerk of the
65 House of Delegates, the Clerk of the State Senate and any
66 employee of the State Legislature whose employment is
67 otherwise classified as temporary and who is employed to
68 perform services required by the Legislature for its regular
69 sessions or during the interim between regular sessions and who
70 has been or is employed during regular sessions or during the
71 interim between sessions in seven consecutive calendar years,
72 as certified by the Clerk of the House in which the employee
73 served, or any member of the legislative body of any other
74 political subdivision shall become a member of the retirement
75 system provided he or she notifies the retirement system in
76 writing of his or her intention to be a member of the system and
77 files a membership enrollment form as prescribed by the Board
78 of Trustees, and each person, upon filing his or her written
79 notice to participate in the retirement system, shall by that act
80 authorize the Clerk of the House of Delegates or the Clerk of
81 the State Senate or such person or legislative agency as the
82 legislative body of any other political subdivision shall design-
83 nate to deduct the member's contribution, as provided in
84 subsection (b), section twenty-nine of this article, and after the
85 deductions have been made from the member's compensation,
86 the deductions shall be forwarded to the retirement system.

87 (d) If question arises regarding the membership status of
88 any employee, the Board of Trustees has the final power to
89 decide the question.

90 (e) Any individual who is a leased employee is not eligible
91 to participate in the system. For the purposes of this article, the
92 term "leased employee" means any individual who performs
93 services as an independent contractor or pursuant to an agree-
94 ment with an employee leasing organization or other similar
95 organization. If a question arises regarding the status of an
96 individual as a leased employee, the Board has final authority
97 to decide the question.

§5-10-21. Deferred retirement and early retirement.

1 (a) Any member who has five or more years of credited
2 service in force, of which at least three years are contributing
3 service, and who leaves the employ of a participating public
4 employer prior to his or her attaining age sixty years for any
5 reason except his or her disability retirement or death, is
6 entitled to an annuity computed according to section twenty-
7 two of this article, as that section was in force as of the date of
8 his or her separation from the employ of a participating public
9 employer: *Provided*, That he or she does not withdraw his or
10 her accumulated contributions from the members' deposit fund:
11 *Provided, however*, That on and after the first day of July, two
12 thousand two, any person who becomes a new member of this
13 retirement system shall, in qualifying for retirement under this
14 section, have five or more years of service, all of which years
15 shall be actual, contributory ones. His or her annuity shall begin
16 the first day of the calendar month next following the month in
17 which his or her application for same is filed with the Board of
18 Trustees on or after his or her attaining age sixty-two years.

19 (b) Any member who qualifies for deferred retirement
20 benefits in accordance with subsection (a) of this section and

21 has ten or more years of credited service in force and who has
22 attained age fifty-five as of the date of his or her separation,
23 may, prior to the effective date of his or her retirement, but not
24 thereafter, elect to receive the actuarial equivalent of his or her
25 deferred retirement annuity as a reduced annuity commencing
26 on the first day of any calendar month between his or her date
27 of separation and his or her attainment of age sixty-two years
28 and payable throughout his or her life.

29 (c) Any member who qualifies for deferred retirement
30 benefits in accordance with subsection (a) of this section and
31 has twenty or more years of credited service in force may elect
32 to receive the actuarial equivalent of his or her deferred
33 retirement annuity as a reduced annuity commencing on the
34 first day of any calendar month between his or her fifty-fifth
35 birthday and his or her attainment of age sixty-two years and
36 payable throughout his or her life.

37 (d) Notwithstanding any of the other provisions of this
38 section or of this article, except sections twenty-seven-a and
39 twenty-seven-b of this article, and pursuant to rules promul-
40 gated by the Board, any member who has thirty or more years
41 of credited service in force, at least three of which are contrib-
42 uting service, and who elects to take early retirement, which for
43 the purposes of this subsection means retirement prior to age
44 sixty, whether an active employee or a separated employee at
45 the time of application, is entitled to the full computation of
46 annuity according to section twenty-two of this article, as that
47 section was in force as of the date of retirement application, but
48 with the reduced actuarial equivalent of the annuity the member
49 would have received if his or her benefit had commenced at age
50 sixty when he or she would have been entitled to full computa-
51 tion of benefit without any reduction.

52 (e) Notwithstanding any of the other provisions of this
53 section or of this article, except sections twenty-seven-a and

54 twenty-seven-b of this article, any member of the retirement
55 system may retire with full pension rights, without reduction of
56 benefits, if he or she is at least fifty-five years of age and the
57 sum of his or her age plus years of contributing service and
58 limited credited service, as defined in section two of this article,
59 equals or exceeds eighty. The member's annuity shall begin the
60 first day of the calendar month immediately following the
61 calendar month in which his or her application for the annuity
62 is filed with the Board.

§5-10-22. Retirement annuity.

1 (a) Upon a member's retirement, as provided in this article,
2 he or she shall receive a straight life annuity equal to one and
3 five-tenths percent of his or her final average salary multiplied
4 by the number of years, and fraction of a year, of his or her
5 credited service in force at the time of his or her retirement:
6 *Provided*, That the final average salary used in this calculation
7 does not include any lump sum payment for unused, accrued
8 leave of any kind or character. The credited service used for this
9 calculation may not include any period of limited credited
10 service: *Provided, however*, That after March 1, one thousand
11 nine hundred seventy, all members retired and all members
12 retiring shall receive a straight life annuity equal to two percent
13 of his or her final average salary multiplied by the number of
14 years, and fraction of a year, of his or her credited service,
15 exclusive of limited credited service in force at the time of his
16 or her retirement. In either event, upon his or her retirement he
17 or she has the right to elect an option provided in section
18 twenty-four of this article. All annuity payments shall com-
19 mence effective the first day of the month following the month
20 in which a member retires or a member dies leaving a benefi-
21 ciary entitled to benefits and shall continue to the end of the
22 month in which the retirant or beneficiary dies, and the annuity
23 payments may not be prorated for any portion of a month in
24 which a member retires or retirant or beneficiary dies. Any

25 member receiving an annuity based in part upon limited
26 credited service is not eligible for the supplements provided in
27 sections twenty-two-a through twenty-two-d, inclusive, of this
28 article.

29 (b) The annuity of any member of the Legislature who
30 participates in the retirement system as a member of the
31 Legislature and who retires under this article or of any former
32 member of the Legislature who has retired under this article
33 (including any former member of the Legislature who has
34 retired under this article and whose annuity was readjusted as
35 of the first day of March, one thousand nine hundred seventy,
36 under the former provisions of this section) shall be increased
37 from time to time during the period of his or her retirement
38 when and if the legislative compensation paid under section
39 two, article two-a, chapter four of this code, to a member of the
40 Legislature shall be increased to the point where a higher
41 annuity would be payable to the retirant if he or she were
42 retiring as of the effective date of the latest increase in legisla-
43 tive compensation, but on the basis of his or her years of
44 credited service to the date of his or her actual retirement.

§5-10-22h. Limitations on benefit increases.

1 (a) The state shall not increase any existing benefits or
2 create any new benefits for any retirees or beneficiaries
3 currently receiving monthly benefit payments from the system,
4 other than an increase in benefits or new benefits effected by
5 operation of law in effect on the effective date of this article, in
6 an amount that would exceed more than one percent of the
7 accrued actuarial liability of the system as of the last day of the
8 preceding fiscal year as determined in the annual actuarial
9 valuation for the plan completed for the Consolidated Public
10 Retirement Board as of the first day of the following fiscal year
11 as of the date the improvement is adopted by the Legislature.

12 (b) If any increase of existing benefits or creation of new
13 benefits for any retirees or beneficiaries currently receiving
14 monthly benefit payments under the system, other than an
15 increase in benefits or new benefits effected by operation of law
16 in effect on the effective date of this article, causes any addi-
17 tional unfunded actuarial accrued liability in the system as
18 calculated in the annual actuarial valuation for the plan during
19 any fiscal year, the additional unfunded actuarial accrued
20 liability of that pension system shall be fully amortized over no
21 more than the six consecutive fiscal years following the date the
22 increase in benefits or new benefits become effective as
23 certified by the Consolidated Public Retirement Board. The
24 Consolidated Public Retirement Board shall include the six year
25 amortization in the determination of the adequacy of the
26 employer contribution percentage for the system.

27 (c) The state will not increase any existing benefits or
28 create any new benefits for active members due to retirement,
29 death or disability of the system unless the actuarial accrued
30 liability of the plan is at least eighty-five percent funded as of
31 the last day of the prior fiscal year as determined in the actuarial
32 valuation for the plan completed for the Consolidated Public
33 Retirement Board as of the first day of the following fiscal year
34 as of the date the improvement is adopted by the Legislature.
35 Any additional unfunded actuarial accrued liability due to any
36 improvement in active members benefits shall be fully amor-
37 tized over not more than ten years following the date the
38 increase in benefits or new benefits become effective as
39 certified by the Consolidated Public Retirement Board. The
40 Consolidated Public Retirement Board shall include the ten year
41 amortization in the determination of the adequacy of the
42 employer contribution percentage for the system.

§5-10-23. Terminal payment following retirement.

1 (a) This section provides for the payment of the balance in
2 a retired member's account in the event that all claims to

3 benefits payable to, or on behalf of, a member expire before his
4 or her member account has been fully exhausted. The expiration
5 of the rights to benefits would be on the occasion of either the
6 death of the retired member drawing benefits under a straight
7 life annuity, or the death of a survivor annuitant drawing
8 benefits under any optional form of benefit selected by the
9 retired member, whichever occurs later.

10 (b) In the event that all claims to benefits payable to, or on
11 behalf of, a retired member expire, and the accumulated
12 contributions exceed the accumulated net benefit payments paid
13 to or on behalf of the retired member, the balance in the retired
14 member's account shall be paid to the person or persons as the
15 retired member has nominated by written designation duly
16 executed and filed with the board of trustees. If there is no
17 designated person or persons surviving the retired member
18 following the expiration of claims, the excess of the accumu-
19 lated contributions over the accumulated net benefit, if any,
20 shall be paid to the retired member's estate.

**§5-10-26. Reexamination of disability retirants; reemployment;
adjustment of annuity for earnings.**

1 (a) At least once each year during the first five years
2 following the retirement of a member on account of disability,
3 as provided in section twenty-five of this article, and at least
4 once in each three-year period thereafter, the Board may require
5 a disability retirant, who has not attained age sixty years, to
6 undergo a medical examination to be made by or under the
7 direction of a physician designated by the board, or to submit
8 a statement signed by the disability retirant's physician certify-
9 ing continued disability, or both, and a copy of the disability
10 retirants's annual statement of earnings. If the retirant refuses
11 to submit to the medical examination or provide the certifica-
12 tion or statement in any period, his or her disability annuity
13 may be discontinued by the Board until the retirant complies. If

14 the refusal continues for one year, all the retirant's rights in and
15 to the annuity may be revoked by the board. If, upon medical
16 examination of a disability retirant, the physician reports to the
17 board that the retirant is physically able and capable of resum-
18 ing employment with a participating public employer, the
19 retirant shall be returned to the employ of the participating
20 public employer from whose employment he or she retired and
21 his or her disability annuity shall terminate: *Provided*, That the
22 Board concurs in the physician's report.

23 (b) A disability retirant who is returned to the employ of a
24 participating public employer shall again become a member of
25 the retirement system and the retirant's credited service in force
26 at the time of his or her retirement shall be restored.

27 (c) If a review of the disability retirant's annual statement
28 of earnings or other financial information as required by the
29 Board determines that the disability retirant's earned income for
30 the preceding year exceeds the substantial gainful activity
31 amount as defined by the United States Social Security Admin-
32 istration, the disability retirant's annuity shall be terminated by
33 the Board, upon recommendation of the Board's disability
34 review committee, on the first day of the month following the
35 Board's action. Any person who wishes to reapply for disability
36 retirement and whose disability retirement annuity has been
37 terminated by the Board may do so within ninety days of the
38 effective date of termination by requesting an examination at
39 the applicant's expense by an appropriate medical professional
40 chosen by the Board.

§5-10-27. Preretirement death annuities.

1 (a) In the event any member who has ten or more years of
2 credited service or any former member with ten or more years
3 of credited service and who is entitled to a deferred annuity,
4 pursuant to section twenty-one of this article: (1) Dies without

5 leaving a surviving spouse; but (2) leaves surviving him or her
6 a child who is financially dependent on the member by virtue
7 of a permanent mental or physical disability upon evidence
8 satisfactory to the Board; and (3) has named the disabled child
9 as sole beneficiary, the disabled child shall immediately receive
10 an annuity computed in the same manner in all respects as if the
11 member had: (1) Retired the day preceding the date of his or her
12 death, notwithstanding that he or she might not have attained
13 age sixty or sixty-two years, as the case may be; (2) elected
14 option A provided for in section twenty-four of this article; and
15 (3) nominated his or her disabled child as beneficiary. A
16 member or former member with ten or more years of credited
17 service, who does not leave surviving him or her a spouse or a
18 disabled child, may elect to have the preretirement death benefit
19 paid as a return of accumulated contributions in a lump sum
20 amount to any beneficiary or beneficiaries he or she chooses.

21 (b) In the event any member who has ten or more years of
22 credited service, or any former member with ten or more years
23 of credited service and who is entitled to a deferred annuity,
24 pursuant to section twenty-one of this article: (1) Dies; and (2)
25 leaves a surviving spouse, the surviving spouse shall immedi-
26 ately receive an annuity computed in the same manner in all
27 respects as if the the member had: (1) Retired the day preceding
28 the date of his or her death, notwithstanding that he or she
29 might not have attained age sixty or sixty-two years, as the case
30 may be; (2) elected option A provided in section twenty-four of
31 this article; and (3) nominated his or her surviving spouse as
32 beneficiary. However, the surviving spouse shall have the right
33 to waive the annuity provided in this section: *Provided*, That he
34 or she executes a valid and notarized waiver on a form provided
35 by the Board and that the member or former member attests to
36 the waiver. If the waiver is presented to and accepted by the
37 Board, the member or former member, may nominate a
38 beneficiary who has an insurable interest in the member's or

39 former member's life. As an alternative to annuity option A, the
40 member or former member may elect to have the preretirement
41 death benefit paid as a return of accumulated contributions in
42 a lump sum amount to any beneficiary or beneficiaries he or she
43 chooses in the event a waiver, as provided in this section, has
44 been presented to and accepted by the Board.

45 (c) In the event any member who has ten or more years of
46 credited service or any former member with ten or more years
47 of credited service and who is entitled to a deferred annuity,
48 pursuant to section twenty-one of this article: (1) Dies without
49 leaving surviving him or her a spouse; but (2) leaves surviving
50 him or her an infant child or children; and (3) does not have a
51 beneficiary nominated as provided in subsection (a) of this
52 section, the infant child or children are entitled to an annuity to
53 be calculated as follows: The annuity reserve shall be calculated
54 as though the member had retired as of the date of his or her
55 decease and elected a straight life annuity and the amount of the
56 annuity reserve shall be paid in equal monthly installments to
57 the member's infant child or children until the child or children
58 attain age twenty-one or sooner marry or become emancipated;
59 however, in no event shall any child or children receive more
60 than two hundred fifty dollars per month each. The annuity
61 payments shall be computed as of the date of the death of the
62 member and the amount of the annuity shall remain constant
63 during the period of payment. The annual amount of the
64 annuities payable by this section shall not exceed sixty percent
65 of the deceased member's final average salary.

66 (d) In the event any member or former member does not
67 have ten or more years of credited service, no preretirement
68 death annuity may be authorized, owed or awarded under this
69 section.

§5-10-31. Employers accumulation fund; employers contributions.

1 (a) The employers accumulation fund is hereby continued.
2 It shall be the fund in which shall be accumulated the contribu-
3 tions made by the participating public employers to the retire-
4 ment system, and from which transfers shall be made as
5 provided in this section.

6 (b) Based upon the provisions of section thirteen of this
7 article, the participating public employers' contributions to the
8 retirement system, as determined by the Consolidated Public
9 Retirement Board by legislative rule promulgated in accordance
10 with the provisions of article three, chapter twenty-nine-a of
11 this code, shall be a percent of the members' total annual
12 compensation related to benefits under this retirement system.
13 In determining the amount, the Board shall give consideration
14 to setting the amount at a sum equal to an amount which, if paid
15 annually by the participating public employers, will be suffi-
16 cient to provide for the total normal cost of the benefits
17 expected to become payable to all members and to amortize any
18 unfunded liability found by application of the actuarial funding
19 method chosen for that purpose by the Consolidated Public
20 Retirement Board, over a period of years determined actuarially
21 appropriate. When proposing a rule for promulgation which
22 relates to the amount of employer contribution, the Board may
23 promulgate emergency rules pursuant to the provisions of
24 article three, chapter twenty-nine-a of this code, if the inability
25 of the board to increase employer contributions will detrimen-
26 tally affect the actuarial soundness of the retirement system. A
27 signed statement from the state actuary shall accompany the
28 statement of facts and circumstances constituting an emergency
29 which shall be filed in the State Register. For purposes of this
30 section, subdivision (2), subsection (b), section fifteen-a, article
31 three, chapter twenty-nine-a of this code is not applicable to the
32 Secretary of State's determination of whether an emergency
33 rule should be approved.

§5-10-44. Correction of errors.

1 If any change or employer error in the records of any
2 participating public employer or the retirement system results
3 in any person receiving from the system more or less than he or
4 she would have been entitled to receive had the records been
5 correct, the Board shall correct the error, and as far as is
6 practicable shall adjust the payment of the benefit in a manner
7 that the actuarial equivalent of the benefit to which the person
8 was correctly entitled shall be paid. Any employer error
9 resulting in an underpayment to the retirement system may be
10 corrected by the employee remitting the required employee
11 contribution and the participating public employer remitting the
12 required employer contribution. Interest shall accumulate in
13 accordance with the Legislative Rule 162 CSR 7 concerning
14 retirement board refund, reinstatement and loan interest factors,
15 and any accumulating interest owed on the employee and
16 employer contributions resulting from the employer error shall
17 be the responsibility of the participating public employer. The
18 participating public employer may remit total payment and the
19 employee reimburse the participating public employer through
20 payroll deduction over a period equivalent to the time period
21 during which the employer error occurred.

**ARTICLE 10A. DISQUALIFICATION FOR PUBLIC RETIREMENT PLAN
BENEFITS.**

§5-10A-2. Definitions.

§5-10A-3. Notice of intention to terminate benefits; waiver; failure to reply.

§5-10A-11. Notification from prosecuting attorneys.

§5-10A-2. Definitions.

1 As used in this article:

2 (a) "Retirement plan" or "plan" means the Public Employ-
3 ees Retirement Act, pursuant to article ten, chapter five of this
4 code; each municipal employees retirement plan, pursuant to
5 article twenty-two, chapter eight of this code; each policemen's

6 and firemen's pension and relief fund, pursuant to article
7 twenty-two, chapter eight of this code; the West Virginia State
8 Police Death, Disability and Retirement Fund, pursuant to
9 article two, chapter fifteen of this code; the West Virginia State
10 Police Retirement System, pursuant to article two-a, chapter
11 fifteen of this code; the State Teachers Retirement System,
12 pursuant to article seven-a, chapter eighteen of this code; the
13 Teachers' Defined Contribution Retirement System, pursuant
14 to article seven-b, chapter eighteen of this code; the Deputy
15 Sheriff Retirement System, pursuant to article fourteen-d,
16 chapter seven of this code; supplemental and additional
17 retirement plans, pursuant to section four-a, article twenty-
18 three, chapter eighteen of this code; the Judges' Retirement
19 System, pursuant to article nine, chapter fifty-one of this code;
20 and any other plan established pursuant to this code for the
21 payment of pension, annuity, disability or other benefits to any
22 person by reason of his or her service as an officer or employee
23 of this state or of any political subdivision, agency or instru-
24 mentality thereof, whenever the plan is supported in whole or
25 in part by public funds.

26 (b) "Beneficiary" means any person eligible for or receiv-
27 ing benefits on account of the service for a public employer by
28 a participant in a retirement plan.

29 (c) "Benefits" means pension, annuity, disability or any
30 other benefits granted pursuant to a retirement plan.

31 (d) "Conviction" means a conviction on or after the
32 effective date of this article in any federal or state court of
33 record whether following a plea of guilty, not guilty or nolo
34 contendere, and whether or not the person convicted was
35 serving as an officer or employee of a public employer at the
36 time of the conviction.

37 (e) "Less than honorable service" means:

38 (1) Impeachment and conviction of a participant under the
39 provisions of section nine, article four of the Constitution of
40 West Virginia, except for a misdemeanor;

41 (2) Conviction of a participant of a felony for conduct
42 related to his or her office or employment which he or she
43 committed while holding the office or during the employment;
44 or

45 (3) Conduct of a participant which constitutes all of the
46 elements of a crime described in either of the foregoing
47 subdivisions (1) or (2) but for which the participant was not
48 convicted because:

49 (i) Having been indicted or having been charged in an
50 information for the crime, he or she made a plea bargaining
51 agreement pursuant to which he or she pleaded guilty to or nolo
52 contendere to a lesser crime: *Provided*, That the lesser crime is
53 a felony containing all the elements described in subdivisions
54 (1) or (2) of this subsection; or

55 (ii) Having been indicted or having been charged in an
56 information for the crime, he or she was granted immunity from
57 prosecution for the crime.

58 (f) "Participant" means any person eligible for or receiving
59 any benefit under a retirement plan on account of his or her
60 service as an officer or employee for a public employer.

61 (g) "Public employer" means the State of West Virginia and
62 any political subdivision, agency, or instrumentality thereof for
63 which there is established a retirement plan.

64 (h) "Supervisory board" or "Board" means the Consoli-
65 dated Public Retirement Board; the board of trustees of any
66 municipal retirement fund; the board of trustees of any police-
67 men's or firemen's retirement plan; the governing board of any

68 supplemental retirement plan instituted pursuant to authority
69 granted by section four-a, article twenty-three, chapter eighteen
70 of this code, and any other board, commission or public body
71 having the duty to supervise and operate any retirement plan.

**§5-10A-3. Notice of intention to terminate benefits; waiver;
failure to reply.**

1 (a) Whenever a supervisory board, upon receipt of a
2 verified complaint or otherwise, has reasonable cause to believe
3 that a participant rendered less than honorable service as
4 defined in section two of this article, it shall notify the affected
5 participant or beneficiary that it believes that the participant
6 rendered less than honorable service and that the participant or
7 beneficiary is thereby ineligible to receive benefits. No supervi-
8 sory board may issue a notice:

9 (1) If more than two years have elapsed since the judgment
10 of conviction upon which the notice is based became final; or

11 (2) In cases described in paragraph (3), subsection (e),
12 section two of this article, if more than two years have elapsed
13 since, as the case may be: the plea bargaining agreement or the
14 grant of immunity; or

15 (3) With respect to conduct which occurred prior to the
16 effective date of this article.

17 (b) The notice shall contain a concise statement of the
18 reasons why the Board believes that the participant rendered
19 less than honorable service and shall be made either by personal
20 service or by certified mail, return receipt requested, to the
21 address which the participant or beneficiary maintains for
22 purposes of corresponding with the Board. If notice is made by
23 certified mail, service shall be considered complete upon
24 mailing and a completed receipt constitute proofs of the receipt
25 of the notice. The notice shall inform the participant or benefi-

26 ciary that he or she has the right to demand that the Board seek
27 a determination in circuit court of his or her eligibility for
28 benefits and membership in the retirement plan by notifying the
29 Board of the demand within forty days. The notice shall also
30 inform the participant or beneficiary that the Board will
31 terminate the benefits in accordance with section four of this
32 article and refund the participant's contributions with interest
33 less benefits previously paid as provided in section six thereof
34 if the participant or beneficiary either waives the right to
35 demand that the Board take the matter before the circuit court
36 or fails to respond to the Board's notice within forty days after
37 service.

§5-10A-11. Notification from prosecuting attorneys.

1 The prosecuting attorneys of the counties of this state shall,
2 within sixty days of a conviction or a plea agreement meeting
3 the definition of less than honorable service, report the convic-
4 tion or plea agreement to the executive director of the Board,
5 including with the report the indictment, plea agreement and
6 any order finding the defendant guilty.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-5. Members.

§7-14D-7. Members' contributions; employer contributions.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

§7-14D-23. Loans to members.

§7-14D-5. Members.

1 (a) Any deputy sheriff first employed by a county in
2 covered employment after the effective date of this article shall
3 be a member of this retirement system and does not qualify for
4 membership in any other retirement system administered by the

5 Board, so long as he or she remains employed in covered
6 employment.

7 (b) Any deputy sheriff employed in covered employment on
8 the effective date of this article shall within six months of that
9 effective date notify in writing both the county commission in
10 the county in which he or she is employed and the Board, of his
11 or her desire to become a member of the plan: *Provided*, That
12 this time period is extended to the thirtieth day of January, one
13 thousand nine hundred ninety-nine, in accordance with the
14 decision of the Supreme Court of Appeals in *West Virginia*
15 *Deputy Sheriffs' Association, et al v. James L. Sims, et al*, No.
16 25212: *Provided, however*, That any deputy sheriff employed
17 in covered employment on the effective date of this article has
18 an additional time period consisting of the ten-day period
19 following the day after which the amended provisions of this
20 section become law to notify in writing both the county
21 commission in the county in which he or she is employed and
22 the Board of his or her desire to become a member of the plan.
23 Any deputy sheriff who elects to become a member of the plan
24 ceases to be a member or have any credit for covered employ-
25 ment in any other retirement system administered by the Board
26 and shall continue to be ineligible for membership in any other
27 retirement system administered by the Board so long as the
28 deputy sheriff remains employed in covered employment in this
29 plan: *Provided further*, That any deputy sheriff who elects
30 during the time period from the first day of July, one thousand
31 nine hundred ninety-eight, to the thirtieth day of January, one
32 thousand nine hundred ninety-nine, or who so elects during the
33 ten-day time period occurring immediately following the day
34 after the day the amendments made during the one thousand
35 nine hundred ninety-nine legislative session become law, to
36 transfer from the Public Employees Retirement System to the
37 plan created in this article shall contribute to the plan created in
38 this article at the rate set forth in section seven of this article

39 retroactive to the first day of July, one thousand nine hundred
40 ninety-eight. Any deputy sheriff who does not affirmatively
41 elect to become a member of the plan continues to be eligible
42 for any other retirement system as is from time to time offered
43 to other county employees but is ineligible for this plan
44 regardless of any subsequent termination of employment and
45 rehire.

46 (c) Any deputy sheriff employed in covered employment on
47 the effective date of this article who has timely elected to
48 transfer into this plan as provided in subsection (b) of this
49 section shall be given credited service at the time of transfer for
50 all credited service then standing to the deputy sheriff's service
51 credit in the Public Employees Retirement System regardless of
52 whether the credited service (as that term is defined in section
53 two, article ten, chapter five of this code) was earned as a
54 deputy sheriff. All the credited service standing to the transfer-
55 ring deputy sheriff's credit in the Public Employees Retirement
56 Fund System at the time of transfer into this plan shall be
57 transferred into the plan created by this article, and the transfer-
58 ring deputy sheriff shall be given the same credit for the
59 purposes of this article for all service transferred from the
60 Public Employees Retirement System as that transferring
61 deputy sheriff would have received from the Public Employees
62 Retirement System as if the transfer had not occurred. In
63 connection with each transferring deputy sheriff receiving
64 credit for prior employment as provided in this subsection, a
65 transfer from the Public Employees Retirement System to this
66 plan shall be made pursuant to the procedures described in
67 section eight of this article: *Provided*, That a member of this
68 plan who has elected to transfer from the Public Employees
69 Retirement System into this plan pursuant to subsection (b) of
70 this section may not, after having transferred into and become
71 an active member of this plan, reinstate to his or her credit in
72 this plan any service credit relating to periods of nondeputy
73 sheriff service which were withdrawn from the Public Employ-

74 ees Retirement System prior to his or her elective transfer into
75 this plan.

76 (d) Any deputy sheriff who was employed as a deputy
77 sheriff prior to the effective date of this article, but was not
78 employed as a deputy sheriff on the effective date of this
79 article, shall become a member upon rehire as a deputy sheriff.
80 For purposes of this subsection, the member's years of service
81 and credited service in the Public Employees Retirement
82 System prior to the effective date of this article shall not be
83 counted for any purposes under this plan unless: (1) The deputy
84 sheriff has not received the return of his or her accumulated
85 contributions in the Public Employees Retirement System
86 pursuant to section thirty, article ten, chapter five of this code;
87 or (2) the accumulated contributions returned to the member
88 from the Public Employees Retirement System have been
89 repaid pursuant to section thirteen of this article. If the condi-
90 tions of subdivision (1) or (2) of this subsection are met, all
91 years of the deputy sheriff's covered employment shall be
92 counted as years of service for the purposes of this article.

93 (e) Once made, the election provided for in this section is
94 irrevocable. All deputy sheriffs first employed after the
95 effective date and deputy sheriffs electing to become members
96 as described in this section shall be members as a condition of
97 employment and shall make the contributions required by
98 section seven of this article.

99 (f) Notwithstanding any other provisions of this article, any
100 individual who is a leased employee is not eligible to partici-
101 pate in the plan. For purposes of this plan, a "leased employee"
102 means any individual who performs services as an independent
103 contractor or pursuant to an agreement with an employee
104 leasing organization or similar organization. If a question arises
105 regarding the status of an individual as a leased employee, the
106 Board has final power to decide the question.

§7-14D-7. Members' contributions; employer contributions.

1 (a) There shall be deducted from the monthly salary of each
2 member and paid into the Fund an amount equal to eight and
3 one-half percent of his or her monthly salary. An additional
4 amount shall be paid to the Fund by the county commission of
5 the county in which the member is employed in covered
6 employment in an amount determined by the Board: *Provided,*
7 That in no year may the total of the contributions provided in
8 this section, to be paid by the county commission, exceed ten
9 and one-half percent of the total payroll for the members in the
10 employ of the county commission for the preceding fiscal year.
11 If the Board finds that the benefits provided by this article can
12 be actually funded with a lesser contribution, then the Board
13 shall reduce the required member or employer contributions or
14 both. The sums withheld each calendar month shall be paid to
15 the Fund no later than fifteen days following the end of the
16 calendar month.

17 (b) Any active member who has concurrent employment in
18 an additional job or jobs and the additional employment
19 requires the deputy sheriff to be a member of another retirement
20 system which is administered by the Consolidated Public
21 Retirement Board pursuant to article ten-d, chapter five of this
22 code shall make an additional contribution to the Fund of eight
23 and one-half percent of his or her monthly salary earned from
24 any additional employment which requires the deputy sheriff to
25 be a member of another retirement which is administered by the
26 Consolidated Public Retirement Board pursuant to article ten-d,
27 chapter five of this code. An additional amount shall be paid to
28 the Fund by the concurrent employer for which the member is
29 employed in an amount determined by the Board: *Provided,*
30 That in no year may the total of the contributions provided in
31 this section, to be paid by the concurrent employer, exceed ten
32 and one-half percent of the monthly salary of the employee. If
33 the Board finds that the benefits provided by this article can be

34 funded with a lesser contribution, then the Board shall reduce
35 the required member or employer contributions or both. The
36 sums withheld each calendar month shall be paid to the Fund no
37 later than fifteen days following the end of the calendar month.

§7-14D-13. Refunds to certain members upon discharge or resignation; deferred retirement; forfeitures.

1 (a) Any member who terminates covered employment and
2 is not eligible to receive disability benefits under this article is,
3 by written request filed with the Board, entitled to receive from
4 the Fund the member's accumulated contributions. Except as
5 provided in subsection (b) of this section, upon withdrawal the
6 member shall forfeit his or her accrued benefit and cease to be
7 a member.

8 (b) Any member of this plan who ceases employment in
9 covered employment and active participation in this plan, and
10 who thereafter becomes reemployed in covered employment
11 may not receive any credited service for any prior withdrawn
12 accumulated contributions from either this plan or the Public
13 Employees Retirement System relating to the prior covered
14 employment unless following his or her return to covered
15 employment and active participation in this plan, the member
16 redeposits in this plan the amount of the withdrawn accumu-
17 lated contributions submitted on salary earned while a deputy
18 sheriff, together with interest on the accumulated contributions
19 at the rate determined by the Board from the date of withdrawal
20 to the date of redeposit. Upon repayment he or she shall receive
21 the same credit on account of his or her former service in
22 covered employment as if no refund had been made. The
23 repayment authorized by this subsection shall be made in a
24 lump sum within sixty months of the deputy sheriff's
25 reemployment in covered employment or if later, within sixty
26 months of the effective date of this article.

27 (c) A member of this plan who has elected to transfer from
28 the Public Employees Retirement System into this plan pursu-
29 ant to subsection (b) of section five of this article may not, after
30 having transferred into and become an active member of this
31 plan, reinstate to his or her credit in this plan any service credit
32 relating to periods of nondeputy sheriff service which were
33 withdrawn from the Public Employees Retirement System plan
34 prior to his or her elective transfer into this plan.

35 (d) Every member who completes sixty months of covered
36 employment is eligible, upon cessation of covered employment,
37 to either withdraw his or her accumulated contributions in
38 accordance with subsection (a) of this section, or to choose not
39 to withdraw his or her accumulated contribution and to receive
40 retirement income payments upon attaining normal retirement
41 age.

42 (e) Notwithstanding any other provision of this article,
43 forfeitures under the plan shall not be applied to increase the
44 benefits any member would otherwise receive under the plan.

§7-14D-23. Loans to members.

1 (a) A member who is not yet receiving disability or
2 retirement income benefits from the plan may borrow from the
3 plan no more than one time in any year an amount up to one
4 half of his or her accumulated contributions, but not less than
5 five hundred dollars nor more than eight thousand dollars:
6 *Provided*, That the maximum amount of any loan shall not
7 exceed the lesser of the following: (1) Eight thousand dollars;
8 or (2) fifty percent of his or her accumulated contributions. No
9 member is eligible for more than one outstanding loan at any
10 time. No loan may be made from the plan if the Board deter-
11 mines that the loans constitute more than fifteen percent of the
12 amortized cost value of the assets of the plan as of the last day
13 of the preceding plan year. The Board may discontinue the

14 loans any time it determines that cash flow problems might
15 develop as a result of the loans. Each loan shall be repaid
16 through monthly installments over periods of six through sixty
17 months and carry interest on the unpaid balance and an annual
18 effective interest rate that is two hundred basis points higher
19 than the most recent rate of interest used by the Board for
20 determining actuarial contributions levels: *Provided, however,*
21 That interest charged shall be commercially reasonable in
22 accordance with the provisions of Section 72(p)(2) of the
23 Internal Revenue Code and federal regulations issued thereun-
24 der. Monthly loan payments shall be calculated to be as nearly
25 equal as possible with all but the final payment being an equal
26 amount. An eligible member may make additional loan
27 payments or pay off the entire loan balance at any time without
28 incurring any interest penalty. At the member's option, the
29 monthly loan payment may include a level premium sufficient
30 to provide declining term insurance with the plan as beneficiary
31 to repay the loan in full upon the member's death. If a member
32 declines the insurance and dies before the loan is repaid, the
33 unpaid balance of the loan shall be deducted from the lump sum
34 insurance benefits payable under section twenty-one of this
35 article.

36 (b) A member with an unpaid loan balance who wishes to
37 retire may have the loan repaid in full by accepting retirement
38 income payments reduced by deducting from the actuarial
39 reserve for the accrued benefit the amount of the unpaid balance
40 and then converting the remaining of the reserve to a monthly
41 pension payable in the form of the annuity desired by the
42 member.

43 (c) The entire unpaid balance of any loan, and interest due
44 thereon, shall at the option of the Board become due and
45 payable without further notice or demand upon the occurrence
46 with respect to the borrowing member of any of the following
47 events of default: (1) Any payment of principal and accrued

48 interest on a loan remains unpaid after they become due and
49 payable under the terms of the loan or after the grace period
50 established in the discretion of the Retirement Board; (2) the
51 borrowing member attempts to make an assignment for the
52 benefit of creditors of his or her benefit under the retirement
53 system; or (3) any other event of default set forth in rules
54 promulgated by the Board pursuant to the authority granted in
55 section one, article ten-d, chapter five of this code: *Provided,*
56 That any offset of an unpaid loan balance shall be made only at
57 such time as the member is entitled to receive a distribution
58 under the plan.

59 (d) Loans shall be evidenced by such form of obligations
60 and shall be made upon such additional terms as to default,
61 prepayment, security, and otherwise as the Board may deter-
62 mine.

63 (e) Notwithstanding anything in this section to the contrary,
64 the loan program authorized by this section shall comply with
65 the provisions of Section 72(p)(2) and Section 401 of the
66 Internal Revenue Code and the federal regulations issued
67 thereunder. The Board may: (a) Apply and construe the
68 provisions of this section and administer the plan loan program
69 in such a manner as to comply with the provisions of Sections
70 72(p)(2) and Section 401 of the Internal Revenue Code; (b)
71 adopt plan loan policies or procedures consistent with these
72 federal law provisions; and (c) take any actions it considers
73 necessary or appropriate to administer the plan loan program
74 created under this section in accordance with these federal law
75 provisions. The Board is further authorized in connection with
76 the plan loan program to take any actions that may at any time
77 be required by the Internal Revenue Service regarding compli-
78 ance with the requirements of Section 72(p)(2) or Section 401
79 of the Internal Revenue Code, notwithstanding any provision in
80 this article to the contrary.

81 (f) Notwithstanding anything in this article to the contrary,
82 the loan program authorized by this section shall not be
83 available to any deputy sheriff who becomes a member of the
84 Deputy Sheriff Retirement System on or after the first day of
85 July, two thousand five.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 8. PENSION LIABILITY REDEMPTION.

- §12-8-2. Declaration of policy; legislative findings; legislative intent.
- §12-8-3. Definitions.
- §12-8-4. Issuance of bonds; determination of unfunded actuarial accrued liability.
- §12-8-5. Method of bond issuance; manner of sale of bonds; authority of department of administration.
- §12-8-6. Contracts with obligation holders; provisions of bonds and trust indentures and other agreements.
- §12-8-7. Proceeds from the sale of bonds.
- §12-8-8. Continuation of Pension Liability Redemption Fund; disbursements to pay pension liability redemption payments.
- §12-8-10. State pledges and covenants.
- §12-8-15. Operation of article.

§12-8-2. Declaration of policy; legislative findings; legislative intent.

1 The Legislature finds and declares that:

2 (a) The Legislature has established a number of pension
3 systems, including the death, disability and retirement fund of
4 the West Virginia State Police established in article two,
5 chapter fifteen of this code; the Judges' Retirement System
6 established in article nine, chapter fifty-one of this code; and
7 the Teachers Retirement System established in article seven-a,
8 chapter eighteen of this code, each of which is a trust for the
9 benefit of the participating public employees.

10 (b) This article provides for the redemption of the unfunded
11 actuarial accrued liability of each pension system through the

12 issuance of bonds for the purpose of: (i) Providing for the safety
13 and soundness of the pension systems; and (ii) realizing savings
14 over the remaining term of the amortization schedules of the
15 unfunded actuarial accrued liabilities and thereby achieve
16 budgetary savings.

§12-8-3. Definitions.

1 As used in this article, unless the context clearly requires a
2 different meaning:

3 (1) "Bonds" means bonds, notes, refunding notes and
4 bonds, or other obligations of the state issued by the Governor
5 pursuant to this article.

6 (2) "Consolidated Public Retirement Board" means the
7 Board created to administer all public retirement plans in this
8 state under article ten-d, chapter five of this code and any board
9 or agency that succeeds to the powers and duties of the Consoli-
10 dated Public Retirement Board.

11 (3) "Costs" include, but are not limited to, amounts
12 necessary to fund any capitalized interest funds and any reserve
13 funds, any costs relating to the issuance and determination of
14 the validity of the bonds, fees for obtaining bond insurance,
15 credit enhancements or liquidity facilities, administrative costs,
16 fees incurred pursuant to subsection (f), section five of this
17 article and costs attributable to the agreements described in
18 section six of this article.

19 (4) "Death, Disability and Retirement Fund" means the
20 Death, Disability and Retirement Fund of the West Virginia
21 State Police created by article two, chapter fifteen of this code.

22 (5) "Department of administration" means the Department
23 established pursuant to article one, chapter five-a of this code
24 and any board or agency that succeeds to the powers and duties
25 of the Department of Administration.

26 (6) “Executive order” means an executive order issued by
27 the Governor to authorize the issuance of bonds as provided in
28 this article.

29 (7) “Investment management board” means the Board
30 established under article six, chapter twelve of this code, and
31 any board or agency that succeeds to the powers and duties of
32 the Investment Management Board.

33 (8) “Judges’ Retirement System” means the Judicial
34 Retirement System created under article nine, chapter fifty-one
35 of this code.

36 (9) “Obligation holders” means any holder or owner of any
37 bond, any trustee or other fiduciary for any holder, or any
38 provider of a letter of credit, policy of bond insurance, surety,
39 or other credit enhancement or liquidity facility or swap relating
40 to any bond.

41 (10) “Pension Liability Redemption Fund” means the
42 special account in the State Treasury created pursuant to
43 subsection (a), section eight of this article.

44 (11) “Pension Liability Redemption Payments” means: (a)
45 The principal of, premium, if any, and interest on any outstand-
46 ing bonds issued pursuant to this article; and (b) any other
47 amounts required to be paid pursuant to the terms of any
48 outstanding bonds, any indenture authorized pursuant to this
49 article and any other agreement entered into between the
50 Governor and any obligation holder.

51 (12) “Pension systems” means the Judges’ Retirement
52 System, the Death, Disability and Retirement Fund and the
53 Teachers Retirement System.

54 (13) “Refund” or “refunding” means the issuance and sale
55 of bonds the proceeds of which are used or are to be used for

56 the payment, defeasance or redemption of outstanding bonds
57 upon or prior to maturity.

58 (14) "Refunding bonds" means bonds issued for the
59 payment, defeasance or redemption of outstanding bonds upon
60 or prior to maturity.

61 (15) "Teachers Retirement System" means the retirement
62 system established in article seven-a, chapter eighteen of this
63 code.

64 (16) "Normal cost" means the value of benefits accruing for
65 the current valuation year under the actuarial cost method.

66 (17) "Actuarial cost method" means a mathematical process
67 in which the cost of benefits projected to be paid after a period
68 of active employment has ended is allocated over the period of
69 active employment during which the benefits are earned.

70 (18) "Unfunded actuarial accrued liability" means the
71 aggregate of the unfunded actuarial accrued liabilities of the
72 pension systems, with the unfunded actuarial accrued liability
73 of each pension system being calculated in an actuarial valua-
74 tion report provided by the Consolidated Public Retirement
75 Board to the Department of Administration pursuant to section
76 four of this article.

77 (19) "West Virginia State Police Retirement System"
78 means the retirement system established in article two-a,
79 chapter fifteen of this code.

80 (20) "West Virginia Public Employees Retirement System"
81 means the retirement system established in article ten, chapter
82 five of this code.

83 (21) "West Virginia State Sponsored Pension Systems"
84 means the pension systems as defined in subdivision twelve of

85 this subsection, the West Virginia Public Employees Retirement
86 System and the West Virginia State Police Retirement System.

**§12-8-4. Issuance of bonds; determination of unfunded actuarial
accrued liability.**

1 (a) The Governor may, as provided by this article, issue the
2 bonds authorized in this section at a time or times as provided
3 by a resolution adopted by the Legislature to fund all or a
4 portion of the unfunded actuarial accrued liability, the bonds to
5 be payable from and secured by moneys deposited in the
6 Pension Liability Redemption Fund. Any bonds issued pursuant
7 to this article, other than refunding bonds, shall be issued no
8 later than five years after the date of adoption of the resolution
9 of the Legislature authorizing the issuance of the bonds referred
10 to in this section.

11 (b) The aggregate principal amount of bonds issued
12 pursuant to the provisions of this article is limited to no more
13 than the lesser of the following: (1) The principal amount
14 necessary, after deduction of costs, underwriter's discount and
15 original issue discount, if any, to fund not in excess of one
16 hundred percent of the unfunded actuarial accrued liability of
17 the Death, Disability and Retirement Fund of the West Virginia
18 State Police established in article two, chapter fifteen of this
19 code, one hundred percent of the unfunded actuarial accrued
20 liability of the Judges' Retirement System established in article
21 nine, chapter fifty-one of this code, and ninety-five percent of
22 the unfunded actuarial accrued liability of the Teachers Retire-
23 ment System established in article seven-a, chapter eighteen of
24 this code, as certified by the Consolidated Public Retirement
25 Board to the Department of Administration pursuant to subsec-
26 tion (e) of this section; or (2) five billion five hundred million
27 dollars; but in no event shall the aggregate principal amount of
28 bonds issued exceed the principal amount necessary, after
29 deduction of costs, underwriter's discount and original issue

30 discount, if any, to fund not in excess of the total unfunded
31 actuarial accrued liability, as certified by the Consolidated
32 Public Retirement Board to the Department of Administration
33 pursuant to subsection (e) of this section.

34 (c) The costs of issuance, excluding fees for ratings, bond
35 insurance, credit enhancements and liquidity facilities, plus
36 underwriter's discount and any other costs associated with the
37 issuance shall not exceed, in the aggregate, the sum of one
38 percent of the aggregate principal amount of bonds issued.

39 (d) The limitation on the aggregate principal amount of
40 bonds provided in this section shall not preclude the issuance of
41 bonds from time to time or in one or more series.

42 (e) No later than ten days after receipt of a request from the
43 Department of Administration, the Consolidated Public
44 Retirement Board shall provide the Department of Administra-
45 tion with a certified statement of the amount of each pension
46 system's unfunded actuarial accrued liability calculated in an
47 actuarial valuation report that establishes the amount of the
48 unfunded actuarial accrued liability as of a date specified by the
49 Department of Administration, based upon each pension
50 system's most recent actuarial valuation as completed by the
51 Consolidated Public Retirement Board.

52 (f) No later than fifteen days after receipt of a request from
53 the Governor, the Department of Administration shall provide
54 the Governor with a certification of the maximum aggregate
55 principal amount of bonds that may be issued at that time
56 pursuant to subsection (b) of this section.

**§12-8-5. Method of bond issuance; manner of sale of bonds;
authority of department of administration.**

1 (a) Upon the adoption of a resolution by the Legislature
2 authorizing the issuance of the bonds in the amount and upon

3 the terms specified in the resolution, the bonds shall be autho-
4 rized by an executive order issued by the Governor. The
5 executive order shall be received by the Secretary of State and
6 filed in the State Register pursuant to section three, article two,
7 chapter twenty-nine-a of this code. The Governor, either in the
8 executive order authorizing the issuance of the bonds or by the
9 execution and delivery by the Governor of a trust indenture or
10 agreement authorized in the executive order, shall stipulate the
11 form of the bonds, whether the bonds are to be issued in one or
12 more series, the date or dates of issue, the time or times of
13 maturity, the rate or rates of interest payable on the bonds,
14 which may be at fixed rates or variable rates and which interest
15 may be current interest or may accrue, the denomination or
16 denominations in which the bonds are issued, the conversion or
17 registration privileges applicable to some or all of the bonds,
18 the sources and medium of payment and place or places of
19 payment, the terms of redemption, any privileges of
20 exchangeability or interchangeability applicable to the bonds,
21 and the entitlement of obligation holders to priorities of
22 payment or security in the amounts deposited in the pension
23 liability redemption fund. Bonds shall be signed by the Gover-
24 nor and attested by the Secretary of State, by either manual or
25 facsimile signatures.

26 (b) The bonds may be sold at public or private sale at a
27 price or prices determined by the Governor. The Governor may
28 enter into any agreements necessary or desirable to effectuate
29 the purposes of this section, including agreements to sell bonds
30 to any person and to comply with the laws of any jurisdiction
31 relating thereto.

32 (c) The Governor, in the executive order authorizing the
33 issuance of bonds or by the execution and delivery by the
34 Governor of a trust indenture or agreement authorized in the
35 executive order, may covenant as to the use and disposition of
36 or pledge of funds made available for pension liability redemp-

37 tion payments or any reserve funds established pursuant to the
38 executive order or established pursuant to any indenture
39 authorized by the executive order. All costs may be paid by or
40 upon the order of the Governor from amounts received from the
41 proceeds of the bonds and from amounts received pursuant to
42 section eight of this article.

43 (d) Bonds may be issued by the Governor upon resolution
44 adopted by the Legislature authorizing the same.

45 (e) Neither the Governor, the Secretary of State, nor any
46 other person executing or attesting the bonds or any agreement
47 authorized in this article are personally liable with respect to
48 payment of any pension liability redemption payments.

49 (f) Notwithstanding any other provision of this code, the
50 Department of Administration, in the Department's discretion:
51 (i) Shall select, employ and compensate one or more persons or
52 firms to serve as bond counsel or cobond counsel who shall be
53 responsible for the issuance of a final approving opinion
54 regarding the legality of the bonds issued pursuant to this
55 article; (ii) may select, employ and compensate one or more
56 persons or firms to serve as underwriter or counderwriter for
57 any issuance of bonds pursuant to this article; and (iii) may
58 select, employ and compensate one or more fiduciaries,
59 financial advisors and experts, other legal counsel, placement
60 agents, appraisers, actuaries and any other advisors, consultants
61 and agents necessary to effectuate the purposes of this article.
62 Notwithstanding the provisions of article three, chapter five of
63 this code, bond counsel may represent the state in court, render
64 advice and provide other legal services as may be requested by
65 the Governor or the Department of Administration regarding
66 any bond issuance pursuant to this article and all other matters
67 relating to the bonds.

§12-8-6. Contracts with obligation holders; provisions of bonds and trust indentures and other agreements.

1 (a) The Governor may enter into contracts with obligation
2 holders and the Governor shall comply fully with the terms and
3 provisions of any contracts made with obligation holders.

4 (b) In addition and not in limitation to the other provisions
5 of this section, in connection with any bonds issued pursuant to
6 this article, the Governor may enter into: (i) commitments to
7 purchase or sell bonds and bond purchase or sale agreements;
8 (ii) agreements providing for credit enhancement or liquidity,
9 including revolving credit agreements, agreements establishing
10 lines of credit or letters of credit, insurance contracts, surety
11 bonds and reimbursement agreements; (iii) agreements to
12 manage interest rate exposure and the return on investments,
13 including interest rate exchange agreements, interest rate cap,
14 collar, corridor, ceiling and floor agreements, option, rate
15 spread or similar exposure agreements, float agreements and
16 forward agreements; (iv) stock exchange listing agreements;
17 and (v) any other commitments, contracts or agreements
18 approved by the Governor.

19 (c) The Governor may covenant as to the bonds to be issued
20 and as to the issuance of the bonds, in escrow or otherwise,
21 provide for the replacement of lost, destroyed or mutilated
22 bonds, covenant against extending the time for the payment of
23 bonds or interest on the bonds and covenant for the redemption
24 of bonds and provide the terms and conditions of the redemp-
25 tion.

26 (d) Except as otherwise provided in any executive order or
27 in this article, the terms of the executive order and of this article
28 in effect on the date the bonds are issued constitute a contract
29 between the state and obligation holders. Any representation,
30 warranty or covenant made by the Governor in the executive

31 order, any indenture of trust or trust agreement authorized by
32 the executive order, any bond or any other contract entered into
33 pursuant to this article with any obligation holder shall be a
34 representation, warranty or covenant made by the state.

35 (e) The Governor may vest in the obligation holders, or any
36 portion of them, the right to enforce the payment of the bonds
37 or agreements authorized in this article or any covenants
38 securing or relating to the bonds or the agreements. The
39 Governor may prescribe the procedure, if any, by which the
40 terms of any contract with obligation holders may be supple-
41 mented, amended or abrogated, prescribe which supplements or
42 amendments will require the consent of obligation holders and
43 the portion of obligation holders required to effect the consent
44 and prescribe the manner in which the consent may be given.

§12-8-7. Proceeds from the sale of bonds.

1 (a) The proceeds from the sale of bonds, other than refund-
2 ing bonds, issued pursuant to this article, after payment of any
3 costs payable at time of issuance of the bonds, shall be paid to
4 the Consolidated Public Retirement Board to fund the amount
5 of the unfunded actuarial accrued liability for the pension
6 systems provided for by the bonds.

7 (b) Prior to the time of issuance, when requested by the
8 Department of Administration, the Investment Management
9 Board shall prepare and submit to the Governor, the Speaker of
10 the House of Delegates, the President of the Senate and the
11 Department of Administration the short-term and long-term
12 investment strategies that the Investment Management Board
13 intends to follow for investment of the plan assets of the
14 pension systems, as adjusted by the deposit of the proceeds of
15 bonds issued pursuant to this article, which bond proceeds shall
16 be invested pursuant to section six of article ten of the Constitu-
17 tion of West Virginia and otherwise as provided by law.

§12-8-8. Continuation of Pension Liability Redemption Fund; disbursements to pay pension liability redemption payments.

1 (a) There is hereby continued a special account in the State
2 Treasury to be administered by the State Treasurer, which is
3 designated and known as the "Pension Liability Redemption
4 Fund," into which shall be deposited any and all amounts
5 appropriated by the Legislature or funds from any other source
6 whatsoever which are made available by law for the purpose of
7 making pension liability redemption payments. All funds
8 deposited to the credit of the Pension Liability Redemption
9 Fund shall be held in a separate account and all money belong-
10 ing to the Fund shall be deposited in the State Treasury to the
11 credit of the Pension Liability Redemption Fund.

12 (b) On or before the first day of November of each year, the
13 Department of Administration shall certify to the Governor and
14 the State Treasurer and deliver to the Speaker of the House of
15 Delegates and the President of the Senate a certification as to
16 the amount of pension liability redemption payments to be
17 appropriated for the next fiscal year in order to pay in full when
18 due all pension liability redemption payments that will become
19 due during the next fiscal year. The certification shall include
20 the amount and due date of each pension liability redemption
21 payment. All moneys appropriated by the Legislature in
22 accordance with a certification made pursuant to this subsection
23 shall be deposited into the Pension Liability Redemption Fund.

24 (c) The State Treasurer shall pay to the trustee under the
25 trust indenture or agreement executed by the Governor all
26 pension liability redemption payments as and when due. The
27 payments shall be transferred by electronic funds transfer,
28 unless some other manner of funds transfer is specified by the
29 Governor. No payments shall be required for bonds that are
30 defeased or bonds for which a deposit sufficient to provide for
31 all payments on the bonds has been made.

§12-8-10. State pledges and covenants.

1 (a) The state of West Virginia covenants and agrees with
2 the obligation holders, and the indenture shall so state, that the
3 bonds issued pursuant to this article are a direct and general
4 obligation of the state of West Virginia; that the pension
5 liability redemption payments will be included in each budget
6 along with all other amounts for payment and discharge of the
7 principal of and interest on state debt; that the full faith and
8 credit of the state is hereby pledged to secure the payment of
9 the principal of and interest on the bonds; and that annual state
10 taxes shall be collected in an amount sufficient to pay the
11 pension liability redemption payments as they become due and
12 payable from the Pension Liability Redemption Fund.

13 (b) The state hereby pledges and covenants with the
14 obligation holders, and the indenture shall so state, that the state
15 will not limit or alter the rights, powers or duties vested in any
16 state official, or that state official's successors or assigns, and
17 the obligation holders in a way that will inhibit any state
18 official, or that state official's successors or assigns, from
19 carrying out the state official's rights, powers or duties under
20 this article, nor limit or alter the rights, powers or duties of any
21 state official, or that state official's successors or assigns, in any
22 manner which would jeopardize the interest of any obligation
23 holder, or inhibit or prevent performance or fulfillment by any
24 state official, or that state official's successors or assigns, with
25 respect to the terms of any agreement made with any obligation
26 holder pursuant to section six of this article.

27 (c) The state hereby pledges and covenants with the
28 obligation holders, and the indenture shall state, that, while any
29 of the bonds are outstanding, any changes in unfunded actuarial
30 accrued liability in any of the West Virginia state sponsored
31 pension systems resulting from the actual experience for that
32 system occurring during any fiscal year due to net differences

33 between the expected and actual experience for that year will be
34 fully amortized over no more than the ten consecutive fiscal
35 years following the date the Consolidated Public Retirement
36 Board certifies the net actuarial gain or loss to the Governor.
37 The certification shall be made on or before the thirty-first day
38 of January of each year. The net actuarial gain or loss for the
39 fiscal year shall be determined from the actuarial valuation
40 authorized by the Consolidated Public Retirement Board for
41 each plan completed at as of the first day of the following fiscal
42 year. Following the receipt of the certification of net actuarial
43 gain or loss, the Governor shall submit the amount of the
44 amortization payment or credit each year for the pension
45 systems as part of the annual budget submission or in an
46 executive message to the Legislature. The Consolidated Public
47 Retirement Board shall include the ten year amortization in the
48 determination of the adequacy of the employer contribution
49 percentage for the West Virginia Public Employees Retirement
50 System and West Virginia State Police Retirement System.

51 (d) The state hereby pledges and covenants with the
52 obligation holders, and the indenture shall state, that, while any
53 of the bonds are outstanding, if the unfunded actuarial accrued
54 liability of any of the West Virginia state sponsored pension
55 systems increases or decreases due to changes in actuarial
56 assumptions adopted by the Consolidated Public Retirement
57 Board for completion of the annual actuarial valuation for any
58 plan, the change shall be fully amortized over no more than the
59 ten consecutive fiscal years following the date the Consolidated
60 Public Retirement Board certifies the net change due to changes
61 in assumptions to the Governor. The certification shall be made
62 on or before the thirty-first day of January of each year.
63 Following the receipt of the certification of change due to
64 changes in actuarial assumptions, the Governor shall submit the
65 amount of the amortization payment each year for the pension
66 systems as part of the annual budget submission or in an
67 executive message to the Legislature. The Consolidated Public

68 Retirement Board shall include the ten year amortization in the
69 determination of the adequacy of the employer contribution
70 percentage for the Public Employees Retirement System and
71 West Virginia State Police Retirement System.

72 (e) The state hereby pledges and covenants with the
73 obligation holders, and the indenture shall state, that, while any
74 of the bonds are outstanding (1) the state will not increase any
75 existing benefits or create any new benefits for any retirees or
76 beneficiaries currently receiving monthly benefit payments
77 from any of the West Virginia state sponsored pension systems,
78 other than an increase in benefits or new benefits effected by
79 operation of law in effect on the effective date of this article, in
80 an amount that would exceed more than one percent of the
81 accrued actuarial liability of the system as of the last day of the
82 preceding fiscal year as determined in the annual actuarial
83 valuation for each plan completed for the Consolidated Public
84 Retirement Board as of the first day of the following fiscal year
85 as of the date the improvement is adopted by the Legislature;
86 and (2) if any increase of existing benefits or creation of new
87 benefits for any retirees or beneficiaries currently receiving
88 monthly benefit payments under any of the West Virginia state
89 sponsored pension systems, other than an increase in benefits
90 or new benefits effected by operation of law in effect on the
91 effective date of this article, causes any additional unfunded
92 actuarial accrued liability in any of the West Virginia state
93 sponsored pension systems as calculated in the annual actuarial
94 valuation for each plan during any fiscal year, the additional
95 unfunded actuarial accrued liability of that pension system will
96 be fully amortized over no more than the six consecutive fiscal
97 years following the date the increase in benefits or new benefits
98 become effective as certified by the Consolidated Public
99 Retirement Board. Following the receipt of the certification of
100 additional actuarial accrued liability, the Governor shall submit
101 the amount of the amortization payment each year for the
102 pension systems as part of the annual budget submission or in

103 an executive message to the Legislature. The Consolidated
104 Public Retirement Board shall include the six year amortization
105 in the determination of the adequacy of the employer contribu-
106 tion percentage for the West Virginia Public Employees
107 Retirement System and West Virginia State Police Retirement
108 System.

109 (f) The state hereby pledges and covenants with the
110 obligation holders, and the indenture shall state, that, while any
111 of the bonds are outstanding that the computation of annuities
112 or benefits for active members due to retirement, death or
113 disability as provided for in the pension systems shall not be
114 amended in any manner that increases any existing benefits or
115 provides for new benefits.

116 (g) The state hereby pledges and covenants with the
117 obligation holders, and the indenture shall state, that, while any
118 of the bonds are outstanding, the state will not increase any
119 existing benefits or create any new benefits for active members
120 due to retirement, death or disability of the West Virginia
121 Public Employees Retirement System or the West Virginia
122 State Police Retirement System unless the actuarial accrued
123 liability of the plan is at least eighty-five percent funded as of
124 the last day of the prior fiscal year as determined in the actuar-
125 ial valuation for the plan completed for the Consolidated Public
126 Retirement Board as of the first day of the following fiscal year
127 as of the date the improvement is adopted by the Legislature.
128 Any additional unfunded actuarial accrued liability due to any
129 improvement in active members benefits shall be fully amor-
130 tized over not more than ten years following the date the
131 increase in benefits or new benefits become effective as
132 certified by the Consolidated Public Retirement Board. The
133 Consolidated Public Retirement Board shall include the ten year
134 amortization in the determination of the adequacy of the
135 employer contribution percentage for the West Virginia Public
136 Employees Retirement System and West Virginia State Police
137 Retirement System.

§12-8-15. Operation of article.

- 1 Notwithstanding the effective date of this act of the
- 2 Legislature, this article shall not become operational and shall
- 3 have no force and effect until the day the people ratify an
- 4 amendment to the constitution of this state authorizing pension
- 5 obligation bonds.

CHAPTER 15. PUBLIC SAFETY.**Article****2. West Virginia State Police.****2A. West Virginia State Police Retirement System.****ARTICLE 2. WEST VIRGINIA STATE POLICE.**

§15-2-25b. Definitions.

§15-2-26. Continuation of death, disability and retirement fund; designating the Consolidated Public Retirement Board as administrator of fund.

§15-2-27. Retirement; awards and benefits; leased employees.

§15-2-27a. Retirement annual annuity adjustments.

§15-2-28. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

§15-2-29. Awards and benefits for disability -- Incurred in performance of duty.

§15-2-30. Same - Due to other causes.

§15-2-31. Same -- Physical examinations; termination.

§15-2-31a. Application for disability benefit; determinations.

§15-2-31b. Annual report on each employer's disability retirement experience.

§15-2-32. Retired member not to exercise police authority; retention of group insurance.

§15-2-33. Awards and benefits to dependents of member -- When member dies in performance of duty, etc.; dependent child scholarship and amount.

§15-2-34. Same - When member dies from nonservice-connected causes.

§15-2-37. Refunds to certain members upon discharge or resignation; deferred retirement.

§15-2-39a. Limitations on benefit increases.

§15-2-25b. Definitions.

- 1 As used in this article, unless the context clearly requires a
- 2 different meaning:

3 (a) "Board" means the Consolidated Public Retirement
4 Board created pursuant to article ten-d, chapter five of this
5 code.

6 (b) "Department" means the West Virginia State Police.

7 (c) "Fund," "plan," or "system," means the West Virginia
8 Death, Disability and Retirement Fund.

9 (d) "Law-enforcement officer" means an individual
10 employed or otherwise engaged in either a public or private
11 position which involves the rendition of services relating to
12 enforcement of federal, state or local laws for the protection of
13 public or private safety, including, but not limited to, positions
14 as deputy sheriffs, police officers, marshals, bailiffs, court
15 security officers or any other law-enforcement position which
16 requires certification, but excluding positions held by elected
17 sheriffs or appointed chiefs of police whose duties are deter-
18 mined by the Board to be purely administrative in nature.

19 (e) "Member" means an employee of the West Virginia
20 State Police who is an active participant in the fund.

21 (f) "Partially disabled" means a member's inability, on a
22 probable permanent basis, to perform the essential duties of a
23 law-enforcement officer by reason of any medically determina-
24 ble physical or mental impairment which has lasted or can be
25 expected to last for a continuous period of not less than twelve
26 months, but which impairment does not preclude the member
27 from engaging in other types of nonlaw-enforcement employ-
28 ment.

29 (g) "Physical or mental impairment" means an impairment
30 that results from an anatomical, physiological or psychological
31 abnormality that is demonstrated by medically accepted clinical
32 and laboratory diagnostic techniques.

33 (h) "Totally disabled" means a member's probable perma-
34 nent inability to engage in substantial gainful activity by reason
35 of any medically determined physical or mental impairment
36 that can be expected to result in death or that has lasted or can
37 be expected to last for a continuous period of not less than
38 twelve months. For purposes of this subsection, a member is
39 totally disabled only if his or her physical or mental impair-
40 ments are so severe that he or she is not only unable to perform
41 his or her previous work as a member of the Department but
42 also cannot, considering his or her age, education and work
43 experience, engage in any other kind of substantial gainful
44 employment which exists in the state regardless of whether: (1)
45 The work exists in the immediate area in which the member
46 lives; (2) a specific job vacancy exists; or (3) the member
47 would be hired if he or she applied for work.

**§15-2-26. Continuation of death, disability and retirement fund;
designating the Consolidated Public Retirement
Board as administrator of fund.**

1 (a) There is continued the Death, Disability and Retirement
2 Fund created for the benefit of members of the Department and
3 any dependent of a retired or deceased member of the Depart-
4 ment.

5 (b) There shall be deducted from the monthly payroll of
6 each member of the Department and paid into the fund six
7 percent of the amount of his or her salary: *Provided*, That
8 beginning on the first day of July, one thousand nine hundred
9 ninety-four, there shall be deducted from the monthly payroll
10 of each member and paid into the Fund seven and one-half
11 percent of the amount of his or her salary: *Provided, however*,
12 That on and after the first day of July, one thousand nine
13 hundred ninety-five, there shall be deducted from the monthly
14 payroll of each member and paid into the Fund nine percent of
15 the amount of his or her salary. An additional twelve percent of

16 the monthly salary of each member of the Department shall be
17 paid by the State of West Virginia monthly into the fund out of
18 the annual appropriation for the Department: *Provided further*,
19 That beginning on the first day of July, one thousand nine
20 hundred ninety-five, the State shall pay thirteen percent of the
21 monthly salary of each member into the Fund: *And provided*
22 *further*, That beginning on the first day of July, one thousand
23 nine hundred ninety-six, the State shall pay fourteen percent of
24 the monthly salary of each member into the Fund: *And provided*
25 *further*, That on and after the first day of July, one thousand
26 nine hundred ninety-seven, the State shall pay fifteen percent of
27 the monthly salary of each member into the Retirement Fund.
28 There shall also be paid into the Fund amounts that have
29 previously been collected by the Superintendent of the Depart-
30 ment on account of payments to members for court attendance
31 and mileage, rewards for apprehending wanted persons, fees for
32 traffic accident reports and photographs, fees for criminal
33 investigation reports and photographs, fees for criminal history
34 record checks, fees for criminal history record reviews and
35 challenges or from any other sources designated by the Superin-
36 tendent. All moneys payable into the Fund shall be deposited in
37 the State Treasury and the Treasurer and Auditor shall keep a
38 separate account thereof on their respective books.

39 (c) Notwithstanding any other provisions of this article,
40 forfeitures under the Fund shall not be applied to increase the
41 benefits any member would otherwise receive under the Fund.

42 (d) The moneys in this Fund, and the right of a member to
43 a retirement allowance, to the return of contributions, or to any
44 benefit under the provisions of this article, are exempt from any
45 state or municipal tax; shall not be subject to execution,
46 garnishment, attachment or any other process whatsoever, with
47 the exception that the benefits or contributions under the Fund
48 shall be subject to "qualified domestic relations orders" as that
49 term is defined in Section 414(p) of the Internal Revenue Code

50 with respect to governmental plans; and shall be unassignable
51 except as is provided in this article. The Death, Disability and
52 Retirement Fund shall be administered by the Consolidated
53 Public Retirement Board created pursuant to article ten-d,
54 chapter five of this code.

55 (e) All moneys paid into and accumulated in the Death,
56 Disability and Retirement Fund, except amounts designated or
57 set aside by the awards, shall be invested by the State Board of
58 Investments as provided by law.

§15-2-27. Retirement; awards and benefits; leased employees.

1 (a) The Retirement Board shall retire any member of the
2 Department when the member has both attained the age of fifty-
3 five years and completed twenty-five years of service as a
4 member of the Department, including military service credit
5 granted under the provisions of section twenty-eight of this
6 article.

7 (b) The Retirement Board shall retire any member of the
8 Department who has lodged with the Executive Director of the
9 Consolidated Public Retirement Board his or her voluntary
10 petition in writing for retirement, and:

11 (1) Has or shall have completed twenty-five years of
12 service as a member of the Department (including military
13 service credit granted under the provisions of section twenty-
14 eight of this article);

15 (2) Has or shall have attained the age of fifty years and has
16 or shall have completed twenty years of service as a member of
17 the Department (excluding military service credit granted under
18 section twenty-eight of this article); or

19 (3) Being under the age of fifty years has or shall have
20 completed twenty years of service as a member of the Depart-

21 ment (excluding military service credit granted under section
22 twenty-eight of this article.)

23 (c) When the Retirement Board retires any member under
24 any of the provisions of this section, the Board shall, by order
25 in writing, make an award directing that the member is entitled
26 to receive annually and that there shall be paid to the member
27 from the Death, Disability and Retirement Fund in equal
28 monthly installments during the lifetime of the member while
29 in status of retirement, one or the other of two amounts,
30 whichever is the greater:

31 (1) An amount equal to five and one-half percent of the
32 aggregate of salary paid to the member during the whole period
33 of service as a member of the Department; or

34 (2) The sum of six thousand dollars.

35 When a member has or shall have served twenty years or
36 longer but less than twenty-five years as a member of the
37 Department and is retired under any of the provisions of this
38 section before he or she has attained the age of fifty years,
39 payment of monthly installments of the amount of retirement
40 award to the member shall commence on the date he or she
41 attains the age of fifty years. Beginning on the fifteenth day of
42 July, one thousand nine hundred ninety-four, in no event may
43 the provisions of section thirteen, article sixteen, chapter five of
44 this code be applied in determining eligibility to retire with
45 either immediate or deferred commencement of benefit.

46 (d) Any individual who is a leased employee is not eligible
47 to participate in the Fund. For purposes of this Fund, a "leased
48 employee" means any individual who performs services as an
49 independent contractor or pursuant to an agreement with an
50 employee leasing organization or other similar organization. If
51 a question arises regarding the status of an individual as a

52 leased employee, the Board has final power to decide the
53 question.

§15-2-27a. Retirement annual annuity adjustments.

1 (a) Every member of the Department who is fifty-five years
2 of age or older and who is retired by the Retirement Board
3 under the provisions of section twenty-seven of this article;
4 every member of the Department who is retired by the Retire-
5 ment Board under the provisions of section twenty-nine or
6 thirty of this article; and every surviving spouse or other
7 beneficiary receiving a benefit pursuant to section thirty-three
8 or thirty-four of this article, is eligible to receive an annual
9 retirement annuity adjustment equal to three and seventy-five
10 hundredths percent of his or her retirement award or surviving
11 spouse award: *Provided*, That for any person retiring on and
12 after the fifteenth day of September, one thousand nine hundred
13 ninety-four, the annual retirement annuity adjustment shall be
14 equal to two percent of his or her retirement award or award
15 paid to a surviving spouse or other beneficiary. The adjustments
16 may not be retroactive. Yearly adjustments shall begin upon the
17 first day of July of each year. The annuity adjustments shall be
18 awarded and paid to the members from the Death, Disability
19 and Retirement Fund in equal monthly installments while the
20 member is in status of retirement. The annuity adjustments shall
21 supplement the retirement awards and benefits as provided in
22 this article.

23 (b) Any member or beneficiary who receives a benefit
24 pursuant to the provisions of section twenty-nine, thirty, thirty-
25 three or thirty-four of this article shall begin to receive the
26 annual annuity adjustment one year after the commencement of
27 the benefit on the next July first: *Provided*, That if the member
28 has been retired for less than one year when the first annuity
29 adjustment is given on that July first, that first annuity adjust-
30 ment will be a pro rata share of the full year's annuity adjust-
31 ment.

§15-2-28. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.

1 (a) For purposes of this section, the term "active military
2 duty" means full-time active duty with the Armed Forces of the
3 United States, namely, the United States Air Force, Army,
4 Coast Guard, Marines or Navy; and service with the National
5 Guard or reserve military forces of any of such Armed Forces
6 when the member has been called to active full-time duty and
7 has received no compensation during the period of such duty
8 from any person other than the Armed Forces.

9 (b) Any member of the Department who has previously
10 served on active military duty is entitled to and shall receive
11 credit on the minimum period of service required by law for
12 retirement pay from the service of the West Virginia State
13 Police under the provisions of this article for a period equal to
14 the active military duty not to exceed five years, subject to the
15 following:

16 (1) That he or she has been honorably discharged from the
17 Armed Forces;

18 (2) That he or she substantiates by appropriate documenta-
19 tion or evidence his or her period of active military duty;

20 (3) That he or she is receiving no benefits from any other
21 retirement system for his or her active military duty; and

22 (4) That, except with respect to disability retirement pay
23 awarded under section thirty of this article, he or she has
24 actually served with the Department for twenty years exclusive
25 of his or her active military duty.

26 (c) The amount of retirement pay to which any member is
27 entitled shall be calculated and determined as if he or she had
28 been receiving for the period of his or her active military duty
29 a monthly salary from the Department equal to the average
30 monthly salary which he or she actually received from the
31 Department for his or her total service with the Department
32 exclusive of the active military duty. The Superintendent shall
33 transfer and pay into the Death, Disability and Retirement Fund
34 from moneys appropriated for the Department, a sum equal to
35 eighteen percent of the aggregate of the salaries on which the
36 retirement pay of all members has been calculated and deter-
37 mined for their periods of active military duty. In addition, any
38 person who, while a member of the Department was commis-
39 sioned, enlisted or inducted into the Armed Forces of the
40 United States or, being a member of the reserve officers' corps,
41 was called to active duty in the Armed Forces between the first
42 day of September, one thousand nine hundred forty, and the
43 close of hostilities in World War II, or between the twenty-
44 seventh day of June, one thousand nine hundred fifty, and the
45 close of the armed conflict in Korea on the twenty-seventh day
46 of July, one thousand nine hundred fifty-three, between the first
47 day of August, one thousand nine hundred sixty-four and the
48 close of the armed conflict in Vietnam, or during any other
49 period of armed conflict by the United States whether sanc-
50 tioned by a declaration of war by the Congress or by executive
51 or other order of the President, is entitled to and shall receive
52 credit on the minimum period of service required by law for
53 retirement pay from the service of the West Virginia State
54 Police for a period equal to the full time he or she has or shall,
55 pursuant to the commission, enlistment, induction or call, have
56 served with the Armed Forces subject to the following:

57 (1) That he or she has been honorably discharged from the
58 Armed Forces;

59 (2) That within ninety days after honorable discharge from
60 the Armed Forces he or she has presented himself or herself to
61 the Superintendent and offered to resume service as an active
62 member of the Department; and

63 (3) That he or she has made no voluntary act, whether by
64 reenlistment, waiver of discharge, acceptance of commission or
65 otherwise, to extend or participate in extension of the period of
66 service with the Armed Forces beyond the period of service for
67 which he or she was originally commissioned, enlisted,
68 inducted or called.

69 (d) That amount of retirement pay to which any member is
70 entitled shall be calculated and determined as if the member has
71 continued in the active service of the Department at the rank or
72 grade to him or her appertaining at the time of the commission,
73 induction, enlistment or call, during a period coextensive with
74 the time the member served with the Armed Forces pursuant to
75 the commission, induction, enlistment or call. The Superinten-
76 dent of the Department shall transfer and pay each month into
77 the Death, Disability and Retirement Fund from moneys
78 appropriated for the Department a sum equal to eighteen
79 percent of the aggregate of salary which all members would
80 have been entitled to receive had they continued in the active
81 service of the Department during a period coextensive with the
82 time the members served with the Armed Forces pursuant to the
83 commission, induction, enlistment or call: *Provided*, That the
84 total amount of military service credit allowable under this
85 section shall not exceed five years.

86 (e) Notwithstanding any of the preceding provisions of this
87 section, contributions, benefits and service credit with respect
88 to qualified military service shall be provided in accordance
89 with Section 414(u) of the Internal Revenue Code. For purposes
90 of this section, "qualified military service" has the same
91 meaning as in Section 414(u) of the Internal Revenue Code.

92 The Retirement Board may determine all questions and make
93 all decisions relating to this section and, pursuant to the
94 authority granted to the Retirement Board in section one, article
95 ten-d, chapter five of this code, may promulgate rules relating
96 to contributions, benefits and service credit to comply with
97 Section 414(u) of the Internal Revenue Code.

§15-2-29. Awards and benefits for disability — Incurred in performance of duty.

1 (a) Any member of the Department who has not yet entered
2 retirement status on the basis of age and service and who
3 becomes partially disabled by injury, illness or disease resulting
4 from any occupational risk or hazard inherent in or peculiar to
5 the services required of members of the Department and
6 incurred pursuant to or while the member was engaged in the
7 performance of his or her duties as a member of the Department
8 shall, if, in the opinion of the Retirement Board, he or she is by
9 reason of that cause probably permanently unable to perform
10 adequately the duties required of him or her as a member of the
11 Department, but is able to engage in any other gainful employ-
12 ment in a field other than law enforcement, be retired from
13 active service by the Retirement Board. The member thereafter
14 is entitled to receive annually and there shall be paid to the
15 member from the Death, Disability and Retirement Fund in
16 equal monthly installments during the lifetime of the member;
17 or until the member attains the age of fifty; or until the disabil-
18 ity sooner terminates, one or the other of two amounts, which-
19 ever is greater:

20 (1) An amount equal to two thirds of the salary received in
21 the preceding twelve-month employment period: *Provided,*
22 That if the member had not been employed with the Department
23 for twelve months prior to the disability, the amount of monthly
24 salary shall be annualized for the purpose of determining the
25 benefit; or

26 (2) The sum of six thousand dollars.

27 (b) Upon attaining age fifty, the member shall receive the
28 benefit provided in subsection (c), section twenty-seven of this
29 article as it would apply to his or her aggregate career earnings
30 from the Department through the day immediately preceding
31 his or her disability. The recalculation of benefit upon a
32 member attaining age fifty shall be considered to be a retire-
33 ment under the provisions of section twenty-seven of this
34 article, for purposes of determining the amount of annual
35 annuity adjustment and for all other purposes of this article:
36 *Provided*, That a member who is partially disabled under this
37 article may not, while in receipt of benefits for partial disability,
38 be employed as a law-enforcement officer: *Provided, however*,
39 That a member retired on partial disability under this article
40 may serve as an elected sheriff or appointed chief of police in
41 the state without a loss of disability retirement benefits so long
42 as the elected or appointed position is shown, to the satisfaction
43 of the Board, to require the performance of administrative
44 duties and functions only, as opposed to the full range of duties
45 of a law-enforcement officer.

46 (c) If any member not yet in retirement status on the basis
47 of age and service is found by the Board to be permanently and
48 totally disabled as the result of a physical or mental impairment
49 resulting from any occupational risk or hazard inherent in or
50 peculiar to the services required of members of the Department
51 and incurred pursuant to or while the member was engaged in
52 the performance of his or her duties as a member of the
53 Department, the member is entitled to receive annually and
54 there shall be paid to the member from the Death, Disability
55 and Retirement Fund in equal monthly installments during the
56 lifetime of the member or until the disability sooner terminates,
57 an amount equal to the amount of the salary received by the
58 member in the preceding twelve-month employment period:
59 *Provided*, That in no event may the amount be less than fifteen

60 thousand dollars per annum, unless required by section forty of
61 this article: *Provided, however,* That if the member had not
62 been employed with the Department for twelve months prior to
63 the disability, the amount of monthly salary shall be annualized
64 for the purpose of determining the benefit.

65 (d) The Superintendent may expend moneys from funds
66 appropriated for the Department in payment of medical,
67 surgical, laboratory, X-ray, hospital, ambulance and dental
68 expenses and fees, and reasonable costs and expenses incurred
69 in the purchase of artificial limbs and other approved appliances
70 which may be reasonably necessary for any member of the
71 Department who has or becomes temporarily, permanently or
72 totally disabled by injury, illness or disease resulting from any
73 occupational risk or hazard inherent in or peculiar to the service
74 required of members of the Department and incurred pursuant
75 to or while such member was or shall be engaged in the
76 performance of duties as a member of the Department. When-
77 ever the Superintendent determines that any disabled member
78 is ineligible to receive any of the aforesaid benefits at public
79 expense, the Superintendent shall, at the request of the disabled
80 member, refer the matter to the Consolidated Public Retirement
81 Board for hearing and final decision. In no case will the
82 compensation rendered to health care providers for medical and
83 hospital services exceed the then current rate schedule in use by
84 the Workers' Compensation Commission.

85 (e) For the purposes of this section, the term "salary" does
86 not include any compensation paid for overtime service.

§15-2-30. Same — Due to other causes.

1 If any member while in active service of the Department
2 has, in the opinion of the Retirement Board, become perma-
3 nently partially or totally disabled to the extent that the member
4 cannot adequately perform the duties required of a member of

5 the Department from any cause other than those set forth in the
6 preceding section and not due to vicious habits, intemperance
7 or willful misconduct on his or her part, the member shall be
8 retired by the Retirement Board. The member is entitled to
9 receive annually and there shall be paid to the member while in
10 status of retirement, from the Death, Disability and Retirement
11 Fund in equal monthly installments during the lifetime of such
12 member or until the disability sooner terminates, a sum equal
13 to one-half the salary received in the preceding twelve-month
14 period: *Provided*, That if the member had not been employed
15 with the Department for twelve months prior to the disability,
16 the amount of monthly salary shall be annualized for the
17 purpose of determining the benefit. If the member, at the time
18 of retirement under the terms of this section, has served twenty
19 years or longer as a member of the Department, the member is
20 entitled to receive annually and there shall be paid to the
21 member from the Death, Disability and Retirement Fund in
22 equal monthly installments, commencing on the date the
23 member is retired and continuing during the lifetime of the
24 member, until the member attains the age of fifty, while in
25 status of retirement, an amount equal to one-half the salary
26 received by the member in the preceding twelve-month period:
27 *Provided, however*, That if the member had not been employed
28 with the Department for twelve months prior to the disability,
29 the amount of monthly salary shall be annualized for the
30 purpose of determining the benefit.

31 For the purposes of this section, the term "salary" does not
32 include any compensation paid for overtime service.

33 Upon attaining age fifty, the member shall receive the
34 benefit provided in subsection (c), section twenty-seven of this
35 article as it would apply to his or her aggregate career earnings
36 from the Department through the day immediately preceding
37 his or her disability. The recalculation of benefit upon a
38 member attaining age fifty shall be considered to be a retire-

39 ment under the provisions of section twenty-seven of this
40 article, for purposes of determining the amount of annual
41 annuity adjustment and for all other purposes of this article.

§15-2-31. Same – Physical examinations; termination.

1 The Consolidated Public Retirement Board may require any
2 member who has been retired with compensation on account of
3 disability to submit to a physical and/or mental examination by
4 a physician or physicians selected or approved by the Board and
5 cause all costs incident to the examination including hospital,
6 laboratory, X ray, medical and physicians' fees to be paid out
7 of funds appropriated to defray the current expense of the
8 Department, and a report of the findings of the physician or
9 physicians shall be submitted in writing to the Consolidated
10 Public Retirement Board for its consideration. If, from the
11 report or from the report and hearing on the report, the Retire-
12 ment Board is of opinion and finds that the disabled member
13 has recovered from the disability to the extent that he or she is
14 able to perform adequately the duties of a law-enforcement
15 officer, the Board shall order that all payments from the Death,
16 Disability and Retirement Fund be terminated. If, from the
17 report or the report and hearing on the report, the Board is of
18 the opinion and finds that the disabled member has recovered
19 from his or her previously determined probable permanent
20 disability to the extent that he or she is able to engage in gainful
21 employment but remains unable to adequately perform the
22 duties of a law-enforcement officer, the Board shall order the
23 payment, in monthly installments of an amount equal to two
24 thirds of the salary, in the case of a member retired under the
25 provisions of section twenty-nine of this article, or equal to one
26 half of the salary, in the case of a member retired under the
27 provisions of section thirty of this article, excluding any
28 compensation paid for overtime service, for the twelve-month
29 employment period preceding the disability: *Provided*, That if
30 the member had not been employed with the Department for

31 twelve months prior to the disability, the amount of monthly
32 salary shall be annualized for the purpose of determining the
33 benefit.

§15-2-31a. Application for disability benefit; determinations.

1 (a) Application for a disability benefit may be made by a
2 member or, if the member is under an incapacity, by a person
3 acting with legal authority on the member's behalf. After
4 receiving an application for a disability benefit from a member
5 or a person acting with legal authority on behalf of the member,
6 the Board shall notify the Superintendent of the Department
7 that an application has been filed: *Provided*, That when, in the
8 judgment of the Superintendent, a member is no longer physi-
9 cally or mentally fit for continued duty as a member of the
10 West Virginia State Police and the member has failed or refused
11 to make application for disability benefits under this article, the
12 Superintendent may petition the Board to retire the member on
13 the basis of disability pursuant to rules which may be estab-
14 lished by the Board. Within thirty days of the Superintendent's
15 receipt of the notice from the Board or the filing of the Superin-
16 tendent's petition with the Board, the Superintendent shall
17 forward to the Board a statement certifying the duties of the
18 member's employment, information relating to the Superinten-
19 dent's position on the work relatedness of the member's alleged
20 disability, complete copies of the member's medical file and
21 any other information requested by the Board in its processing
22 of the application, if this information is requested timely.

23 (b) The Board shall propose legislative rules in accordance
24 with the provisions of article three, chapter twenty-nine-a of
25 this code relating to the processing of applications and petitions
26 for disability retirement under this article.

27 (c) The Board shall notify a member and the Superintendent
28 of its final action on the disability application or petition within

29 ten days of the Board's final action. The notice shall be sent by
30 certified mail, return receipt requested. If either the member or
31 the Superintendent is aggrieved by the decision of the Board
32 and intends to pursue judicial review of the Board's decision as
33 provided in section four, article five, chapter twenty-nine-a of
34 this code, the party so aggrieved shall notify the Board within
35 twenty days of the member's or Superintendent's receipt of the
36 Board's notice that they intend to pursue judicial review of the
37 Board's decision.

38 (d) The Board may require a disability benefit recipient to
39 file an annual statement of earnings and any other information
40 required in rules which may be adopted by the Board. The
41 Board may waive the requirement that a disability benefit
42 recipient file the annual statement of earnings if the Board's
43 physician certifies that the recipient's disability is ongoing. The
44 Board shall annually examine the information submitted by the
45 recipient. If a disability retiree refuses to file a statement and
46 information, the disability benefit shall be suspended until the
47 statement and information are filed.

§15-2-31b. Annual report on each employer's disability retirement experience.

1 Not later than the first day of January, two thousand six,
2 and each first day of January thereafter, the Board shall prepare
3 a report for the preceding fiscal year of the disability retirement
4 experience of the State Police. The report shall specify the total
5 number of disability applications submitted, the status of each
6 application as of the last day of the fiscal year, total applica-
7 tions granted or denied, and the percentage of disability benefit
8 recipients to the total number of State Police employees who
9 are members of the Fund. The report shall be submitted to the
10 Governor and the chairpersons of the standing committees of
11 the Senate and House of Delegates with primary responsibility
12 for retirement legislation.

§15-2-32. Retired member not to exercise police authority; retention of group insurance.

1 A member who is retired may not, while in retirement
2 status, exercise any of the powers conferred upon active
3 members by section twelve of this article; but is entitled to
4 receive free of cost to the member and retain as his or her
5 separate property one complete standard uniform prescribed by
6 section nine of this article: *Provided*, That the uniform may be
7 worn by a member in retirement status only on occasions
8 prescribed by the Superintendent. The Superintendent shall
9 maintain at public expense for the benefit of all members in
10 retirement status that group life insurance mentioned in section
11 ten of this article. The Superintendent, when he or she is of
12 opinion that the public safety shall require, may recall to active
13 duty during any period determined by the Superintendent, any
14 member who is retired under the provisions of section
15 twenty-seven of this article, provided the consent of the
16 member to reassume duties of active membership shall first be
17 had and obtained. When any member in retirement resumes
18 status of active membership the member, during the period the
19 member remains in active status, is not entitled to receive
20 retirement pay or benefits, but in lieu thereof, is entitled to
21 receive that rate of salary and allowance pertinent to the rank or
22 grade held by the member when retired. When the member is
23 released from active duty he or she shall reassume the status of
24 retirement and shall thereupon be entitled to receive appropriate
25 benefits as provided by this article: *Provided*, That the amount
26 of the benefits shall in no event be less than the amount
27 determined by the order of the Retirement Board previously
28 made in his or her behalf.

§15-2-33. Awards and benefits to dependents of member — When member dies in performance of duty, etc.; dependent child scholarship and amount.

1 (a) The surviving spouse or the dependent child or children
2 or dependent parent or parents of any member who has lost or
3 loses his or her life by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of members while the member
6 was or is engaged in the performance of his or her duties as a
7 member of the Department, or if the member dies from any
8 cause after having been retired pursuant to the provisions of
9 section twenty-nine of this article, the surviving spouse or other
10 dependent is entitled to receive and shall be paid from the
11 Death, Disability and Retirement Fund benefits as follows: To
12 the surviving spouse annually, in equal monthly installments
13 during his or her lifetime one or the other of two amounts,
14 which shall become immediately available and which shall be
15 the greater of:

16 (1) An amount equal to seven tenths of the salary received
17 in the preceding twelve-month employment period by the
18 deceased member: *Provided*, That if the member had not been
19 employed with the Department for twelve months prior to the
20 disability, the amount of monthly salary shall be annualized for
21 the purpose of determining the benefit; or

22 (2) The sum of six thousand dollars.

23 (b) In addition thereto the surviving spouse is entitled to
24 receive and there shall be paid to the surviving spouse one
25 hundred dollars monthly for each dependent child or children.
26 If the surviving spouse dies or if there is no surviving spouse,
27 there shall be paid monthly to each dependent child or children
28 from the Death, Disability and Retirement Fund a sum equal to
29 twenty-five percent of the surviving spouse's entitlement. If
30 there is no surviving spouse and no dependent child or children,
31 there shall be paid annually in equal monthly installments from
32 the Death, Disability and Retirement Fund to the dependent
33 parents of the deceased member during their joint lifetimes a

34 sum equal to the amount which a surviving spouse, without
35 children, would have received: *Provided*, That when there is but
36 one dependent parent surviving, that parent is entitled to receive
37 during his or her lifetime one-half the amount which both
38 parents, if living, would have been entitled to receive.

39 (c) Any person qualified as a surviving dependent child
40 under this section, in addition to any other benefits due under
41 this or other sections of this article, is entitled to receive a
42 scholarship to be applied to the career development education
43 of that person. This sum up to but not exceeding seven thousand
44 five hundred dollars shall be paid from the Death, Disability
45 and Retirement Fund to any university or college in this state or
46 to any trade or vocational school or other entity in this state
47 approved by the Board, to offset the expenses of tuition, room
48 and board, books, fees or other costs incurred in a course of
49 study at any of those institutions so long as the recipient makes
50 application to the Board on an approved form and under rules
51 as provided by the Board, and maintains scholastic eligibility as
52 defined by the institution or the Board. The Board may by
53 appropriate rules define age requirements, physical and mental
54 requirements, scholastic eligibility, disbursement methods,
55 institutional qualifications and other requirements as necessary
56 and not inconsistent with this section.

57 (d) Awards and benefits for a member's surviving spouse
58 or dependents received under any section or any of the provi-
59 sions of this retirement system shall be in lieu of receipt of any
60 benefits for those persons under the provisions of any other
61 state retirement system. Receipt of benefits under any other
62 state retirement system shall be in lieu of any right to receive
63 any benefits under this retirement system, so that only a single
64 receipt of retirement benefits occurs.

65 (e) For the purposes of this section, the term "salary" does
66 not include any compensation paid for overtime service.

§15-2-34. Same — When member dies from nonservice-connected causes.

1 (a) In any case where a member while in active service of
2 the Department, before having completed twenty years of
3 service as a member of the Department, dies from any cause
4 other than those specified in this article and not due to vicious
5 habits, intemperance or willful misconduct on his or her part,
6 there shall be paid annually in equal monthly installments from
7 the Death, Disability and Retirement Fund to the surviving
8 spouse of the member during his or her lifetime, or until such
9 time as the surviving spouse remarries, a sum equal to one half
10 of the salary received in the preceding twelve-month employ-
11 ment period by the deceased member: *Provided*, That if the
12 member had not been employed with the Department for twelve
13 months prior to his or her death, the amount of monthly salary
14 shall be annualized for the purpose of determining the benefit.
15 The benefit shall become immediately available upon the death
16 of the member. If there is no surviving spouse, or the surviving
17 spouse dies or remarries, there shall be paid monthly to each
18 dependent child or children, from the Death, Disability and
19 Retirement Fund, a sum equal to twenty-five percent of the
20 surviving spouse's entitlement. If there is no surviving spouse
21 and no dependent child or children, there shall be paid annually
22 in equal monthly installments from the Fund to the dependent
23 parents of the deceased member during their joint lifetimes, a
24 sum equal to the amount which a surviving spouse would have
25 been entitled to receive: *Provided, however*, That when there is
26 but one dependent parent surviving, that parent is entitled to
27 receive during his or her lifetime one-half the amount which
28 both parents, if living, would have been entitled to receive.

29 (b) For the purposes of this section, the term "salary" does
30 not include compensation paid for overtime service.

§15-2-37. Refunds to certain members upon discharge or resignation; deferred retirement.

1 (a) Any member who is discharged by order of the Superin-
2 tendent or otherwise terminates employment with the Depart-
3 ment, at the written request of the member to the Retirement
4 Board, is entitled to receive from the Retirement Fund a sum
5 equal to the aggregate of the principal amount of moneys
6 deducted from his or her salary and paid into the Death,
7 Disability and Retirement Fund plus four percent interest
8 compounded thereon calculated annually as provided and
9 required by this article.

10 (b) Any member who has ten or more years of service with
11 the Department and who withdraws his or her contributions
12 may thereafter be reenlisted as a member of the Department,
13 but may not receive any prior service credit on account of
14 former service, unless following reenlistment the member
15 redeposits in the Fund established in article two-a of this
16 chapter the amount of the refund, together with interest thereon
17 at the rate of seven and one-half percent per annum from the
18 date of withdrawal to the date of redeposit, in which case he or
19 she shall receive the same credit on account of his or her former
20 service as if no refund had been made. He or she shall become
21 a member of the Retirement System established in article two-a
22 of this chapter.

23 (c) Every member who completes ten years of service with
24 the Department is eligible, upon separation of employment with
25 the Department, either to withdraw his or her contributions in
26 accordance with subsection (a) of this section or to choose not
27 to withdraw his or her accumulated contributions with interest.
28 Upon attainment of age sixty-two, a member who chooses not
29 to withdraw his or her contributions is eligible to receive a
30 retirement annuity. Any member choosing to receive the
31 deferred annuity under this subsection is not eligible to receive

32 the annual annuity adjustment provided in section twenty-
33 seven-a of this article. When the Retirement Board retires any
34 member under any of the provisions of this section, the Board
35 shall, by order in writing, make an award directing that the
36 member is entitled to receive annually and that there shall be
37 paid to the member from the Death, Disability and Retirement
38 Fund in equal monthly installments during the lifetime of the
39 member while in status of retirement one or the other of two
40 amounts, whichever is greater:

41 (1) An amount equal to five and one-half percent of the
42 aggregate of salary paid to the member during the whole period
43 of service as a member of the Department; or

44 (2) The sum of six thousand dollars.

45 The annuity shall be payable during the lifetime of the
46 member. The retiring member may choose, in lieu of a life
47 annuity, an annuity in reduced amount payable during the
48 member's lifetime, with one half of the reduced monthly
49 amount paid to his or her surviving spouse if any, for the
50 spouse's remaining lifetime after the death of the member.
51 Reduction of this monthly benefit amount shall be calculated to
52 be of equal actuarial value to the life annuity the member could
53 otherwise have chosen.

§15-2-39a. Limitations on benefit increases.

1 (a) The state shall not increase any existing benefits or
2 create any new benefits for any retirees or beneficiaries
3 currently receiving monthly benefit payments from the system,
4 other than an increase in benefits or new benefits effected by
5 operation of law in effect on the effective date of this article, in
6 an amount that would exceed more than one percent of the
7 accrued actuarial liability of the system as of the last day of the
8 preceding fiscal year as determined in the annual actuarial
9 valuation for the plan completed for the Consolidated Public

10 Retirement Board as of the first day of the following fiscal year
11 as of the date the improvement is adopted by the Legislature.

12 (b) If any increase of existing benefits or creation of new
13 benefits for any retirees or beneficiaries currently receiving
14 monthly benefit payments under the system, other than an
15 increase in benefits or new benefits effected by operation of law
16 in effect on the effective date of this article, causes any addi-
17 tional unfunded actuarial accrued liability in any of the West
18 Virginia state sponsored pension systems as calculated in the
19 annual actuarial valuation for the plan during any fiscal year,
20 the additional unfunded actuarial accrued liability of the system
21 shall be fully amortized over no more than the six consecutive
22 fiscal years following the date the increase in benefits or new
23 benefits become effective as certified by the consolidated
24 public retirement board. Following the receipt of the certifica-
25 tion of additional actuarial accrued liability, the Governor shall
26 submit the amount of the amortization payment each year for
27 the system as part of the annual budget submission or in an
28 executive message to the Legislature.

29 (c) Notwithstanding the provisions of subsections (a) and
30 (b) of this section, the computation of annuities or benefits for
31 active members due to retirement, death or disability as
32 provided for in the system shall not be amended in such a
33 manner as to increase any existing benefits or to provide for
34 new benefits.

35 (d) The provisions of this section terminate effective the
36 first day of July, two thousand twenty-five: *Provided*, That if
37 bonds are issued pursuant to article eight, chapter twelve of this
38 code, the provisions of this section shall not terminate while
39 any of the bonds are outstanding.

ARTICLE 2A. WEST VIRGINIA STATE POLICE RETIREMENT SYSTEM.

§15-2A-2. Definitions.

§15-2A-5. Members' contributions; employer contributions; forfeitures.

- §15-2A-6. Retirement; commencement of benefits.
- §15-2A-7. Annual annuity adjustment.
- §15-2A-8. Refunds to certain members upon discharge or resignation; deferred retirement.
- §15-2A-9. Awards and benefits for disability — Incurred in performance of duty.
- §15-2A-10. Same - Due to other causes.
- §15-2A-11. Same - Physical examinations; termination.
- §15-2A-11a. Physical examinations of prospective members; application for disability benefit; determinations.
- §15-2A-11b. Annual report on each employer's disability retirement experience.
- §15-2A-12. Awards and benefits to dependents of member — When member dies in performance of duty, etc.; dependent child scholarship and amount.
- §15-2A-13. Same — When member dies from nonservice-connected causes.
- §15-2A-14. Awards and benefits to dependents of member — When member dies after retirement or after serving twenty years.
- §15-2A-19. Credit toward retirement for member's prior military service; credit toward retirement when member has joined armed forces in time of armed conflict; qualified military service.
- §15-2A-21. Retirement credited service through member's use, as option, of accrued annual or sick leave days.
- §15-2A-22. Limitations on benefit increases.

§15-2A-2. Definitions.

1 As used in this article, unless the context clearly requires a
2 different meaning:

3 (1) "Active military duty" means full-time active duty with
4 the Armed Forces of the United States, namely, the United
5 States Air Force, Army, Coast Guard, Marines or Navy; and
6 service with the National Guard or reserve military forces of
7 any of the Armed Forces when the member has been called to
8 active full-time duty and has received no compensation during
9 the period of duty from any person other than the Armed
10 Forces.

11 (2) "Base salary" means compensation paid to a member
12 without regard to any overtime pay.

13 (3) "Board" means the Consolidated Public Retirement
14 Board created pursuant to article ten-d, chapter five of this
15 code.

16 (4) "Department" means the West Virginia State Police.

17 (5) "Final average salary" means the average of the highest
18 annual compensation received for employment with the
19 Department, including compensation paid for overtime service,
20 received by the member during any five calendar years within
21 the member's last ten years of service.

22 (6) "Fund" means the West Virginia State Police Retirement Fund created pursuant to section four of this article.

24 (7) "Internal Revenue Code" means the Internal Revenue
25 Code of 1986, as amended.

26 (8) "Law-enforcement officer" means individuals employed
27 or otherwise engaged in either a public or private position
28 which involves the rendition of services relating to enforcement
29 of federal, state or local laws for the protection of public or
30 private safety, including, but not limited to, positions as deputy
31 sheriffs, police officers, marshals, bailiffs, court security
32 officers or any other law-enforcement position which requires
33 certification, but excluding positions held by elected sheriffs or
34 appointed chiefs of police whose duties are purely administrative
35 in nature.

36 (9) "Member" or "employee" means a person regularly
37 employed in the service of the Department as a law-enforcement
38 officer after the effective date of this article.

39 (10) "Month of service" means each month for which a
40 member is paid or entitled to payment for at least one hour of
41 service for which contributions were remitted to the Fund.
42 These months shall be credited to the member for the calendar
43 year in which the duties are performed.

44 (11) "Partially disabled" means a member's inability, on a
45 probable permanent basis, to perform the essential duties of a

46 law enforcement officer by reason of any medically determina-
47 ble physical or mental impairment which has lasted or can be
48 expected to last for a continuous period of not less than twelve
49 months, but which impairment does not preclude the member
50 from engaging in other types of nonlaw-enforcement employ-
51 ment.

52 (12) "Physical or mental impairment" means an impairment
53 that results from an anatomical, physiological or psychological
54 abnormality that is demonstrated by medically accepted clinical
55 and laboratory diagnostic techniques.

56 (13) "Plan year" means the twelve-month period commenc-
57 ing on the first day of July of any designated year and ending
58 the following thirtieth day of June.

59 (14) "Required beginning date" means the first day of April
60 of the calendar year following the later of: (a) The calendar year
61 in which the member attains age seventy and one half years; or
62 (b) the calendar year in which he or she retires or otherwise
63 separates from service with the Department after having
64 attained the age of seventy and one half years.

65 (15) "Retirement system," "plan" or "system" means the
66 West Virginia State Police Retirement System created and
67 established by this article.

68 (16) "Salary" means the compensation of a member,
69 excluding any overtime payments.

70 (17) "Totally disabled" means a member's probable
71 permanent inability to engage in substantial gainful activity by
72 reason of any medically determined physical or mental impair-
73 ment that can be expected to result in death or that has lasted or
74 can be expected to last for a continuous period of not less than
75 twelve months. For purposes of this subdivision, a member is
76 totally disabled only if his or her physical or mental impair-

77 ments are so severe that he or she is not only unable to perform
78 his or her previous work as a member of the Department, but
79 also cannot, considering his or her age, education and work
80 experience, engage in any other kind of substantial gainful
81 employment which exists in the state regardless of whether: (A)
82 The work exists in the immediate area in which the member
83 lives; (B) a specific job vacancy exists; or (C) the member
84 would be hired if he or she applied for work.

85 (18) "Years of service" means the months of service
86 acquired by a member while in active employment with the
87 Department divided by twelve. Years of service shall be
88 calculated in years and fraction of a year from the date of active
89 employment of the member with the Department through the
90 date of termination of employment or retirement from the
91 Department. If a member returns to active employment with the
92 Department following a previous termination of employment
93 with the Department, and the member has not received a refund
94 of contributions plus interest for the previous employment
95 under section eight of this article, service shall be calculated
96 separately for each period of continuous employment, and years
97 of service shall be the total service for all periods of employ-
98 ment. Years of service shall exclude any periods of employment
99 with the Department for which a refund of contributions plus
100 interest has been paid to the member, unless the member repays
101 the previous withdrawal, as provided in section eight of this
102 article, to reinstate the years of service.

**§15-2A-5. Members' contributions; employer contributions;
forfeitures.**

1 (a) There shall be deducted from the monthly payroll of
2 each member and paid into the Fund created pursuant to section
3 four of this article, twelve percent of the amount of his or her
4 salary.

5 (b) The state of West Virginia's contributions to the
6 retirement system, as determined by the Consolidated Public
7 Retirement Board by legislative rule promulgated in accordance
8 with the provisions of article three, chapter twenty-nine-a of
9 this code, shall be a percent of the members' total annual
10 compensation related to benefits under this retirement system.
11 In determining the amount, the Board shall give consideration
12 to setting the amount at a sum equal to an amount which, if paid
13 annually by the state, will be sufficient to provide for the total
14 normal cost of the benefits expected to become payable to all
15 members and to amortize any unfunded liability found by
16 application of the actuarial funding method chosen for that
17 purpose by the Consolidated Public Retirement Board, over a
18 period of years determined actuarially appropriate. When
19 proposing a rule for promulgation which relates to the amount
20 of employer contribution, the board may promulgate emergency
21 rules pursuant to the provisions of article three, chapter twenty-
22 nine-a of this code, if the inability of the Board to increase state
23 contributions will detrimentally affect the actuarial soundness
24 of the retirement system. A signed statement from the state
25 actuary shall accompany the statement of facts and circum-
26 stances constituting an emergency which shall be filed in the
27 State Register. For purposes of this section, subdivision (2),
28 subsection (b), section fifteen-a, article three, chapter twenty-
29 nine-a of this code is not applicable to the Secretary of State's
30 determination of whether an emergency rule should be ap-
31 proved. The state's contributions shall be paid monthly into the
32 fund created pursuant to section four of this article out of the
33 annual appropriation for the Department.

34 (c) Notwithstanding any other provisions of this article,
35 forfeitures under the system shall not be applied to increase the
36 benefits any member would otherwise receive under the system.

§15-2A-6. Retirement; commencement of benefits.

1 (a) A member may retire with full benefits upon attaining
2 the age of fifty-five and completing twenty or more years of
3 service, by lodging with the Consolidated Public Retirement
4 Board his or her voluntary petition in writing for retirement. A
5 member who is less than age fifty-five may retire upon com-
6 pleting twenty years or more of service: *Provided*, That he or
7 she will receive a reduced benefit that is of equal actuarial value
8 to the benefit the member would have received if the member
9 deferred commencement of his or her accrued retirement
10 benefit to the age of fifty-five.

11 (b) When the Retirement Board retires a member with full
12 benefits under the provisions of this section, the Board, by order
13 in writing, shall make a determination that the member is
14 entitled to receive an annuity equal to two and three-fourths
15 percent of his or her final average salary multiplied by the
16 number of years, and fraction of a year, of his or her service in
17 the Department at the time of retirement. The member's annuity
18 shall begin the first day of the calendar month following the
19 month in which the member's application for the annuity is
20 filed with the Board on or after his or her attaining age and
21 service requirements, and termination of employment.

22 (c) In no event may the provisions of section thirteen,
23 article sixteen, chapter five be applied in determining eligibility
24 to retire with either a deferred or immediate commencement of
25 benefit.

§15-2A-7. Annual annuity adjustment.

1 (a) Every member of the Department who is sixty-three
2 years of age or older and who is retired by the Retirement
3 Board under the provisions of section six of this article; every
4 member who is retired under the provisions of section nine or
5 ten of this article; and every surviving spouse receiving a
6 benefit pursuant to section twelve, thirteen or fourteen of this

7 article is eligible to receive an annual retirement annuity
8 adjustment equal to one percent of his or her retirement award
9 or surviving spouse award. The adjustments may not be
10 retroactive. Yearly adjustments shall begin upon the first day of
11 July of each year. The annuity adjustments shall be awarded
12 and paid to a member from the Fund in equal monthly install-
13 ments while the member is in status of retirement. The annuity
14 adjustments shall supplement the retirement awards and
15 benefits provided in this article.

16 (b) Any member or beneficiary who receives a benefit
17 pursuant to the provisions of section nine, ten, twelve, thirteen
18 or fourteen of this article shall begin to receive the annual
19 annuity adjustment one year after the commencement of the
20 benefit on the next July first: *Provided*, That if the member has
21 been retired for less than one year when the first annuity
22 adjustment is given on that July first, that first annuity adjust-
23 ment will be a pro rata share of the full year's annuity adjust-
24 ment.

**§15-2A-8. Refunds to certain members upon discharge or resig-
nation; deferred retirement.**

1 (a) Any member who is discharged by order of the Superin-
2 tendent or otherwise terminates employment with the Depart-
3 ment is, at the written request of the member to the Retirement
4 Board, entitled to receive from the Retirement Fund a sum
5 equal to the aggregate of the principal amount of moneys
6 deducted from the salary of the member and paid into the
7 Retirement Fund plus four percent interest compounded thereon
8 calculated annually as provided and required by this article.

9 (b) Any member withdrawing contributions who may
10 thereafter be reenlisted as a member of the Department shall not
11 receive any prior service credit on account of the former
12 service, unless following his or her reenlistment the member

13 redeposits in the Fund the amount of the refund, together with
14 interest thereon at the rate of seven and one-half percent per
15 annum from the date of withdrawal to the date of redeposit, in
16 which case he or she shall receive the same credit on account of
17 his or her former service as if no refund had been made.

18 (c) Every member who completes ten years of service with
19 the Department is eligible, upon separation of employment with
20 the Department, to either withdraw his or her contributions in
21 accordance with subsection (a) of this section, or to choose not
22 to withdraw his or her accumulated contributions with interest.
23 Upon attainment of age sixty-two, a member who chooses not
24 to withdraw his or her contributions is eligible to receive a
25 retirement annuity. The annuity shall be payable during the
26 lifetime of the member, and shall be in the amount of his or her
27 accrued retirement benefit as determined under section six of
28 this article. The retiring member may choose, in lieu of a life
29 annuity, an annuity in reduced amount payable during the
30 member's lifetime, with one half of the reduced monthly
31 amount paid to his or her surviving spouse if any, for the
32 spouse's remaining lifetime after the death of the member.
33 Reduction of the monthly benefit amount shall be calculated to
34 be of equal actuarial value to the life annuity the member could
35 otherwise have chosen. Any member choosing to receive the
36 deferred annuity under this subsection is not eligible to receive
37 the annual annuity adjustment provided in section seven of this
38 article.

**§15-2A-9. Awards and benefits for disability — Incurred in
performance of duty.**

1 (a) Except as otherwise provided in this section, a member
2 of the Department who has not yet entered retirement status on
3 the basis of age and service and who becomes partially disabled
4 by injury, illness or disease resulting from any occupational risk
5 or hazard inherent in or peculiar to the services required of

6 members of the Department and incurred pursuant to or while
7 the member was engaged in the performance of his or her duties
8 as a member of the Department shall, if, in the opinion of the
9 Retirement Board, he or she is, by reason of such cause, unable
10 to perform adequately the duties required of him or her as a
11 member of the Department, but is able to engage in other
12 gainful employment in a field other than law enforcement, be
13 retired from active service by the Board. The member thereafter
14 is entitled to receive annually and there shall be paid to the
15 member from the Fund in equal monthly installments during the
16 lifetime of the member, or until the member attains the age of
17 fifty-five or until the disability sooner terminates, one or the
18 other of two amounts, whichever is greater:

19 (1) An amount equal to six tenths of the base salary
20 received in the preceding twelve-month employment period:
21 *Provided*, That if the member had not been employed with the
22 Department for twelve months prior to the disability, the
23 amount of monthly salary shall be annualized for the purpose
24 of determining the benefit; or

25 (2) The sum of six thousand dollars.

26 Upon attaining age fifty-five, the member shall receive the
27 benefit provided in section six of this article as it would apply
28 to his or her final average salary based on earnings from the
29 Department through the day immediately preceding his or her
30 disability. The recalculation of benefit upon a member attaining
31 age fifty-five shall be considered to be a retirement under the
32 provisions of section six of this article, for purposes of deter-
33 mining the amount of annual annuity adjustment and for all
34 other purposes of this article: *Provided*, That a member who is
35 partially disabled under this article may not, while in receipt of
36 benefits for partial disability, be employed as a law-enforce-
37 ment officer: *Provided, however*, That a member retired on a
38 partial disability under this article may serve as an elected

39 sheriff or appointed chief of police in the state without a loss of
40 disability retirement benefits so long as the elected or appointed
41 position is shown, to the satisfaction of the Board, to require the
42 performance of administrative duties and functions only, as
43 opposed to the full range of duties of a law-enforcement officer.

44 (b) Any member who has not yet entered retirement status
45 on the basis of age and service and who becomes physically or
46 mentally disabled by injury, illness or disease on a probable
47 permanent basis resulting from any occupational risk or hazard
48 inherent in or peculiar to the services required of members of
49 the Department and incurred pursuant to or while the member
50 was or is engaged in the performance of his or her duties as a
51 member of the Department to the extent that the member is
52 incapacitated ever to engage in any gainful employment, the
53 member is entitled to receive annually, and there shall be paid
54 to the member from the Fund in equal monthly installments
55 during the lifetime of the member or until the disability sooner
56 terminates, an amount equal to the amount of the base salary
57 received by the member in the preceding twelve-month
58 employment period.

59 (c) The Superintendent of the Department may expend
60 moneys from funds appropriated for the Department in payment
61 of medical, surgical, laboratory, X-ray, hospital, ambulance and
62 dental expenses and fees, and reasonable costs and expenses
63 incurred in the purchase of artificial limbs and other approved
64 appliances which may be reasonably necessary for any member
65 of the Department who is temporarily, permanently or totally
66 disabled by injury, illness or disease resulting from any
67 occupational risk or hazard inherent in or peculiar to the service
68 required of members of the Department and incurred pursuant
69 to or while the member was or shall be engaged in the perfor-
70 mance of duties as a member of the Department. Whenever the
71 Superintendent determines that any disabled member is
72 ineligible to receive any of the aforesaid benefits at public

73 expense, the Superintendent shall, at the request of the disabled
74 member, refer the matter to the Board for hearing and final
75 decision. In no case will the compensation rendered to health
76 care providers for medical and hospital services exceed the then
77 current rate schedule in use by the Bureau of Employment
78 Programs, Workers' Compensation Division.

§15-2A-10. Same — Due to other causes.

1 (a) If any member while in active service of the State Police
2 becomes partially or totally disabled on a probable permanent
3 basis to the extent that the member cannot adequately perform
4 the duties required of a member of the Department from any
5 cause other than those set forth in the preceding section and not
6 due to vicious habits, intemperance or willful misconduct on his
7 or her part, the member shall be retired by the Board. There
8 shall be paid annually to the member from the Fund in equal
9 monthly installments, commencing on the date the member is
10 retired and continuing during the lifetime of the member; or
11 until the member attains the age of fifty-five; while in status of
12 retirement an amount equal to one half the base salary received
13 by the member in the preceding twelve-month period: *Pro-*
14 *vided*, That if the member had not been employed with the
15 Department for twelve months prior to the disability, the
16 amount of monthly salary shall be annualized for the purpose
17 of determining the benefit.

18 (b) Upon attaining age fifty-five, the member shall receive
19 the benefit provided in section six of this article as it would
20 apply to his or her final average salary based on earnings from
21 the Department through the day immediately preceding his or
22 her disability. The recalculation of benefit upon a member
23 attaining age fifty-five shall be considered to be a retirement
24 under the provisions of section six of this article, for purposes
25 of determining the amount of annual annuity adjustment and for
26 all other purposes of this article.

§15-2A-11. Same — Physical examinations; termination.

1 The Board may require any member retired with compensa-
2 tion on account of disability to submit to a physical or mental
3 examination or both a physical and mental examination by a
4 physician or physicians selected or approved by the Board and
5 cause all costs incident to the examination including hospital,
6 laboratory, X-ray, medical and physicians' fees to be paid out
7 of funds appropriated to defray the current expenses of the
8 Department, and a report of the findings of the physician or
9 physicians shall be submitted in writing to the Board for its
10 consideration. If from the report or from the report and hearing
11 on the report, the Board is of opinion and finds that the disabled
12 member has recovered from the disability to the extent that he
13 or she is able to perform adequately the duties of a law-enforce-
14 ment officer, the Board shall order that all payments from the
15 Fund be terminated. If from the report or the report and hearing
16 on the report, the Board is of the opinion and find that the
17 disabled member has recovered from his or her previously
18 determined probable permanent disability to the extent that he
19 or she is able to engage in any gainful employment but unable
20 to adequately perform the duties of a law-enforcement officer,
21 the Board shall order, in the case of a member retired under the
22 provisions of section nine of this article, that the disabled
23 member be paid annually from the Fund an amount equal to six
24 tenths of the base salary paid to the member in the last twelve-
25 month employment period. The Board shall order, in the case
26 of a member retired under the provisions of section ten of this
27 article, that the disabled member be paid from the Fund an
28 amount equal to one fourth of the base salary paid to the
29 member in the last twelve-month employment period: *Provided,*
30 That if the member had not been employed with the Department
31 for twelve months prior to the disability, the amount of monthly
32 salary shall be annualized for the purpose of determining the
33 benefit.

§15-2A-11a. Physical examinations of prospective members; application for disability benefit; determinations.

1 (a) Not later than thirty days after an employee becomes a
2 member of the Fund, the employer shall forward to the Board
3 a copy of the physician's report of a physical examination
4 which incorporates the standards or procedures described in
5 section seven, article two, chapter fifteen of this code. A copy
6 of the physicians's report shall be placed in the employee's
7 retirement system file maintained by the Board.

8 (b) Application for a disability benefit may be made by a
9 member or, if the member is under an incapacity, by a person
10 acting with legal authority on the member's behalf. After
11 receiving an application for a disability benefit, the Board shall
12 notify the Superintendent of the Department that an application
13 has been filed: *Provided*, That when, in the judgment of the
14 Superintendent, a member is no longer physically or mentally
15 fit for continued duty as a member of the West Virginia State
16 Police and the member has failed or refused to make application
17 for disability benefits under this article, the Superintendent may
18 petition the Board to retire the member on the basis of disability
19 pursuant to legislative rules proposed in accordance with article
20 three, chapter twenty-nine-a of this code. Within thirty days of
21 the Superintendent's receipt of the notice from the Board or the
22 filing of the Superintendent's petition with the Board, the
23 Superintendent shall forward to the Board a statement certifying
24 the duties of the member's employment, information relating to
25 the Superintendent's position on the work relatedness of the
26 member's alleged disability, complete copies of the member's
27 medical file and any other information requested by the Board
28 in its processing of the application.

29 (c) The Board shall propose legislative rules in accordance
30 with article three, chapter twenty-nine-a of this code relating to

31 the processing of applications and petitions for disability
32 retirement under this article.

33 (d) The Board shall notify a member and the Superinten-
34 dent of its final action on the disability application or petition
35 within ten days of the Board's final action. The notice shall be
36 sent by certified mail, return receipt requested. If either the
37 member or the Superintendent is aggrieved by the decision of
38 the Board and intends to pursue judicial review of the Board's
39 decision as provided in section four, article five, chapter
40 twenty-nine-a of this code, the party aggrieved shall notify the
41 Board within twenty days of the member's or Superintendent's
42 receipt of the Board's notice that they intend to pursue judicial
43 review of the Board's decision.

44 (e) The Board may require a disability benefit recipient to
45 file an annual statement of earnings and any other information
46 required in rules which may be adopted by the Board. The
47 Board may waive the requirement that a disability benefit
48 recipient file the annual statement of earnings if the Board's
49 physician certifies that the recipient's disability is ongoing. The
50 Board shall annually examine the information submitted by the
51 recipient. If a disability recipient refuses to file the statement or
52 information, the disability benefit shall be suspended until the
53 statement and information are filed.

**§15-2A-11b. Annual report on each employer's disability retire-
ment experience.**

1 Not later than the first day of January, two thousand six,
2 and each first day of January thereafter, the Board shall prepare
3 a report for the preceding fiscal year of the disability retirement
4 experience of the State Police. The report shall specify the total
5 number of disability applications submitted, the status of each
6 application as of the last day of the fiscal year, total applica-
7 tions granted or denied, and the percentage of disability benefit

8 recipients to the total number of the State Police employees
9 who are members of the Fund. The report shall be submitted to
10 the Governor and the chairpersons of the standing committees
11 of the Senate and House of Delegates with primary responsibil-
12 ity for retirement legislation.

**§15-2A-12. Awards and benefits to dependents of member —
When member dies in performance of duty, etc.;
dependent child scholarship and amount.**

1 The surviving spouse, the dependent child or children or
2 dependent parent or parents of any member who has lost or
3 shall lose his or her life by reason of injury, illness or disease
4 resulting from an occupational risk or hazard inherent in or
5 peculiar to the service required of members while the member
6 was engaged in the performance of his or her duties as a
7 member of the Department, or the survivor of a member who
8 dies from any cause after having been retired pursuant to the
9 provisions of section nine of this article, is entitled to receive
10 and shall be paid from the Fund benefits as follows: To the
11 surviving spouse annually, in equal monthly installments during
12 his or her lifetime, one or the other of two amounts, which shall
13 become immediately available and which shall be the greater
14 of:

15 (1) An amount equal to seven tenths of the base salary
16 received in the preceding twelve-month employment period by
17 the deceased member: *Provided*, That if the member had not
18 been employed with the Department for twelve months prior to
19 his or her death, the amount of monthly salary shall be annual-
20 ized for the purpose of determining the benefit; or

21 (2) The sum of six thousand dollars.

22 In addition thereto, the surviving spouse is entitled to
23 receive and there shall be paid to the person one hundred
24 dollars monthly for each dependent child or children. If the

25 surviving spouse dies or if there is no surviving spouse, there
26 shall be paid monthly to each dependent child or children from
27 the Fund a sum equal to one fourth of the surviving spouse's
28 entitlement. If there is no surviving spouse and no dependent
29 child or children, there shall be paid annually in equal monthly
30 installments from the Fund to the dependent parents of the
31 deceased member during their joint lifetimes a sum equal to the
32 amount which a surviving spouse, without children, would have
33 received: *Provided*, That when there is but one dependent
34 parent surviving, that parent is entitled to receive during his or
35 her lifetime one half the amount which both parents, if living,
36 would have been entitled to receive.

37 Any person qualifying as a surviving dependent child under
38 this section, in addition to any other benefits due under this or
39 other sections of this article, is entitled to receive a scholarship
40 to be applied to the career development education of that
41 person. This sum, up to but not exceeding seven thousand five
42 hundred dollars, shall be paid from the Fund to any university
43 or college in this state or to any trade or vocational school or
44 other entity in this state approved by the Board, to offset the
45 expenses of tuition, room and board, books, fees or other costs
46 incurred in a course of study at any of these institutions so long
47 as the recipient makes application to the Board on an approved
48 form and under rules provided by the Board, and maintains
49 scholastic eligibility as defined by the institution or the Board.
50 The Board may by appropriate rules define age requirements,
51 physical and mental requirements, scholastic eligibility,
52 disbursement methods, institutional qualifications and other
53 requirements as necessary and not inconsistent with this
54 section.

55 Awards and benefits for a surviving spouse or dependents
56 of a member received under any section or any of the provi-
57 sions of this retirement system are in lieu of receipt of any
58 benefits for these persons under the provisions of any other

59 state retirement system. Receipt of benefits under any other
60 state retirement system is in lieu of any right to receive any
61 benefits under this retirement system, so that only a single
62 receipt of state retirement benefits occurs.

§15-2A-13. Same — When member dies from nonservice-connected causes.

1 In any case where a member while in active service of the
2 Department, before having completed twenty years of service
3 as a member of the Department, dies from any cause other than
4 those specified in this article and not due to vicious habits,
5 intemperance or willful misconduct on his or her part, there
6 shall be paid annually in equal monthly installments from the
7 Fund to the surviving spouse of the member during his or her
8 lifetime, or until such time as the surviving spouse remarries, a
9 sum equal to one half of the base salary received in the preced-
10 ing twelve-month employment period by the deceased member:
11 *Provided*, That if the member had not been employed with the
12 Department for twelve months prior to the disability, the
13 amount of monthly salary shall be annualized for the purpose
14 of determining the benefit. If there is no surviving spouse or the
15 surviving spouse dies or remarries, there shall be paid monthly
16 to each dependent child or children from the Fund a sum equal
17 to one fourth of the surviving spouse's entitlement. If there is
18 no surviving spouse and no dependent child or children, there
19 shall be paid annually in equal monthly installments from the
20 Fund to the dependent parents of the deceased member during
21 their joint lifetimes a sum equal to the amount that a surviving
22 spouse would have been entitled to receive: *Provided, however*,
23 That when there is but one dependent parent surviving, then that
24 parent is entitled to receive during his or her lifetime one half
25 the amount which both parents, if living, would have been
26 entitled to receive.

**§15-2A-14. Awards and benefits to dependents of member —
When member dies after retirement or after
serving twenty years.**

1 (a) When any member of the Department has completed
2 twenty years of service or longer as a member of the Depart-
3 ment and dies from any cause or causes other than those
4 specified in this article before having been retired by the Board,
5 and when a member in retirement status has died after having
6 been retired by the Board under the provisions of this article,
7 there shall be paid annually in equal monthly installments from
8 the Fund to the surviving spouse of the member, commencing
9 on the date of the death of the member and continuing during
10 the lifetime or until remarriage of the surviving spouse, an
11 amount equal to two thirds of the retirement benefit which the
12 deceased member was receiving while in status of retirement,
13 or would have been entitled to receive to the same effect as if
14 the member had been retired under the provisions of this article
15 immediately prior to the time of his or her death. In no event
16 shall the annual benefit payable be less than five thousand
17 dollars. In addition thereto, the surviving spouse is entitled to
18 receive and there shall be paid to the surviving spouse from the
19 Fund the sum of one hundred dollars monthly for each depend-
20 ent child or children. If the surviving spouse dies or remarries,
21 or if there is no surviving spouse, there shall be paid monthly
22 from the Fund to each dependent child or children of the
23 deceased member a sum equal to one fourth of the surviving
24 spouse's entitlement. If there is no surviving spouse or no
25 surviving spouse eligible to receive benefits and no dependent
26 child or children, there shall be paid annually in equal monthly
27 installments from the Fund to the dependent parents of the
28 deceased member during their joint lifetimes a sum equal to the
29 amount which a surviving spouse without children would have
30 been entitled to receive: *Provided*, That when there is but one
31 dependent parent surviving, that parent is entitled to receive

32 during his or her lifetime one half the amount which both
33 parents, if living, would have been entitled to receive.

34 (b) The member may choose a higher percentage of
35 surviving spouse benefits by taking an actuarially determined
36 reduced initial benefit so that the chosen spouse benefit and
37 initial benefit would be actuarially equivalent to the normal
38 spouse benefit and initial benefit. The Retirement Board shall
39 design these benefit options and provide them as choices for the
40 member to select. For the purposes of this subsection, "initial
41 benefit" means the benefit received by the member upon
42 retirement.

**§15-2A-19. Credit toward retirement for member's prior military
service; credit toward retirement when member
has joined armed forces in time of armed conflict;
qualified military service.**

1 (a) Any member who has previously served on active
2 military duty is entitled to receive additional credited service
3 for the purpose of determining the amount of retirement award
4 under the provisions of this article for a period equal to the
5 active military duty not to exceed five years, subject to the
6 following:

7 (1) That he or she has been honorably discharged from the
8 Armed Forces;

9 (2) That he or she substantiates by appropriate documenta-
10 tion or evidence his or her period of active military duty;

11 (3) That he or she is receiving no benefits from any other
12 retirement system for his or her active military duty; and

13 (4) That, except with respect to disability retirement pay
14 awarded under this article, he or she has actually served with

15 the Department for twenty years exclusive of his or her active
16 military duty.

17 (b) In addition, any person who while a member of the
18 Department was commissioned, enlisted or inducted into the
19 Armed Forces of the United States or, being a member of the
20 reserve officers' corps, was called to active duty in the Armed
21 Forces between the first day of September, one thousand nine
22 hundred forty, and the close of hostilities in World War II, or
23 between the twenty-seventh day of June, one thousand nine
24 hundred fifty, and the close of the armed conflict in Korea on
25 the twenty-seventh day of July, one thousand nine hundred
26 fifty-three, between the first day of August, one thousand nine
27 hundred sixty-four, and the close of the armed conflict in
28 Vietnam, or during any other period of armed conflict by the
29 United States whether sanctioned by a declaration of war by
30 Congress or by executive or other order of the President, is
31 entitled to and shall receive credit on the minimum period of
32 service required by law for retirement pay from the service of
33 the Department, or its predecessor agency, for a period equal to
34 the full time that he or she has or, pursuant to that commission,
35 enlistment, induction or call, shall have served with the Armed
36 Forces subject to the following:

37 (1) That he or she has been honorably discharged from the
38 Armed Forces;

39 (2) That within ninety days after honorable discharge from
40 the Armed Forces, he or she presented himself or herself to the
41 Superintendent and offered to resume service as an active
42 member of the Department; and

43 (3) That he or she has made no voluntary act, whether by
44 reenlistment, waiver of discharge, acceptance of commission or
45 otherwise, to extend or participate in extension of the period of
46 service with the Armed Forces beyond the period of service for

47 which he or she was originally commissioned, enlisted,
48 inducted or called.

49 (c) The total amount of military service credit allowable
50 under this section may not exceed five years for any member of
51 the Department.

52 (d) Notwithstanding the preceding provisions of this
53 section, contributions, benefits and service credit with respect
54 to qualified military service shall be provided in accordance
55 with Section 414 (u) of the Internal Revenue Code. For pur-
56 poses of this section, "qualified military service" has the same
57 meaning as in Section 414 (u) of the Internal Revenue Code.
58 The Retirement Board shall determine all questions and make
59 all decisions relating to this section and, pursuant to the
60 authority granted to the Retirement Board in section one, article
61 ten-d, chapter five of this code, may promulgate rules relating
62 to contributions, benefits and service credit to comply with
63 Section 414 (u) of the Internal Revenue Code.

**§15-2A-21. Retirement credited service through member's use, as
option, of accrued annual or sick leave days.**

1 Any member accruing annual leave or sick leave days may,
2 after the effective date of this section, elect to use the days at
3 the time of retirement to acquire additional credited service in
4 this retirement system. The days shall be applied on the basis of
5 two workdays' credit granted for each one day of accrued
6 annual or sick leave days, with each month of retirement
7 service credit to equal twenty workdays and with any remainder
8 of ten workdays or more to constitute a full month of additional
9 credit and any remainder of less than ten workdays to be
10 dropped and not used, notwithstanding any provisions of the
11 code to the contrary. The credited service shall be allowed and
12 not considered to controvert the requirement of no more than
13 twelve months' credited service in any year's period.

§15-2A-22. Limitations on benefit increases.

1 (a) The state will not increase any existing benefits or
2 create any new benefits for any retirees or beneficiaries
3 currently receiving monthly benefit payments from the system,
4 other than an increase in benefits or new benefits effected by
5 operation of law in effect on the effective date of this article, in
6 an amount that would exceed more than one percent of the
7 accrued actuarial liability of the system as of the last day of the
8 preceding fiscal year as determined in the annual actuarial
9 valuation for the plan completed for the Consolidated Public
10 Retirement Board as of the first day of the following fiscal year
11 as of the date the improvement is adopted by the Legislature.

12 (b) If any increase of existing benefits or creation of new
13 benefits for any retirees or beneficiaries currently receiving
14 monthly benefit payments under the system, other than an
15 increase in benefits or new benefits effected by operation of law
16 in effect on the effective date of this article, causes any addi-
17 tional unfunded actuarial accrued liability in the system as
18 calculated in the annual actuarial valuation for the plan during
19 any fiscal year, the additional unfunded actuarial accrued
20 liability of that pension system will be fully amortized over no
21 more than the six consecutive fiscal years following the date the
22 increase in benefits or new benefits become effective as
23 certified by the Consolidated Public Retirement Board. The
24 Consolidated Public Retirement Board shall include the six year
25 amortization in the determination of the adequacy of the
26 employer contribution percentage for the system.

27 (c) The state will not increase any existing benefits or
28 create any new benefits for active members due to retirement,
29 death or disability of the system unless the actuarial accrued
30 liability of the plan shall be at least eighty-five percent funded
31 as of the last day of the prior fiscal year as determined in the
32 actuarial valuation for the plan completed for the Consolidated

33 Public Retirement Board as of the first day of the following
34 fiscal year as of the date the improvement is adopted by the
35 Legislature. Any additional unfunded actuarial accrued liability
36 due to any improvement in active members benefits shall be
37 fully amortized over not more than ten years following the date
38 the increase in benefits or new benefits become effective as
39 certified by the Consolidated Public Retirement Board. The
40 Consolidated Public Retirement Board shall include the ten year
41 amortization in the determination of the adequacy of the
42 employer contribution percentage for the system.

CHAPTER 18. EDUCATION.

Article

7A. State teachers retirement system.

7B. Teachers' defined contribution retirement system.

7C. Merger of teachers' defined contribution retirement system with state teachers retirement system.

ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

§18-7A-3. Definitions.

§18-7A-14. Contributions by members; contributions by employers.

§18-7A-17. Statement and computation of teachers' service; qualified military service.

§18-7A-18. Teachers Employers Contribution Collection Account; Teachers Retirement System Fund; transfers.

§18-7A-18a. Calculation of allocation to Teachers Employers Contribution Collection Account.

§18-7A-23a. Terminal benefits.

§18-7A-25. Eligibility for retirement allowance.

§18-7A-26. Computation of annuities.

§18-7A-28e. Limitations on benefit increases.

§18-7A-34. Loans to members.

§18-7A-39. Employee Pension and Health Care Benefits Fund.

§18-7A-40. Higher education employees.

§18-7A-3. Definitions.

- 1 (a) As used in this article, unless the context clearly require
- 2 a different meaning:

3 (1) "Accumulated contributions" means all deposits and all
4 deductions from the gross salary of a contributor plus regular
5 interest.

6 (2) "Accumulated net benefit" means the aggregate amount
7 of all benefits paid to or on behalf of a retired member;

8 (3) "Annuities" means the annual retirement payments for
9 life granted beneficiaries in accordance with this article.

10 (4) "Average final salary" means the average of the five
11 highest fiscal year salaries earned as a member within the last
12 fifteen fiscal years of total service credit, including military
13 service as provided in this article, or if total service is less than
14 fifteen years, the average annual salary for the period on which
15 contributions were made.

16 (5) "Beneficiary" means the recipient of annuity payments
17 made under the retirement system.

18 (6) "Contributor" means a member of the retirement system
19 who has an account in the teachers accumulation fund.

20 (7) "Deposit" means a voluntary payment to his or her
21 account by a member.

22 (8) "Employer" means the agency of and within the state
23 which has employed or employs a member.

24 (9) "Employment term" means employment for at least ten
25 months, a month being defined as twenty employment days.

26 (10) "Gross salary" means the fixed annual or periodic cash
27 wages paid by a participating public employer to a member for
28 performing duties for the participating public employer for
29 which the member was hired. Gross salary shall also include
30 retroactive payments made to a member to correct a clerical

31 error, or pursuant to a court order or final order of an adminis-
32 trative agency charged with enforcing federal or state law
33 pertaining to the member's rights to employment or wages, with
34 all such retroactive salary payments to be allocated to and
35 deemed paid in the periods in which the work was or would
36 have been done. Gross salary shall not include lump sum
37 payments for bonuses, early retirement incentives, severance
38 pay, or any other fringe benefit of any kind including, but not
39 limited to, transportation allowances, automobiles or automo-
40 bile allowances, or lump sum payments for unused, accrued
41 leave of any type or character.

42 (11) "Internal Revenue Code" means the Internal Revenue
43 Code of 1986, as it has been amended.

44 (12) "Member" means a member of the retirement system.

45 (13) "Members of the administrative staff of the public
46 schools" means deans of instruction, deans of men, deans of
47 women, and financial and administrative secretaries.

48 (14) "Members of the extension staff of the public schools"
49 means every agricultural agent, boys' and girls' club agent and
50 every member of the agricultural extension staff whose work is
51 not primarily stenographic, clerical or secretarial.

52 (15) "New entrant" means a teacher who is not a present
53 teacher.

54 (16) "Nonteaching member" means any person, except a
55 teacher member, who is regularly employed for full-time
56 service by: (a) Any county board of education; (b) the State
57 Board of Education; (c) the West Virginia Board of Regents
58 [abolished]; or (d) the Teachers Retirement Board.

59 (17) "Pick-up service" means service that a member was
60 entitled to, but which the employer has not withheld or paid for.

61 (18) "Plan year" means the twelve-month period commencing
62 on the first day of July and ending the following thirtieth
63 day of June of any designated year.

64 (19) "Present member" means a present teacher who is a
65 member of the retirement system.

66 (20) "Present teacher" means any person who was a teacher
67 within the thirty-five years beginning the first day of July, one
68 thousand nine hundred thirty-four, and whose membership in
69 the retirement system is currently active.

70 (21) "Prior service" means all service as a teacher completed
71 prior to the first day of July, one thousand nine hundred
72 forty-one, and all service of a present member who was
73 employed as a teacher, and did not contribute to a retirement
74 account because he or she was legally ineligible for membership
75 during the service.

76 (22) "Public schools" means all publicly supported schools,
77 including colleges and universities in this state.

78 (23) "Refund beneficiary" means the estate of a deceased
79 contributor or a person he or she has nominated as beneficiary
80 of his or her contributions by written designation duly executed
81 and filed with the retirement board.

82 (24) "Refund interest" means interest compounded,
83 according to the formula established in legislative rules, series
84 seven of the Consolidated Public Retirement Board.

85 (25) "Regular interest" means interest at four percent
86 compounded annually, or a higher earnable rate if set forth in
87 the formula established in legislative rules, series seven of the
88 Consolidated Public Retirement Board.

89 (26) "Regularly employed for full-time service" means
90 employment in a regular position or job throughout the employ-

91 ment term regardless of the number of hours worked or the
92 method of pay.

93 (27) "Required beginning date" means the first day of April
94 of the calendar year following the later of: (a) The calendar year
95 in which the member attains age seventy and one-half years; or
96 (b) the calendar year in which the member retires or ceases
97 covered employment under the system after having attained the
98 age of seventy and one half years.

99 (28) "Retirement system" means the State Teachers
100 Retirement System provided for in this article.

101 (29) "Teacher member" means the following persons, if
102 regularly employed for full-time service: (a) Any person
103 employed for instructional service in the public schools of West
104 Virginia; (b) principals; (c) public school librarians; (d)
105 superintendents of schools and assistant county superintendents
106 of schools; (e) any county school attendance director holding a
107 West Virginia teacher's certificate; (f) the Executive Secretary
108 of the Retirement Board; (g) members of the research, exten-
109 sion, administrative or library staffs of the public schools; (h)
110 the State Superintendent of Schools, heads and assistant heads
111 of the divisions under his or her supervision, or any other
112 employee under the State Superintendent performing services
113 of an educational nature; (i) employees of the State Board of
114 Education who are performing services of an educational
115 nature; (j) any person employed in a nonteaching capacity by
116 the State Board of Education, any county board of education,
117 the State Department of Education or the Teachers Retirement
118 Board, if that person was formerly employed as a teacher in the
119 public schools; (k) all classroom teachers, principals and
120 educational administrators in schools under the supervision of
121 the Division of Corrections, the Division of Health or the
122 Division of Human Services; and (l) employees of the State
123 Board of School Finance, if that person was formerly employed
124 as a teacher in the public schools.

125 (30) "Total service" means all service as a teacher while a
126 member of the retirement system since last becoming a member
127 and, in addition thereto, credit for prior service, if any.

128 The masculine gender shall be construed so as to include
129 the feminine.

130 Age in excess of seventy years shall be considered to be
131 seventy years.

**§18-7A-14. Contributions by members; contributions by employ-
ers.**

1 (a) At the end of each month every member of the retire-
2 ment system shall contribute six percent of that member's
3 monthly gross salary to the Retirement Board: Provided, That
4 any member employed by the West Virginia Board of Directors
5 of the State College System or the Board of Trustees of the
6 University System at an institution of higher education under its
7 control shall contribute on the member's full earnable compen-
8 sation, unless otherwise provided in section fourteen-a of this
9 article.

10 (b) Annually, the contributions of each member shall be
11 credited to the member's account in the Teachers' Retirement
12 System Fund. The contributions shall be deducted from the
13 salaries of the members as prescribed in this section, and every
14 member shall be considered to have given consent to the
15 deductions. No deductions, however, shall be made from the
16 earnable compensation of any member who retired because of
17 age or service, and then resumed service unless as provided in
18 section thirteen-a of this article.

19 (c) The aggregate of employer contributions, due and
20 payable under this article, shall equal annually the total deduc-
21 tions from the gross salary of members required by this section.
22 Beginning the first day of July, one thousand nine hundred

23 ninety-four, the rate shall be seven and one-half percent;
24 beginning on the first day of July, one thousand nine hundred
25 ninety-five, the rate shall be nine percent; beginning on the first
26 day of July, one thousand nine hundred ninety-six, the rate shall
27 be ten and one-half percent; beginning on the first day of July,
28 one thousand nine hundred ninety-seven, the rate shall be
29 twelve percent; beginning on the first day of July, one thousand
30 nine hundred ninety-eight, the rate shall be thirteen and one-half
31 percent; and beginning on the first day of July, one thousand
32 nine hundred ninety-nine and thereafter, the rate shall be fifteen
33 percent: *Provided*, that the rate shall be seven and one-half
34 percent for any individual who becomes a member of the
35 Teachers Retirement System for the first time on or after the
36 first day of July, two-thousand five or any individual who
37 becomes a member of the Teachers Retirement System as a
38 result of the merger contemplated in article seven-c of this
39 chapter.

40 (d) Payment by an employer to a member of the sum
41 specified in the employment contract minus the amount of the
42 employee's deductions shall be considered to be a full dis-
43 charge of the employer's contractual obligation as to earnable
44 compensation.

45 (e) Each contributor shall file with the Retirement Board or
46 with the employer to be forwarded to the Retirement Board an
47 enrollment form showing the contributor's date of birth and
48 other data needed by the Retirement Board.

**§18-7A-17. Statement and computation of teachers' service;
qualified military service.**

1 (a) Under rules adopted by the Retirement Board, each
2 teacher shall file a detailed statement of his or her length of
3 service as a teacher for which he or she claims credit. The
4 Retirement Board shall determine what part of a year is the
5 equivalent of a year of service. In computing the service,

6 however, it shall credit no period of more than a month's
7 duration during which a member was absent without pay, nor
8 shall it credit for more than one year of service performed in
9 any calendar year.

10 (b) For the purpose of this article, the Retirement Board
11 shall grant prior service credit to new entrants and other
12 members of the retirement system for service in any of the
13 Armed Forces of the United States in any period of national
14 emergency within which a federal Selective Service Act was in
15 effect. For purposes of this section, "Armed Forces" includes
16 Women's Army Corps, women's appointed volunteers for
17 emergency service, Army Nurse Corps, SPARS, Women's
18 Reserve and other similar units officially parts of the military
19 service of the United States. The military service is considered
20 equivalent to public school teaching, and the salary equivalent
21 for each year of that service is the actual salary of the member
22 as a teacher for his or her first year of teaching after discharge
23 from military service. Prior service credit for military service
24 shall not exceed ten years for any one member, nor shall it
25 exceed twenty-five percent of total service at the time of
26 retirement. Notwithstanding the preceding provisions of this
27 subsection, contributions, benefits and service credit with
28 respect to qualified military service shall be provided in
29 accordance with Section 414(u) of the Internal Revenue Code.
30 For purposes of this section, "qualified military service" has the
31 same meaning as in Section 414(u) of the Internal Revenue
32 Code. The Retirement Board is authorized to determine all
33 questions and make all decisions relating to this section and,
34 pursuant to the authority granted to the Retirement Board in
35 section one, article ten-d, chapter five of this code, may
36 promulgate rules relating to contributions, benefits and service
37 credit to comply with Section 414(u) of the Internal Revenue
38 Code. No military service credit may be used in more than one
39 retirement system administered by the Consolidated Public
40 Retirement Board.

41 (c) For service as a teacher in the employment of the federal
42 government, or a state or territory of the United States, or a
43 governmental subdivision of that state or territory, the Retirement
44 Board shall grant credit to the member: *Provided*, That the
45 member shall pay to the system double the amount he or she
46 contributed during the first full year of current employment,
47 times the number of years for which credit is granted, plus
48 interest at a rate to be determined by the Retirement Board. The
49 interest shall be deposited in the reserve fund and service credit
50 granted at the time of retirement shall not exceed the lesser of
51 ten years or fifty percent of the member's total service as a
52 teacher in West Virginia. Any transfer of out-of-state service,
53 as provided in this article, shall not be used to establish eligibil-
54 ity for a retirement allowance and the Retirement Board shall
55 grant credit for the transferred service as additional service
56 only: *Provided, however*, That a transfer of out-of-state service
57 is prohibited if the service is used to obtain a retirement benefit
58 from another retirement system: *Provided further*, That salaries
59 paid to members for service prior to entrance into the retirement
60 system shall not be used to compute the average final salary of
61 the member under the retirement system.

62 (d) Service credit for members or retired members shall not
63 be denied on the basis of minimum income rules promulgated
64 by the teachers retirement board: *Provided*, That the member or
65 retired member shall pay to the system the amount he or she
66 would have contributed during the year or years of public
67 school service for which credit was denied as a result of the
68 minimum income rules of the Teachers Retirement Board.

69 (e) No members shall be considered absent from service
70 while serving as a member or employee of the Legislature of
71 the state of West Virginia during any duly constituted session
72 of that body or while serving as an elected member of a county
73 commission during any duly constituted session of that body.

74 (f) No member shall be considered absent from service as
75 a teacher while serving as an officer with a statewide profes-
76 sional teaching association, or who has served in that capacity,
77 and no retired teacher, who served in that capacity while a
78 member, shall be considered to have been absent from service
79 as a teacher by reason of that service: *Provided*, That the period
80 of service credit granted for that service shall not exceed ten
81 years: *Provided, however*, That a member or retired teacher
82 who is serving or has served as an officer of a statewide
83 professional teaching association shall make deposits to the
84 Teachers Retirement Board, for the time of any absence, in an
85 amount double the amount which he or she would have contrib-
86 uted in his or her regular assignment for a like period of time.

87 (g) The Teachers Retirement Board shall grant service
88 credit to any former or present member of the West Virginia
89 Public Employees Retirement System who has been a contribut-
90 ing member for more than three years, for service previously
91 credited by the Public Employees Retirement System and: (1)
92 Shall require the transfer of the member's contributions to the
93 Teachers Retirement System; or (2) shall require a repayment
94 of the amount withdrawn any time prior to the member's
95 retirement: *Provided*, That there shall be added by the member
96 to the amounts transferred or repaid under this subsection an
97 amount which shall be sufficient to equal the contributions he
98 or she would have made had the member been under the
99 Teachers Retirement System during the period of his or her
100 membership in the Public Employees Retirement System plus
101 interest at a rate to be determined by the Board compounded
102 annually from the date of withdrawal to the date of payment.
103 The interest paid shall be deposited in the reserve fund.

104 (h) For service as a teacher in an elementary or secondary
105 parochial school, located within this state and fully accredited
106 by the West Virginia Department of Education, the Retirement
107 Board shall grant credit to the member: *Provided*, That the

108 member shall pay to the system double the amount contributed
109 during the first full year of current employment, times the
110 number of years for which credit is granted, plus interest at a
111 rate to be determined by the Retirement Board. The interest
112 shall be deposited in the reserve fund and service granted at the
113 time of retirement shall not exceed the lesser of ten years or
114 fifty percent of the member's total service as a teacher in the
115 West Virginia public school system. Any transfer of parochial
116 school service, as provided in this section, may not be used to
117 establish eligibility for a retirement allowance and the Board
118 shall grant credit for the transfer as additional service only:
119 *Provided, however,* That a transfer of parochial school service
120 is prohibited if the service is used to obtain a retirement benefit
121 from another retirement system.

122 (i) Active members who previously worked in CETA
123 (Comprehensive Employment and Training Act) may receive
124 service credit for time served in that capacity: *Provided,* That
125 in order to receive service credit under the provisions of this
126 subsection the following conditions must be met: (1) The
127 member must have moved from temporary employment with
128 the participating employer to permanent full-time employment
129 with the participating employer within one hundred twenty days
130 following the termination of the member's CETA employment;
131 (2) the Board must receive evidence that establishes to a
132 reasonable degree of certainty as determined by the Board that
133 the member previously worked in CETA; and (3) the member
134 shall pay to the Board an amount equal to the employer and
135 employee contribution plus interest at the amount set by the
136 Board for the amount of service credit sought pursuant to this
137 subsection: *Provided, however,* That the maximum service
138 credit that may be obtained under the provisions of this subsec-
139 tion is two years: *Provided further,* That a member must apply
140 and pay for the service credit allowed under this subsection and
141 provide all necessary documentation by the thirty-first day of
142 March, two thousand three: *And provided further,* That the

143 Board shall exercise due diligence to notify affected employees
144 of the provisions of this subsection.

145 (j) If a member is not eligible for prior service credit or
146 pension as provided in this article, then his or her prior service
147 shall not be considered a part of his or her total service.

148 (k) A member who withdrew from membership may regain
149 his or her former membership rights as specified in section
150 thirteen of this article only in case he or she has served two
151 years since his or her last withdrawal.

152 (l) Subject to the provisions of subsections (a) through (l),
153 inclusive, of this section, the Board shall verify as soon as
154 practicable the statements of service submitted. The Retirement
155 Board shall issue prior service certificates to all persons eligible
156 for the certificates under the provisions of this article. The
157 certificates shall state the length of the prior service credit, but
158 in no case shall the prior service credit exceed forty years.

159 (m) Notwithstanding any provision of this article to the
160 contrary, when a member is or has been elected to serve as a
161 member of the Legislature, and the proper discharge of his or
162 her duties of public office require that member to be absent
163 from his or her teaching or administrative duties, the time
164 served in discharge of his or her duties of the legislative office
165 are credited as time served for purposes of computing service
166 credit: *Provided*, That the Board may not require any additional
167 contributions from that member in order for the Board to credit
168 him or her with the contributing service credit earned while
169 discharging official legislative duties: *Provided, however*, That
170 nothing in this section may be construed to relieve the employer
171 from making the employer contribution at the member's regular
172 salary rate or rate of pay from that employer on the contributing
173 service credit earned while the member is discharging his or her
174 official legislative duties. These employer payments shall

175 commence as of the first day of June, two thousand: *Provided*
176 *further*, That any member to which the provisions of this
177 subsection apply may elect to pay to the Board an amount equal
178 to what his or her contribution would have been for those
179 periods of time he or she was serving in the Legislature. The
180 periods of time upon which the member paid his or her contri-
181 bution shall then be included for purposes of determining his or
182 her final average salary as well as for determining years of
183 service: *And provided further*, That a member using the
184 provisions of this subsection is not required to pay interest on
185 any contributions he or she may decide to make.

186 (n) The Teachers Retirement Board shall grant service
187 credit to any former member of the State Police Death, Disabil-
188 ity and Retirement System who has been a contributing member
189 for more than three years, for service previously credited by the
190 State Police Death, Disability and Retirement System; and: (1)
191 Shall require the transfer of the member's contributions to the
192 Teachers Retirement System; or (2) shall require a repayment
193 of the amount withdrawn any time prior to the member's
194 retirement: *Provided*, That the member shall add to the amounts
195 transferred or repaid under this paragraph an amount which is
196 sufficient to equal the contributions he or she would have made
197 had the member been under the Teachers Retirement System
198 during the period of his or her membership in the State Police
199 Death, Disability and Retirement System plus interest at a rate
200 to be determined by the Board compounded annually from the
201 date of withdrawal to the date of payment. The interest paid
202 shall be deposited in the reserve fund.

**§18-7A-18. Teachers Employers Contribution Collection Ac-
count; Teachers Retirement System Fund; trans-
fers.**

1 (a) There is hereby created in the State Treasury a special
2 revenue account designated the "Teachers Employers Contribu-

3 tion Collection Account” to be administered by the Consoli-
4 dated Public Retirement Board. The Teachers Employers
5 Contribution Collection Account shall be an interest-bearing
6 account with interest credited to and deposited in the account
7 and transferred in accordance with the provisions of this
8 section.

9 (b) There shall be deposited into the Teachers Employers
10 Contribution Collection Account the following:

11 (1) Contributions of employers, through state appropria-
12 tions, and such amounts shall be included in the budget bill
13 submitted annually by the Governor;

14 (2) Beginning on the first day of July, two-thousand five,
15 contributions from each county in an amount equal to fifteen
16 percent of all salary paid in excess of that authorized for
17 minimum salaries in sections two and eight-a, article four,
18 chapter eighteen-a of this code and any salary equity authorized
19 in section five of said article or any county supplement equal to
20 the amount distributed for salary equity among the counties for
21 each individual who was a member of the Teachers’ Retirement
22 System before the first day of July, two-thousand five: *Pro-*
23 *vided*, That the rate shall be seven and one-half percent for any
24 individual who becomes a member of the Teachers Retirement
25 System for the first time on or after the first day of July, two-
26 thousand five or any individual who becomes a member of the
27 Teachers’ Retirement System as a result of the merger contem-
28 plated in article seven-c of this chapter;

29 (3) The amounts transferred pursuant to section eighteen-a
30 of this article; and

31 (4) Any other moneys, available and not otherwise ex-
32 pended, which may be appropriated or transferred to this
33 account.

34 (c) Moneys on deposit in the Teacher Employers Contribu-
35 tion Collection Account shall be transferred monthly in the
36 following order:

37 (1) To the Teachers' Retirement System Fund the amount
38 certified by the Consolidated Public Retirement Board as the
39 actuarially required contribution;

40 (2) To the Pension Liability Redemption Fund the amount,
41 if any, appropriated in accordance with section eight, article
42 eight, chapter twelve of this code; and

43 (3) The balance, if any, to the Employee Pension and
44 Health Care Benefits Fund established under section thirty-nine,
45 article seven-a of this chapter.

46 (d) There is hereby continued in the State Treasury a
47 separate irrevocable trust designated the Teachers' Retirement
48 System Fund. The Teachers' Retirement System Fund shall be
49 invested as provided in section nine-a, article six, chapter
50 twelve of this code.

51 (e) There shall be deposited into the Teachers' Retirement
52 System Fund, the following:

53 (1) Moneys transferred from the Teachers Employers
54 Contribution Collection Account;

55 (2) Member contributions provided for in section fifteen of
56 this article;

57 (3) Gifts and bequests to the fund and any accretions and
58 accumulations which may properly be paid into and become a
59 part of the fund;

60 (4) Specific appropriations to the fund made by the Legisla-
61 ture;

62 (5) Interest on the investment of any part or parts of the
63 fund; and

64 (6) Any other moneys, available and not otherwise ex-
65 pended, which may be appropriated or transferred to the
66 Teachers Retirement System or the Fund.

67 (f) The Teachers Retirement System Fund shall be the fund
68 from which annuities shall be paid.

69 (g) The Consolidated Public Retirement Board has sole
70 authority to direct and approve the making of any and all fund
71 transfers as provided in this section, anything in this code to the
72 contrary notwithstanding.

73 (h) References in the code to the Teachers Accumulation
74 Fund, the Employers Accumulation Fund, the Benefit Fund, the
75 Reserve Fund and the Expense Fund mean the Teachers
76 Retirement System Fund.

**§18-7A-18a. Calculation of allocation to Teachers Employers
Contribution Collection Account.**

1 (a) There shall be an annual allocation from the State
2 General Revenue Fund to the Teachers Employers Contribution
3 Collection Account, created by section eighteen of this article,
4 equal to the actuarially required contribution, reduced by any
5 employer contributions and other allocated amounts.

6 There shall be an additional allocation in each year an
7 amount equal to the total of all irrevocably forfeited amounts in
8 the suspension account established in section eleven, article
9 seven-b of this chapter plus earnings thereon which have been
10 certified to the several contributing employers as irrevocably
11 forfeited in the prior fiscal year and subsequently used by the
12 contributing employers to reduce their total aggregate contribu-

13 tion requirements pursuant to section seventeen, article seven-b
14 of this chapter.

15 (b) The additional allocation provided in this section
16 represents a funding method by which a part of a rational
17 amortization plan will be established to amortize the current
18 unfunded liability of the Teachers Retirement System created
19 by this article. The additional allocations are not and shall not
20 be construed to be moneys which are owed to, nor earned by
21 any employee.

§18-7A-23a. Terminal benefits.

1 (a) This section provides for the payment of the balance in
2 a retired member's account to paid in the manner described in
3 this section in the event that all claims to benefits payable to, or
4 on behalf of, a member expire before his or her member
5 account has been fully exhausted. The expiration of the rights
6 to benefits would be on the later of either the death of the
7 retired member drawing benefits under a straight life annuity,
8 or the death of a survivor annuitant drawing benefits under any
9 optional form of benefit selected by the retired member.

10 (b) In the event that all claims to benefits payable to, or on
11 behalf of, a retired member expire, and the accumulated
12 contributions exceed the accumulated net benefit payments paid
13 to or on behalf of the retired member, the balance in the retired
14 member's account shall be paid to the person or persons as the
15 retired member has nominated by written designation duly
16 executed and filed with the board of trustees. If there is no
17 designated person or persons surviving the retired member
18 following the expiration of the claims, the excess of the
19 accumulated contributions over the accumulated net benefit, if
20 any, shall be paid to the retired member's estate: *Provided,*
21 That the provisions of this section are retroactive to all mem-
22 bers who entered retirement status on or after the ninth day of
23 June, two thousand.

§18-7A-25. Eligibility for retirement allowance.

1 (a) Any member who has attained the age of sixty years or
2 who has had thirty-five years of total service as a teacher in
3 West Virginia, regardless of age, is eligible for an annuity. No
4 new entrant nor present member is eligible for an annuity,
5 however, if either has less than five years of service to his or
6 her credit.

7 (b) Any member who has attained the age of fifty-five years
8 and who has served thirty years as a teacher in West Virginia is
9 eligible for an annuity.

10 (c) Any member who has served at least thirty but less than
11 thirty-five years as a teacher or nonteaching member in West
12 Virginia and is less than fifty-five years of age is eligible for an
13 annuity, but the annuity shall be the reduced actuarial equiva-
14 lent of the annuity the member would have received if the
15 member were age fifty-five at the time such annuity was
16 applied for.

17 (d) The request for any annuity shall be made by the
18 member in writing to the Retirement Board, but in case of
19 retirement for disability, the written request may be made by
20 either the member or the employer.

21 (e) A member is eligible for annuity for disability if he or
22 she satisfies the conditions in either subdivision (a) or subdivi-
23 sion (b) of this section and meets the conditions of subdivision
24 (c) of this section as follows:

25 (1) His or her service as a teacher or nonteaching member
26 in West Virginia must total at least ten years, and service as a
27 teacher or nonteaching member must have been terminated
28 because of disability, which disability must have caused
29 absence from service for at least six months before his or her
30 application for disability annuity is approved.

31 (2) His or her service as a teacher or nonteaching member
32 in West Virginia must total at least five years, and service as a
33 teacher or nonteaching member must have been terminated
34 because of disability, which disability must have caused
35 absence from service for at least six months before his or her
36 application for disability annuity is approved and the disability
37 is a direct and total result of an act of student violence directed
38 toward the member.

39 (3) An examination by a physician or physicians selected
40 by the Retirement Board must show that the member is at the
41 time mentally or physically incapacitated for service as a
42 teacher, that for that service the disability is total and likely to
43 be permanent, and that he or she should be retired in conse-
44 quence of the disability.

45 (f) Continuance of the disability of the retired member shall
46 be established by medical examination, as prescribed in
47 subdivision three, subsection (1) of this section, annually for
48 five years after retirement, and thereafter at such times required
49 by the Retirement Board. Effective the first day of July, one
50 thousand nine hundred ninety-eight, a member who has retired
51 because of a disability may select an option of payment under
52 the provisions of section twenty-eight of this article: *Provided,*
53 That any option selected under the provisions of section twenty-
54 eight of this article shall be in all respects the actuarial equiva-
55 lent of the straight life annuity benefit the disability retiree
56 receives or would receive if the options under section twenty-
57 eight of this article were not available and that no beneficiary
58 or beneficiaries of the disability annuitant may receive a greater
59 benefit, nor receive any benefit for a greater length of time, than
60 the beneficiary or beneficiaries would have received had the
61 disability retiree not made any election of the options available
62 under said section twenty-eight. In determining the actuarial
63 equivalence, the Board shall take into account the life expectan-
64 cies of the member and the beneficiary: *Provided, however,*

65 That the life expectancies may at the discretion of the Board be
66 established by an underwriting medical director of a competent
67 insurance company offering annuities. Payment of the disability
68 annuity provided in this article shall cease immediately if the
69 Retirement Board finds that the disability of the retired teacher
70 no longer exists, or if the retired teacher refuses to submit to
71 medical examination as required by this section.

§18-7A-26. Computation of annuities.

1 (a) Annuitants whose annuities were approved by the
2 Retirement Board effective before the first day of July, one
3 thousand nine hundred eighty, shall be paid the annuities which
4 were approved by the Retirement Board.

5 (b) Annuities approved by the Board effective after the
6 thirtieth day of June, one thousand nine hundred eighty, shall be
7 computed as provided in this section.

8 (c) Upon establishment of eligibility for a retirement
9 allowance, a member shall be granted an annuity which shall be
10 the sum of the following:

11 (1) Two percent of the member's average salary multiplied
12 by his or her total service credit as a teacher. In this subdivision
13 "average salary" means the average of the highest annual
14 salaries received by the member during any five years con-
15 tained within his or her last fifteen years of total service credit:
16 *Provided*, That the highest annual salary used in this calculation
17 for certain members employed by the West Virginia Higher
18 Education Policy Commission under its control shall be four
19 thousand eight hundred dollars, as provided by section
20 fourteen-a of this article;

21 (2) The actuarial equivalent of the voluntary deposits of the
22 member in his or her individual account up to the time of his or
23 her retirement, with regular interest.

24 (d) The disability annuities of all teachers retired for
25 disability shall be based upon a disability table prepared by a
26 competent actuary approved by the Board.

27 (e) Upon the death of an annuitant who qualified for an
28 annuity as the surviving spouse of an active member or because
29 of permanent disability, the estate of the deceased or benefi-
30 ciary designated for such purpose shall be paid the difference,
31 if any, between the member's contributions with regular interest
32 thereon, and the sum of the annuity payments. Upon the death
33 of a spouse who was named as the member's survivor, a retirant
34 may elect an annuity option approved by the Board in an
35 amount adjusted on a fair basis to be of equal actuarial value as
36 the annuity prospectively in effect relative to the surviving
37 member at the time the new option is elected.

38 (f) All annuities shall be paid in twelve monthly payments.
39 In computing the monthly payments, fractions of a cent shall be
40 considered a cent. The monthly payments shall cease with the
41 payment for the month within which the beneficiary dies, and
42 shall begin with the payment for the month succeeding the
43 month within which the annuitant became eligible under this
44 article for the annuity granted; in no case, however, shall an
45 annuitant receive more than four monthly payments which are
46 retroactive after the Board receives his or her application for
47 annuity. The monthly payments shall be made on the twenty-
48 fifth day of each month, except the month of December, when
49 the payment shall be made on the eighteenth day of December.
50 If the date of payment falls on a holiday, Saturday or Sunday,
51 then the payment shall be made on the preceding workday.

52 (g) In case the Retirement Board receives data affecting the
53 approved annuity of a retired teacher, the annuity shall be
54 changed in accordance with the data, the change being effective
55 with the payment for the month within which the Board
56 received the new data.

57 (h) Any person who has attained the age of sixty-five and
58 who has served at least twenty-five years as a teacher prior to
59 the first day of July, one thousand nine hundred forty-one, is
60 eligible for prior service credit and for prior service pensions as
61 prescribed in this section.

§18-7A-28e. Limitations on benefit increases.

1 (a) The state shall not increase any existing benefits or
2 create any new benefits for any retirees or beneficiaries
3 currently receiving monthly benefit payments from the retire-
4 ment system, other than an increase in benefits or new benefits
5 effected by operation of law in effect on the effective date of
6 this article, in an amount that would exceed more than one
7 percent of the accrued actuarial liability of the system as of the
8 last day of the preceding fiscal year as determined in the annual
9 actuarial valuation for each plan completed for the Consolidated
10 Public Retirement Board as of the first day of the following
11 fiscal year.

12 (b) If any increase of existing benefits or creation of new
13 benefits for any retirees or beneficiaries currently receiving
14 monthly benefit payments under the retirement system, other
15 than an increase in benefits or new benefits effected by opera-
16 tion of law in effect on the effective date of this article, causes
17 any additional unfunded actuarial accrued liability in any of the
18 West Virginia state sponsored pension systems as calculated in
19 the annual actuarial valuation for each plan during any fiscal
20 year, additional unfunded actuarial accrued liability of that
21 pension system shall be fully amortized over no more than the
22 six consecutive fiscal years following the date the increase in
23 benefits or new benefits become effective as certified by the
24 Consolidated Public Retirement Board. Following the receipt of
25 the certification of additional actuarial accrued liability, the
26 Governor shall submit the amount of the amortization payment
27 each year for the retirement system as part of the annual budget
28 submission or in an executive message to the Legislature.

29 (c) Notwithstanding the provisions of subsections (a) and
30 (b) of this section, the computation of annuities or benefits for
31 active members due to retirement, death or disability as
32 provided for in the retirement system shall not be amended in
33 such a manner as to increase any existing benefits or to provide
34 for new benefits.

35 (d) The provisions of this section terminate effective the
36 first day of July, two thousand thirty-four: *Provided, however,*
37 that if bonds are issued pursuant to article eight, chapter twelve
38 of this code, the provisions of this section shall not terminate
39 while any of the bonds are outstanding.

§18-7A-34. Loans to members.

1 (a) An actively contributing member of the retirement
2 system upon written application may borrow from his or her
3 individual account in the Teachers Accumulation Fund, subject
4 to these restrictions:

5 (1) Loans shall be made in multiples of ten dollars, the
6 minimal loan being one hundred dollars and the maximum
7 being eight thousand dollars: *Provided,* That the maximum
8 amount of any loan when added to the outstanding balance of
9 all other loans shall not exceed the lesser of the following: (A)
10 Eight thousand dollars reduced by the excess (if any) of the
11 highest outstanding balance of loans during the one-year period
12 ending on the day before the date on which the loan is made,
13 over the outstanding balance of loans to the member on the date
14 on which the loan is made; or (B) fifty percent of the member's
15 contributions to his or her individual account in the Teachers
16 Accumulations Fund: *Provided, however,* That if the total
17 amount of loaned money outstanding exceeds forty million
18 dollars, the maximum shall not exceed three thousand dollars
19 until the Retirement Board determines that loans outstanding
20 have been reduced to an extent that additional loan amounts are
21 again authorized.

22 (2) Interest charged on the amount of the loan shall be six
23 percent per annum, or a higher rate as set by the Board:
24 *Provided*, That interest charged shall be commercially reason-
25 able in accordance with the provisions of section 72(p)(2) of the
26 Internal Revenue Code, and the federal regulations issued
27 thereunder. If repayable in installments, the interest shall not
28 exceed the annual rate so established upon the principal amount
29 of the loan, for the entire period of the loan, and such charge
30 shall be added to the principal amount of the loan. The minimal
31 interest charge shall be for six months.

32 (3) No member is eligible for more than one outstanding
33 loan at any time.

34 (4) If a refund is payable to the borrower or his or her
35 beneficiary before he or she repays the loan with interest, the
36 balance due with interest to date shall be deducted from the
37 refund.

38 (5) From his or her monthly salary as a teacher or a
39 nonteacher the member shall pay the loan and interest by
40 deductions which will pay the loan and interest in substantially
41 level payments in not more than sixty nor less than six months.
42 Upon notice of loan granted and payment due, the employer is
43 responsible for making the salary deductions and reporting
44 them to the Retirement Board. At the option of the Board, loan
45 deductions may be collected as prescribed herein for the
46 collection of members' contribution, or may be collected
47 through issuance of warrant by employer. If the borrower is no
48 longer employed as a teacher or nonteaching member, the
49 borrower must make monthly loan payments directly to the
50 Consolidated Public Retirement Board and the Board must
51 accept the payments.

52 (6) The entire unpaid balance of any loan, and interest due
53 thereon, shall, at the option of the Board, become due and

54 payable without further notice or demand upon the occurrence
55 with respect to the borrowing member of any of the following
56 events of default: (A) Any payment of principal and accrued
57 interest on a loan remains unpaid after it becomes due and
58 payable under the terms of the loan or after the grace period
59 established in the discretion of the Board; (B) the borrowing
60 member attempts to make an assignment for the benefit of
61 creditors of his or her refund or benefit under the retirement
62 system; or (C) any other event of default set forth in rules
63 promulgated by the Board in accordance with the authority
64 granted pursuant to section one, article ten-d, chapter five of
65 this code: *Provided*, That any refund or offset of an unpaid loan
66 balance shall be made only at the time the member is entitled to
67 receive a distribution under the retirement system.

68 (7) Loans shall be evidenced by such form of obligations
69 and shall be made upon such additional terms as to default,
70 prepayment, security, and otherwise as the Retirement Board
71 may determine.

72 (8) Notwithstanding anything herein to the contrary, the
73 loan program authorized by this section shall comply with the
74 provisions of Section 72(p)(2) and Section 401 of the Internal
75 Revenue Code, and the federal regulations issued thereunder,
76 and accordingly, the Retirement Board is authorized to: (A)
77 Apply and construe the provisions of this section and adminis-
78 ter the plan loan program in such a manner as to comply with
79 the provisions of Section 72(p)(2) and Section 401 of the
80 Internal Revenue Code and the federal regulations issued
81 thereunder; (B) adopt plan loan policies or procedures consis-
82 tent with these federal law provisions; and (C) take such actions
83 as it deems necessary or appropriate to administer the plan loan
84 program created hereunder in accordance with these federal law
85 provisions. The Retirement Board is further authorized in
86 connection with the plan loan program to take any actions that
87 may at any time be required by the Internal Revenue Service

88 regarding compliance with the requirements of Section 72(p)(2)
89 or Section 401 of the Internal Revenue Code, and the federal
90 regulations issued thereunder, notwithstanding any provision in
91 this article to the contrary.

92 (b) Notwithstanding anything in this article to the contrary,
93 the loan program authorized by this section shall not be
94 available to any teacher or nonteacher who becomes a member
95 of the Teachers Retirement System on or after the first day of
96 July, two thousand five: *Provided*, That a member is eligible for
97 loan under subsection (c), section six, article seven-c of this
98 chapter to pay all or part of the one and one-half percent
99 contribution for service in the Defined Contribution Plan.

§18-7A-39. Employee Pension and Health Care Benefits Fund.

1 (a) There is hereby created in the State Treasury a special
2 revenue account designated as the “Employee Pension and
3 Health Care Benefits Fund” to be administered by the Depart-
4 ment of Administration. Funds in this account may be invested
5 in the manner permitted by the provisions of article six, chapter
6 twelve of this code, with all interest income credited to this
7 Fund.

8 (b) Effective the first day of July, two thousand five, any
9 savings realized from the reduction in employer contributions
10 for current retirement benefits, being the difference between the
11 required employer contributions that would have been required
12 into the Teachers Defined Contribution System as in effect
13 immediately prior to the first day of July, two thousand five and
14 the required employer contribution for normal cost into the
15 State Teachers Retirement System on and after the first day of
16 July, two thousand five, shall be deposited into the Employee
17 Pension and Health Care Benefits Fund. The Consolidated
18 Public Retirement Board shall determine the annual amount of
19 the savings based on the annual actuarial valuation for the plan

20 prepared as of the first day of July following the end of each
21 fiscal year and certify the amount to the Governor by the thirty-
22 first day of January of that fiscal year. The Governor shall
23 submit the amount of the savings as part of the annual budget
24 submission or in an executive message to the Legislature.

25 (c) Moneys in the Employee Pension and Health Care
26 Benefits Fund are to be used and expended to pay for the cost
27 of unfunded health care benefits or unfunded pension benefits,
28 or to be transferred into the Pension Liability Redemption Fund
29 created in section eight, article eight, chapter twelve of this
30 code as appropriated by the Legislature.

§18-7A-40. Higher education employees.

1 Nothing in this article or article seven-b of this chapter shall
2 be construed:

3 (1) To be in conflict with section four-a, article twenty-
4 three, chapter eighteen of this code; or

5 (2) To affect the membership of higher education employ-
6 ees who are currently members of either the State Teachers'
7 Retirement System created in this article or the Teachers'
8 Defined Contribution Retirement System created in article
9 seven-b of this chapter: *Provided*, That if the merger contem-
10 plated by article seven-c of this chapter occurs, any higher
11 education employees who are currently members of the
12 Teachers' Defined Contribution Retirement System shall
13 become members of the Teachers Retirement System.

ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.

§18-7B-2. Definitions.

§18-7B-7. Participation in Teachers' Defined Contribution Retirement System;
limiting participation in existing teachers retirement system.

- §18-7B-7a. Plan closed to persons employed for the first time after June, 2005; former employees.
- §18-7B-9. Members' contributions; annuity account established.
- §18-7B-11. Termination of membership.
- §18-7B-12a. Federal minimum required distributions.
- §18-7B-16. Years of employment service.
- §18-7B-20. Prohibition of involuntary cash-outs.

§18-7B-2. Definitions.

1 As used in this article, unless the context clearly requires a
2 different meaning:

3 (1) "Defined contribution system" or "system" means the
4 Teachers' Defined Contribution Retirement System created and
5 established by this article:

6 (2) "Existing retirement system" means the State Teachers
7 Retirement System established in article seven-a of this chapter;

8 (3) "Existing employer" means any employer who em-
9 ployed or employs a member of the existing retirement system;

10 (4) "Consolidated board" or "board" means the Consoli-
11 dated Public Retirement Board created and established pursuant
12 to article ten-d, chapter five of this code;

13 (5) "Member" or "employee" means the following persons,
14 if regularly employed for full-time service: (A) Any person
15 employed for instructional service in the public schools of West
16 Virginia; (B) principals; (C) public school librarians; (D)
17 superintendents of schools and assistant county superintendents
18 of schools; (E) any county school attendance director holding
19 a West Virginia teacher's certificate; (F) members of the
20 research, extension, administrative or library staffs of the public
21 schools; (G) the State Superintendent of Schools, heads and
22 assistant heads of the divisions under his or her supervision, or
23 any other employee under the State Superintendent performing

24 services of an educational nature; (H) employees of the State
25 Board of Education who are performing services of an educa-
26 tional nature; (I) any person employed in a nonteaching
27 capacity by the State Board of Education, any county board of
28 education or the State Department of Education if that person
29 was formerly employed as a teacher in the public schools; (J)
30 all classroom teachers, principals and educational administra-
31 tors in schools under the supervision of the Division of Correc-
32 tions and the Department of Health and Human Resources; (K)
33 any person who is regularly employed for full-time service by
34 any county board of education or the State Board of Education
35 and (L) the administrative staff of the public schools including
36 deans of instruction, deans of men and deans of women, and
37 financial and administrative secretaries;

38 (6) "Regularly employed for full-time service" means
39 employment in a regular position or job throughout the employ-
40 ment term regardless of the number of hours worked or the
41 method of pay;

42 (7) "Year of employment service" means employment for
43 at least ten months, a month being defined as twenty employ-
44 ment days: *Provided*, That no more than one year of service
45 may be accumulated in any twelve-month period;

46 (8) "Employer" means the agency of and within the State
47 of West Virginia which has employed or employs a member;

48 (9) "Compensation" means the full compensation actually
49 received by members for service whether or not a part of the
50 compensation is received from other funds, federal or other-
51 wise, than those provided by the state or its subdivisions;

52 (10) "Public schools" means all publicly supported schools,
53 including normal schools, colleges and universities in this state;

54 (11) "Member contribution" means an amount reduced
55 from the employee's regular pay periods, and deposited into the
56 member's individual annuity account within the Defined
57 Contribution Retirement System;

58 (12) "Employer contribution" means an amount deposited
59 into the member's individual annuity account on a periodic
60 basis coinciding with the employee's regular pay period by an
61 employer from its own funds;

62 (13) "Annuity account" or "annuity" means an account
63 established for each member to record the deposit of member
64 contributions and employer contributions and interest, divi-
65 dends or other accumulations credited on behalf of the member;

66 (14) "Retirement" means a member's withdrawal from the
67 active employment of a participating employer and completion
68 of all conditions precedent to retirement;

69 (15) "Permanent, total disability" means a mental or
70 physical incapacity requiring absence from employment service
71 for at least six months: *Provided*, That the incapacity is shown
72 by an examination by a physician or physicians selected by the
73 Board: *Provided, however*, That for employees hired on or after
74 the first day of July, two thousand five, permanent, total
75 disability means an inability to engage in substantial gainful
76 activity by reason of any medically determinable physical or
77 mental impairment that can be expected to result in death, or
78 has lasted or can be expected to last for a continuous period of
79 not less than twelve months and the incapacity is so severe that
80 the member is likely to be permanently unable to perform the
81 duties of the position the member occupied immediately prior
82 to his or her disabling injury or illness.

83 (16) "Plan year" means the twelve-month period commenc-
84 ing on the first day of July of any designated year and ending on
85 the following thirtieth day of June;

86 (17) "Required beginning date" means the first day of April
87 of the calendar year following the later of: (a) The calendar year
88 in which the member attains age seventy-one and one-half
89 years; or (b) the calendar year in which the member retires or
90 otherwise ceases employment with a participating employer
91 after having attained the age of seventy and one-half years; and

92 (18) "Internal Revenue Code" means the Internal Revenue
93 Code of 1986, as it has been amended.

§18-7B-7. Participation in Teachers' Defined Contribution Retirement System; limiting participation in existing teachers retirement system.

1 (a) Beginning the first day of July, one thousand nine
2 hundred ninety-one, and except as provided in this section, the
3 Teachers' Defined Contribution Retirement System shall be the
4 single retirement program for all new employees whose
5 employment commences on or after that date and all new
6 employees shall be required to participate. No additional new
7 employees except as may be provided in this section may be
8 admitted to the existing Teachers Retirement System.

9 (b) Members of the existing Teachers Retirement System
10 whose employment continues beyond the first day of July, one
11 thousand nine hundred ninety-one, and those whose employ-
12 ment was terminated after the thirtieth day of June, one
13 thousand nine hundred ninety-one, under a reduction in force
14 are not affected by subsection (a) of this section and shall
15 continue to contribute to and participate in the existing Teach-
16 ers Retirement System without a change in plan provisions or
17 benefits.

18 (c) Any person who was previously a member of the
19 Teachers Retirement System and who left participating employ-
20 ment before the creation of the Defined Contribution System on
21 the first day of July, one thousand nine hundred ninety-one, and

22 who later returned to participating employment after the
23 effective date of this section has the right to elect to return to
24 the existing Teachers Retirement System or to elect to partici-
25 pate in the Defined Contribution System. The election shall be
26 made at the time of his or her reemployment, is irrevocable and
27 shall be made upon forms approved by and filed with the West
28 Virginia Consolidated Public Retirement Board.

29 (d) Any person who was, prior to the first day of July, one
30 thousand nine hundred ninety-one, a member of the existing
31 Teachers Retirement System who left participating employment
32 before the creation of the Teachers' Defined Contribution
33 Retirement System on the first day of July, one thousand nine
34 hundred ninety-one, and who later returned to participating
35 employment after that date and who was precluded from
36 returning to the existing Teachers Retirement System as a result
37 of prior provisions of this section, may elect, pursuant to the
38 provisions of this section, readmission to the existing Teachers
39 Retirement System: *Provided*, That persons who are eligible to,
40 and who make the election to, terminate their participation in
41 the Defined Contribution System and to return to participation
42 in the existing Teachers Retirement System as provided in this
43 section shall make the election, on a form approved by and filed
44 with the West Virginia Consolidated Public Retirement Board
45 on or before the thirtieth day of June, two thousand two:
46 *Provided, however*, That as a condition of the right of readmis-
47 sion to the existing Teachers Retirement System, a person
48 making the election provided in this section whose Defined
49 Contribution Account had not, prior to election, been divided by
50 a qualified domestic relations order, shall pay an additional
51 contribution to the existing Teachers Retirement System equal
52 to one and one-half percent of his or her annual gross compen-
53 sation earned for each year during which he or she participated
54 in the Defined Contribution System and shall consent and agree
55 to the transfer of his or her total account balance in the Defined
56 Contribution System as of the most recent plan valuation

57 immediately preceding his or her transfer to the existing
58 Teachers Retirement System. For a person making the election
59 provided in this section whose defined contribution account
60 had, prior to the election, previously been divided by a qualified
61 domestic relations order, the cost to transfer to the existing
62 Teachers Retirement System shall be actuarially determined by
63 the Consolidated Public Retirement Board. Upon verification of
64 that person's eligibility to return to participation in the existing
65 Teachers Retirement System and the tender and transfer of
66 funds as provided in this subsection, a person making this
67 election shall receive service credit for the time the member
68 participated in the Defined Contribution System as if his or her
69 participation had been in the existing Teachers Retirement
70 System: *Provided further*, That the right to terminate participa-
71 tion in the Defined Contribution System and to resume partici-
72 pation in the existing Teachers Retirement System as provided
73 in this section is irrevocable and shall not apply to any person
74 who, while a member of the Teachers Retirement System,
75 voluntarily elected to terminate his or her membership in the
76 Teachers Retirement System and to become a participant in the
77 Defined Contribution System pursuant to section eight of this
78 article.

79 (e) Any employee whose employment with an employer
80 was suspended or terminated while he or she served as an
81 officer with a statewide professional teaching association, is
82 eligible for readmission to the existing retirement system in
83 which he or she was a member.

84 (f) An employee whose employment with an employer or
85 an existing employer is suspended as a result of an approved
86 leave of absence, approved maternity or paternity break in
87 service or any other approved break in service authorized by the
88 Board is eligible for readmission to the existing retirement
89 system in which he or she was a member.

90 (g) In all cases in which a question exists as to the right of
91 an employee to readmission to membership in the existing
92 Teachers Retirement System, the Consolidated Public Retirement
93 Board shall decide the question.

94 (h) Any individual who is not a "member" or "employee"
95 as defined by section two of this article and any individual who
96 is a leased employee is not eligible to participate in the Teachers
97 Defined Contribution System. For purposes of this section,
98 a "leased" employee means any individual who performs
99 services as an independent contractor or pursuant to an agree-
100 ment with an employee leasing organization or other similar
101 organization. In all cases in which a question exists as to
102 whether an individual is eligible for membership in this system,
103 the Consolidated Public Retirement Board shall decide the
104 question.

105 (i) Effective the first day of July, two thousand five and
106 continuing through the first day of two thousand six, any
107 employee of River Valley Child Development Services, Inc.,
108 who is a member of the teachers' defined contribution retire-
109 ment system may elect to withdraw from membership and join
110 the private pension plan provided by River Valley Child
111 Development Services, Inc.

112 (j) River Valley Child Development Services, Inc., and its
113 successors in interest shall provide for their employees a
114 pension plan in lieu of the teachers' defined contribution
115 retirement system on or before the first day of July, two
116 thousand five, and continuing thereafter during the existence of
117 the River Valley Child Development Services, Inc., and its
118 successors in interest. All new employees hired after the
119 thirtieth day of June, two thousand five, shall participate in the
120 pension plan in lieu of the teachers' defined contribution
121 retirement system.

122 (k) The administrative body of River Valley Child Develop-
123 ment Services, Inc., shall, on or before the first day of June, two
124 thousand five, give written notice to each employee who is a
125 member of the teachers' defined contribution retirement system
126 of the option to withdraw from or remain in the system. The
127 notice shall include a copy of this section and a statement
128 explaining the member's options regarding membership. The
129 notice shall include a statement in plain language giving a full
130 explanation and actuarial projection figures, prepared by an
131 independent actuary, in support of the explanation regarding the
132 individual member's current account balance, vested and
133 nonvested, and his or her projected return upon remaining in the
134 teacher's defined contribution retirement system until retire-
135 ment, disability or death, in comparison with the projected
136 return upon withdrawing from the teachers' defined contribu-
137 tion retirement system and joining a private pension plan
138 provided by River Valley Child Development Center, Inc., and
139 remaining therein until retirement, disability or death. The
140 administrative body shall keep in its records a permanent record
141 of each employee's signature confirming receipt of the notice.

**§18-7B-7a. Plan closed to persons employed for the first time
after June, 2005; former employees.**

1 The Retirement System created and established in this
2 article shall be closed and no new members accepted in the
3 system after the thirtieth day of June, two thousand five.
4 Notwithstanding the provisions of sections seven and eight of
5 this article, all persons who are regularly employed for full-time
6 service as a member or an employee whose initial employment
7 commences after the thirtieth day of June, two thousand five,
8 shall become a member of the State Teachers' Retirement
9 System created and established in article seven-a of this
10 chapter: *Provided*, That any person rehired after the thirtieth
11 day of June, two thousand five, shall become a member of the
12 Teachers' Defined Contribution Retirement System created and

13 established in this article, or of the Teachers Retirement System
14 created and established in article seven-a of this chapter,
15 depending upon which system he or she last contributed to
16 while he or she was employed with an employer mandating
17 membership and contributions to one of those plans: *Provided,*
18 *however,* That if, and only if, the Teachers' Defined Contribu-
19 tion Retirement System is merged and consolidated with the
20 Teachers Retirement System pursuant to the provisions of
21 article seven-c of this chapter, then all employees shall be a
22 member of the Teachers Retirement System as of the first day
23 of July, two thousand six, as provided in article seven-c of this
24 chapter.

§18-7B-9. Members' contributions; annuity account established.

1 (a) Each employee who is a member of the Defined
2 Contribution System shall contribute four and one-half percent
3 of his or her gross compensation by salary deduction. The
4 salary deductions shall be made by the employer and shall be
5 paid to the Teachers' Defined Contribution Retirement System
6 within fifteen days of the end of the pay period: *Provided,* That
7 the Board may require any employer to make the payments
8 within such shorter period as it may determine, upon at least
9 sixty days notice to the employer, if the Board determines the
10 employer has the technological capacity to transfer the funds
11 within the shorter period. The employer payments shall be
12 remitted by the Board within five working days to the private
13 pension, insurance, annuity, mutual fund, or other qualified
14 company or companies designated by the Board to administer
15 the day-to-day operations of the system.

16 (b) All member contributions shall be immediately depos-
17 ited to an account or accounts established in the name of the
18 member and held in trust for the benefit of the member. An
19 account agreement shall be issued to each member setting forth
20 the terms and conditions under which contributions are re-

21 ceived, and the investment and retirement options available to
22 the member. The Board shall propose for legislative approval
23 in accordance with article three, chapter twenty-nine-a of this
24 code, pursuant to section six of this article, rules defining the
25 minimum requirements for the investment and retirement
26 options to be provided to the members.

27 (c) The legislative rules proposed by the Board, to the
28 extent not inconsistent with the applicable provisions of the
29 Internal Revenue Code of the United States, shall provide for
30 varied retirement options including, but not limited to:

31 (1) Lump sum or periodic payment distributions;

32 (2) Joint and survivor annuities;

33 (3) Other annuity forms in the discretion of the Board;

34 (4) Variable annuities which gradually increase monthly
35 retirement payments: *Provided*, That said increased payments
36 are funded solely by the existing current value of the member's
37 account at the time the member's retirement payments com-
38 mence and not, to any extent, in a manner which would require
39 additional employer or employee contributions to any mem-
40 ber's account after retirement or after the cessation of employ-
41 ment; and

42 (5) The instances in which, if any, distributions or loans can
43 be made to members from their annuity account balances prior
44 to having attained the age of fifty-five.

§18-7B-11. Termination of membership.

1 (a) Any member whose employment with a participating
2 employer terminates after the completion of six complete years
3 of employment service is eligible to terminate his or her annuity
4 account and receive a distribution from the member's annuity

5 account, in an amount equal to the member's contribution plus
6 one third of the employer contributions and any earnings
7 thereon. Any member whose employment with a participating
8 employer terminates after the completion of nine complete
9 years of employment service is eligible to terminate his or her
10 annuity account and receive a distribution from the member's
11 annuity account, in an amount equal to the member's contribu-
12 tion plus two thirds of the employer's contributions and any
13 earnings thereon. Any member whose employment with a
14 participating employer terminates after the completion of
15 twelve complete years of employment service is eligible to
16 terminate his or her annuity account and receive a distribution
17 of all funds contributed and accumulated in his or her annuity
18 account. Any member whose employment with a participating
19 employer terminates prior to the completion of six complete
20 years of employment service is eligible to terminate his or her
21 annuity account and receive a distribution from the member's
22 annuity account, in an amount equal to the member's contribu-
23 tion plus any earnings thereon: *Provided*, That on the death or
24 permanent, total disability of any member, that member is
25 eligible to terminate his or her annuity account and receive all
26 funds contributed to or accumulated in his or her annuity
27 account.

28 (b) (1) Upon termination of employment, regardless of
29 whether the member has taken a distribution of all or a portion
30 of his or her vested account, the remaining balance, if any, in
31 the member's employer account that is not vested shall be
32 remitted and paid into a suspension account to be administered
33 by the Board. The Board shall propose rules for legislative
34 approval in accordance with article three, chapter twenty-nine-a
35 of this code regarding the distribution of any balance in the
36 special account created by this section: *Provided*, That any
37 funds in the account shall be used solely for the purpose of
38 reducing employer contributions in future years.

39 (2) Any account balances remitted to the suspension
40 account herein shall be maintained by the Board in the suspen-
41 sion account in the name of the terminated employee for a
42 period of five years following the member's termination of
43 employment. For each terminated employee at the culmination
44 of the five-year period, the Board shall certify in writing to each
45 contributing employer the amount of the account balance plus
46 earnings thereon attributable to each separate contributing
47 employer's previously terminated employee's account which
48 has been irrevocably forfeited due to the elapse of a five-year
49 period since termination pursuant to section sixteen of this
50 article.

51 (c) Upon certification to the several contributing employers
52 of the aggregate account balances plus earnings thereon which
53 have been irrevocably forfeited pursuant to this section, the
54 several contributing employers shall be permitted in the next
55 succeeding fiscal year or years to reduce their total aggregate
56 contribution requirements pursuant to section seventeen of this
57 article, for the then current fiscal year by an amount equal to the
58 aggregate amounts irrevocably forfeited and certified as such to
59 each contributing employer: *Provided*, That should the partici-
60 pating employer no longer be contributing to the Defined
61 Contribution System, any funds in the account shall be paid
62 directly to the employer.

63 (d) Upon the use of the amounts irrevocably forfeited to any
64 contributing employer as a reduction in the then current fiscal
65 year contribution obligation and upon notification provided by
66 the several contributing employers to the Board of their
67 intention to use irrevocably forfeited amounts, the Board shall
68 direct the distribution of the irrevocably forfeited amounts from
69 the suspension account to be deposited on behalf of the contrib-
70 uting employer to the member annuity accounts of its then
71 current employees pursuant to section seventeen of this article:
72 *Provided*, That notwithstanding any provision of this article to

73 the contrary, when a member is or has been elected to serve as
74 a member of the Legislature, and the proper discharge of his or
75 her duties of public office requires that member to be absent
76 from his or her teaching, nonteaching or administrative duties,
77 the time served in discharge of his or her duties of the legisla-
78 tive office are credited as time served for purposes of comput-
79 ing service credit, regardless when this time was served:
80 *Provided, however,* That the Board may not require any
81 additional contributions from that member in order for the
82 Board to credit him or her with the contributing service credit
83 earned while discharging official legislative duties: *Provided*
84 *further,* That nothing herein may be construed to relieve the
85 employer from making the employer contribution at the
86 member's regular salary rate or rate of pay from that employer
87 on the contributing service credit earned while the member is
88 discharging his or her official legislative duties. These em-
89 ployer payments shall commence as of the first day of July, two
90 thousand three: *And provided further,* That any member to
91 which the provisions of this subsection apply may elect to pay
92 to the Board an amount equal to what his or her contribution
93 would have been for those periods of time he or she was serving
94 in the Legislature.

§18-7B-12a. Federal minimum required distributions.

1 The requirements of this section apply to any distribution
2 of a member's or beneficiary's interest and take precedence
3 over any inconsistent provisions of this Defined Contribution
4 System. This section applies to plan years beginning after the
5 thirty-first day of December, one thousand nine hundred eighty-
6 six. Notwithstanding anything in this system to the contrary, the
7 payment of benefits under this article shall be determined and
8 made in accordance with Section 401 (a) (9) of the Internal
9 Revenue Code and the regulations thereunder, including
10 without limitation the incidental death benefit provisions of
11 Section 401 (a) (9)(G) of the Internal Revenue Code and the

12 regulations thereunder. For this purpose, the following provi-
13 sions apply:

14 (a) The payment of benefits under the Defined Contribution
15 System to any member shall be distributed to him or her not
16 later than the required beginning date, or be distributed to him
17 or her commencing not later than the required beginning date,
18 in accordance with regulations prescribed under Section 401 (a)
19 (9) of the Internal Revenue Code, over the life of the member
20 or over the lives of the member and his or her beneficiary or
21 over a period not extending beyond the life expectancy of the
22 member and his or her beneficiary.

23 (b) If a member dies after distribution to him or her has
24 commenced pursuant to this section but before his or her entire
25 interest in the system has been distributed, then the remaining
26 portion of that interest shall be distributed at least as rapidly as
27 under the method of distribution being used at the date of his or
28 her death.

29 (c) If a member dies before distribution to him or her has
30 commenced, then his or her entire interest in the system shall be
31 distributed by the thirty-first day of December of the calendar
32 year containing the fifth anniversary of the member's death,
33 except as follows:

34 (1) If a member's interest is payable to a beneficiary,
35 distributions may be made over the life of that beneficiary or
36 over a period certain not greater than the life expectancy of the
37 beneficiary commencing on or before the thirty-first day of
38 December of the calendar year immediately following the
39 calendar year in which the participant died; or

40 (2) If the member's beneficiary is the surviving spouse, the
41 date distributions are required to begin shall be no later than the
42 later of:

43 (A) The thirty-first day of December of the calendar year in
44 which the member would have attained age seventy and one-
45 half years; or

46 (B) The earlier of (i) The thirty-first day of December of the
47 calendar year in which the member died; or (ii) the thirty-first
48 day of December of the calendar year following the calendar
49 year in which the spouse died.

50 (d) For purposes of this section, any amount paid to a child
51 of a member will be treated as if it had been paid to the surviv-
52 ing spouse of the member if the remaining amount becomes
53 payable to the surviving spouse when the child reaches the age
54 of majority.

§18-7B-16. Years of employment service.

1 (a) A member of the Defined Contribution System who
2 terminates employment with a participating employer and does
3 not remove any funds from his or her vested employee and
4 employer account, or who removes the funds and repays them
5 within five years after termination, and becomes reemployed
6 with a participating employer within five years does not forfeit
7 any amounts placed into the suspension account pursuant to
8 section eleven of this article and they shall be returned to his or
9 her employer account.

10 (b) All years of employment service shall be counted for
11 vesting purposes under section eleven of this article.

§18-7B-20. Prohibition of involuntary cash-outs.

1 Notwithstanding any provision of this section or of any
2 legislative rule contained in series three, involuntary cash-outs
3 to members may not be made after the thirtieth day of June, two
4 thousand five.

**ARTICLE 7C. MERGER OF TEACHERS' DEFINED CONTRIBUTION
RETIREMENT SYSTEM WITH STATE TEACHERS
RETIREMENT SYSTEM.**

- §18-7C-1. Short title.
- §18-7C-2. Legislative findings and purpose.
- §18-7C-3. Definitions.
- §18-7C-4. Merger.
- §18-7C-5. Notice, education, record keeping requirements.
- §18-7C-6. Conversion of assets from Defined Contribution System to State Teachers Retirement System.
- §18-7C-7. Service credit in State Teachers Retirement System following merger.
- §18-7C-8. Election; Board may contract for professional services.
- §18-7C-9. Election considered final.
- §18-7C-10. Qualified domestic relations orders.
- §18-7C-11. Vesting.
- §18-7C-12. Minimum guarantees.
- §18-7C-13. Due process and right to appeal.
- §18-7C-14. Nonseverability.

§18-7C-1. Short title.

- 1 This article may be cited as the "Teachers' Retirement
- 2 Equity Act".

§18-7C-2. Legislative findings and purpose.

- 1 (a) The Legislature declares that the State of West Virginia
- 2 and its citizens have always believed in a strong public educa-
- 3 tion system. The Constitution of this State mandates a thorough
- 4 and efficient public education system. The Legislature notes
- 5 that the quality of our state's education system is dependent,
- 6 *inter alia*, upon the motivation and quality of its teachers and
- 7 educational service personnel.

- 8 (b) The Legislature finds and declares that the State of West
- 9 Virginia is privileged to be the home of some of the best
- 10 teachers and education service personnel in this nation, and that
- 11 our teachers and education service personnel are dedicated and
- 12 hard working individuals. The Legislature further finds and

13 declares that our teachers and education service personnel
14 deserve a retirement program whereby they know in advance
15 what their retirement benefit will be, a defined benefit retire-
16 ment program where our teachers and service personnel will not
17 have to bear the risk of investment performance to receive their
18 full retirement benefit. The Legislature notes that uncertainty
19 exists in the investment markets, especially in the post Septem-
20 ber eleventh era, and that placing this risk and uncertainty upon
21 the state in the form of a defined benefit plan will protect and
22 ensure a meaningful retirement benefit for our teachers and
23 educational service personnel.

24 (c) The Legislature declares that it is in the best interests of
25 the teachers and public education in this state and conducive to
26 the fiscal solvency of the Teachers Retirement System that the
27 Teachers' Defined Contribution Retirement System be merged
28 with the State Teachers Retirement System.

29 (d) The Legislature also finds that a fiscally sound retire-
30 ment program with an ascertainable benefit aids in the retention
31 and recruitment of teachers and school service personnel, and
32 that the provisions of this article are designed to accomplish the
33 goals set forth in this section.

34 (e) The Legislature has studied this matter diligently and in
35 making the determination to merge the two plans has availed
36 itself of an actuarial study of the proposed merger by the
37 actuary of the Consolidated Public Retirement Board as well as
38 engaging the service of two independent actuaries.

39 (f) The Legislature further finds and declares that members
40 of a defined contribution system who must bear the attendant
41 market risk and performance of their investments are truly
42 being provided a significant and greater benefit where the
43 defined contribution system is replaced with a defined benefit
44 system in which the employer bears the risk of market fluctua-
45 tions and investment performance, especially where those

46 members decide through an election process whether to trade
47 the defined contribution system for a defined benefit system.

§18-7C-3. Definitions.

1 As used in this article, unless the context clearly requires a
2 different meaning:

3 (1) “Defined Contribution System” means the Teachers
4 Defined Contribution System created and established in article
5 seven-b of this chapter.

6 (2) “Existing retirement system” or “State Teachers
7 Retirement System” means the State Teachers Retirement
8 System created and established in article seven-a of this
9 chapter.

10 (3) “Board” means the Consolidated Public Retirement
11 Board created and established in article ten-d, chapter five of
12 this code and its employees.

13 (4) “Member” means and includes any person who has at
14 least one dollar in the Defined Contribution System.

15 (5) “Assets” or “all assets” means all member contributions,
16 employer contributions and interest or asset appreciation in a
17 member’s Defined Contribution Account, less any applicable
18 fees as approved by the Board.

19 (6) “Salary” or “annual salary” means the annual contract
20 salary for those persons working in accordance with an employ-
21 ment contract and in any other event as an annualized amount
22 determined by multiplying a person’s hourly rate of pay by two
23 thousand eighty hours.

24 (7) “Date of merger” means, in the event of a positive vote
25 on the merger, the first day of July, two thousand six.

§18-7C-4. Merger.

1 On the first day of July, two thousand six, the Teachers'
2 Defined Contribution Retirement System created and estab-
3 lished in this article shall be merged and consolidated with the
4 Teachers Retirement System created and established in article
5 seven-a of this chapter, pursuant to the provisions of this article:
6 *Provided*, That if the majority of the voting members of the
7 Teachers' Defined Contribution Retirement System do not elect
8 in favor of the merger, then all of the provisions of this article
9 are void and of no force and effect, and the Defined Contribu-
10 tion System created and established in article seven-b of this
11 chapter shall continue as the retirement system for all members
12 in that system as of the thirtieth day of June, two thousand six:
13 *Provided, however*, that prior to the merger and consolidation
14 the State shall deposit into the Teachers Retirement System the
15 amount necessary to cover any additional unfunded actuarial
16 accrued liability which results to the system on the date that the
17 assets and liabilities of the Teachers Defined Contribution
18 Retirement System are merged into the Teachers Retirement
19 System as certified by the Consolidated Public Retirement
20 Board.

§18-7C-5. Notice, education, record keeping requirements.

1 (a) Commencing not later than the first day of August, two
2 thousand five, the Consolidated Public Retirement Board shall
3 begin an educational program with respect to the merger of the
4 Defined Contribution Plan with the State Teachers Retirement
5 System. This education program shall address, at a minimum,
6 the law providing for the merger, the mechanics of the merger,
7 the election process, relevant dates and time periods, the
8 benefits, potential advantages and potential disadvantages if
9 members fail or refuse to approve the merger and thereby elect
10 to remain in the Defined Contribution System, the benefits,
11 potential advantages and potential disadvantages of becoming

12 a member of the Teachers Retirement System, potential state
13 and federal tax implications in general attendant to the various
14 options available to the members and any other pertinent
15 information considered relevant by the Board. The Board shall
16 provide this information through its website, by written
17 materials, electronic materials or both written and electronic
18 materials delivered to each member and by classes or seminars,
19 if, in the best judgment of the Board, the classes and seminars
20 are required to provide the necessary education for members to
21 make an informed decision with respect to the election. The
22 Board shall also provide this information through computer
23 programs, or, at the discretion of the Board, through a program
24 of individual counseling which is optional on the part of the
25 member, and by any other educational program or programs
26 considered necessary by the Board.

27 (b) The Board shall provide each member with a copy of
28 the written or electronic educational materials and with a copy
29 of the notice of the election. The notice shall provide full and
30 appropriate disclosure regarding the merger and of the election
31 process, including the date of the election. The Board shall also
32 cause notice of the election to be published in at least ten
33 newspapers of general circulation in this state. This notice shall
34 be by Class III legal advertisement published in accordance
35 with the provisions of article three, chapter fifty-nine of this
36 code. The Board shall cause this notice to be published not later
37 than thirty days prior to the beginning of the election period and
38 not sooner than sixty days prior to the beginning of the election
39 period.

40 (c) It is the responsibility of each member of the Defined
41 Contribution Plan to keep the Board informed of his or her
42 current address. If a member does not keep the Board informed
43 of his or her current address, he or she is considered to have
44 waived his or her right to receive any information from the
45 Board with respect to the purposes of this article.

46 (d) Once the Board has complied with the provisions of this
47 section, every member of the Defined Contribution Plan is
48 considered to have actual notice of the election and all matters
49 pertinent to the election.

§18-7C-6. Conversion of assets from Defined Contribution System to State Teachers Retirement System.

1 (a) If a majority of members voting elect to merge the
2 Defined Contribution System into the State Teachers Retirement
3 System, the consolidation and merger shall be governed
4 by the provisions of this article, the Defined Contribution
5 Retirement System shall not exist after the thirtieth day of June,
6 two thousand six, and all members of that system shall become
7 members of the State Teachers Retirement System as provided
8 in this article.

9 (b) Following the election, if the vote is in favor of the
10 merger, the Board shall transfer all assets in the defined
11 contribution account into the State Teachers Retirement System
12 and members have the option to pay into the State Teachers
13 Retirement System a one and one-half of one percent contribu-
14 tion for service in the Defined Contribution Plan being recog-
15 nized in the State Teachers Retirement System. This contribu-
16 tion shall be calculated based on the member's salary as of the
17 thirtieth day of June, two thousand five, and the members
18 attained age on that date, applying both an annual backward
19 salary scale projection from that date for prior years based upon
20 the salary scale assumption applied in the actuarial valuation
21 dated the first day of July, two thousand four, for the Teachers
22 Retirement System and a one year forward salary scale projec-
23 tion for the year ending on the thirtieth day of June, two
24 thousand six.

25 (c) The Board shall make available to the members a loan
26 in accordance with the provisions of section thirty-four, article
27 seven-a of this chapter to be used by the members to pay all or

28 a part of the one and one-half percent amount established in this
29 section. Notwithstanding any provision of this code, any rule or
30 any policy of the Board to the contrary, the interest rate on any
31 loan used to pay the one and one-half percent amount may not
32 exceed seven and one-half percent per annum and the amount
33 total borrowed for this section may not exceed twelve thousand
34 dollars. In the event a plan loan is used to pay the one and one-
35 half percent, the Board shall make any necessary actuarial
36 adjustments at the time the loan is made. The Board shall make
37 this plan loan available for members until the thirtieth day of
38 June, two thousand seven.

39 (d) The Board shall develop and institute a payroll deduc-
40 tion program for the repayment of the plan loan established in
41 this section.

42 (e) If the merger and consolidation is elected by a majority
43 of those persons voting, as of the first day of July, two thousand
44 six, the members' contribution rate shall become six percent of
45 his or her salary or wages and all members who make a
46 contribution into the State Teachers Retirement System on or
47 after the first day of July, two thousand six, shall be governed
48 by the provisions of article seven-a of this chapter, subject to
49 the provisions of this article.

50 (f) In the event a member has withdrawn or cashed out part
51 of his or her defined contribution plan, that member will not be
52 given credit for those moneys cashed out or withdrawn. The
53 Board shall make an actuarial determination as to the amount
54 of credit a member loses on the amounts he or she has with-
55 drawn or cashed out, which shall be expressed as a loss of
56 service credit: *Provided*, That a member may repay those
57 amounts he or she previously cashed out or withdrew, along
58 with interest determined by the Board and receive the same
59 credit as if the withdrawal or cash out never occurred. If the
60 repayment is five or more years following the cash out or

61 withdrawal, then he or she must repay any forfeited employer
62 contribution account balance along with interest determined by
63 the Board in addition to repaying the cash out or withdrawn
64 amount.

65 (g) Where the member has cashed out of his or her teacher
66 defined contribution plan account balance after the last day of
67 June, two thousand one, and that member wishes to repurchase
68 defined contribution plan service after the thirtieth day of June,
69 two thousand six, then the member shall repay the teachers
70 retirement plan.

71 (h) Any prior service in the State Teachers Retirement
72 System a member may have is not affected by the provisions of
73 this article.

§18-7C-7. Service credit in State Teachers Retirement System following merger.

1 Any member transferring all of his or her assets from the
2 Defined Contribution System to the State Teachers Retirement
3 System pursuant to the provisions of this article, and who has
4 not made any withdrawals from his or her defined contribution
5 plan, is entitled to service credit in the State Teachers Retirement
6 System for each year, or part of a year, as governed by the
7 provisions of article seven-a of this chapter, the member
8 worked and contributed to the Defined Contribution Plan. Any
9 member who has made withdrawals or cash outs will receive
10 service credit based upon the amounts transferred and the Board
11 shall make the appropriate actuarial determination of and the
12 appropriate actuarial adjustment to the service credit the
13 member will receive.

§18-7C-8. Election; Board may contract for professional services.

1 (a) The Board shall arrange for and hold an election for the
2 members of the defined contribution plan on the issue of

3 merging and consolidating the Defined Contribution Plan into
4 the State Teachers Retirement Plan with the result being that, if
5 a majority of the members casting ballots vote in the positive on
6 the issue, all members of the Defined Contribution Plan will
7 transfer, or have transferred, all assets held by them or on their
8 behalf in the Defined Contribution Plan to, and they shall
9 become members of and be entitled to the benefits of, the State
10 Teachers Retirement System and be governed by the provisions
11 of the State Teachers Retirement System subject to the provi-
12 sions of this article: *Provided*, That at least one-half of the
13 members of the Defined Contribution Plan must vote on the
14 question in order for the election to be valid and binding.

15 (b) Any person who has one dollar or more in a defined
16 contribution account created and established pursuant to article
17 seven-b of this chapter, may vote on the question of the merger.

18 (c) The Board may retain the services of the professionals
19 it considers necessary to: (1) Assist in the preparation of
20 educational materials for members of the Defined Contribution
21 Plan to inform these members of their options in the election;
22 (2) assist in the educational process of the members; (3) assist
23 in the election process and the election; and (4) ensure compli-
24 ance with all relevant state and federal laws.

25 (d) Due to the time constraints inherent in the merger
26 process set forth in this article in specific, and due to the nature
27 of the professional services required by the Consolidated Public
28 Retirement Board in general, the provisions of article three,
29 chapter five-a of this code, relating to the Division of Purchas-
30 ing of the Department of Administration do not apply to any
31 contracts for any actuarial services, investment services, legal
32 services or other professional services authorized under the
33 provisions of this article.

34 (e) The election provided for in this section may be held
35 through certified mail or in any other way the Board determines

36 is in the best interest of the members. Each ballot shall contain
37 the following language, in bold fifteen point type: "By casting
38 this ballot I am making an educated, informed and voluntary
39 choice as to my retirement and the retirement system of which
40 I wish to be a member. I am also certifying that I understand the
41 consequences of my vote in this election." Each ballot shall be
42 signed by the member voting. The Board shall retain the ballots
43 in a permanent file. Any unsigned ballot is void.

44 (f) The election period shall begin not later than the first
45 day of March, two thousand six, and the Board shall ascertain
46 the results of the election not later than the last day of March,
47 two thousand six. The Board shall certify the results of the
48 election to the Governor, to the Legislature and to the members
49 not later than the fifth day of April, two thousand six.

50 (g) The election period shall terminate and no votes may be
51 cast or counted after the twelfth day of March, two thousand
52 six, except that if the election is conducted through the United
53 States mails, the ballot shall be postmarked not later than the
54 twelfth day of March, two thousand six, in order to be counted.

55 (h) The Board shall take all necessary steps to see that the
56 merger does not affect the qualified status with the Internal
57 Revenue Service of either retirement plan.

§18-7C-9. Election considered final.

1 (a) The election is considered final and each member,
2 whether he or she votes, or fails to vote, shall thereafter be
3 bound by the results of the election. Every member is consid-
4 ered to have made an informed, educated, knowing and
5 voluntary decision and choice with respect to the election.
6 Those members who fail or refuse to vote are also considered
7 to have made an informed, educated, knowing and voluntary
8 decision and choice with respect to the election and with respect

9 to voting and shall be bound by the results of the election as if
10 he or she voted in the election.

11 (b) Only one election may be held pursuant to the provi-
12 sions of this article on the issue of merging and consolidating
13 the Defined Contribution Plan with the State Teachers Retire-
14 ment Plan.

§18-7C-10. Qualified domestic relations orders.

1 Any member having a qualified domestic relations order
2 against his or her defined contribution account is allowed to
3 repurchase service in the State Teachers Retirement System by
4 repaying any moneys previously distributed to the alternate
5 payee along with the interest as set by the Board: *Provided,*
6 That a member shall repay any amounts under this section by
7 the last day of June, two thousand twelve. The provisions of this
8 section are void and of no effect if the members of the Defined
9 Contribution Plan fail to elect to merge and consolidate the
10 Defined Contribution Plan with the State Teachers Retirement
11 System.

§18-7C-11. Vesting.

1 Any member who works one hour or more after the date of
2 merger provided in this article occurs, is subject to the vesting
3 schedule set forth in article seven-a of this chapter: *Provided,*
4 That if a member is vested under the Defined Contribution Plan
5 and his or her last contribution was not made to the State
6 Teachers Retirement System, that member is subject to the
7 vesting schedule set forth in article seven-b of this chapter.

§18-7C-12. Minimum guarantees.

1 (a) Any member of the Defined Contribution Plan who has
2 made a contribution to the State Teachers Retirement System
3 after the date of merger is guaranteed a minimum benefit equal

4 to his or her contributions to the Defined Contribution Plan as
5 of the thirtieth day of June, two thousand six, plus his or her
6 vested employer account balance as of that date, as stated by the
7 Board or the Board's professional contractor.

8 (b) A member of the Defined Contribution Plan who has
9 made contributions to the State Teachers Retirement System
10 after the thirtieth day of June, two thousand six, where the
11 Defined Contribution Plan has been merged into the State
12 Teachers Retirement System pursuant to the provisions of this
13 article, shall have, upon eligibility to receive a distribution
14 under article seven-a of this chapter, at a minimum, the follow-
15 ing three options: (1) The right to receive an annuity from the
16 State Teachers Retirement System created and established in
17 article seven-a of this chapter, based upon the benefit and
18 vesting provisions of that article; (2) the right to withdraw from
19 the State Teachers Retirement Plan and receive his or her
20 member accumulated contributions plus regular interest thereon
21 as set forth in article seven-a of this chapter; or (3) the right to
22 withdraw and receive his or her original vested defined contri-
23 bution account balance as of the date of the merger as deter-
24 mined by the Board or its professional third party benefits
25 administrator pursuant to the vesting provisions of section
26 twelve of this article.

27 (c) Any member of the Teachers Defined Contribution
28 System who makes no contribution to the State Teachers
29 Retirement System following approval of the merger and
30 following the date of merger is guaranteed the receipt of the
31 amount in his or her total vested account in the Defined
32 Contribution Plan on the date of merger plus interest thereon at
33 four percent accruing from the date of merger.

§18-7C-13. Due process and right to appeal.

1 Any person aggrieved by any actuarial determination made
2 by the Board following the election, if the result of the election

- 3 is in favor of merger and consolidation, may petition the Board
4 and receive an administrative hearing on the matter in dispute.
5 The administrative decision may be appealed to a circuit court.

§18-7C-14. Nonseverability.

- 1 If any provision of this article is held unconstitutional or
2 void, the remaining provisions of this article shall be void and
3 of no effect and, to this end, the provisions of this article are
4 hereby declared to be nonseverable.

CHAPTER 51. COURTS AND THEIR OFFICERS.

**ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF
RECORD.**

§51-9-6c. Limitations on benefit increases.

- 1 (a) The state shall not increase any existing benefits or
2 create any new benefits for any retirees or beneficiaries
3 currently receiving monthly benefit payments from the system,
4 other than an increase in benefits or new benefits effected by
5 operation of law in effect on the effective date of this article, in
6 an amount that would exceed more than one percent of the
7 accrued actuarial liability of the system as of the last day of the
8 preceding fiscal year as determined in the annual actuarial
9 valuation for the plan completed for the Consolidated Public
10 Retirement Board as of the first day of the following fiscal year
11 as of the date the improvement is adopted by the Legislature.

- 12 (b) If any increase of existing benefits or creation of new
13 benefits for any retirees or beneficiaries currently receiving
14 monthly benefit payments under the system, other than an
15 increase in benefits or new benefits effected by operation of law
16 in effect on the effective date of this article, causes any addi-
17 tional unfunded actuarial accrued liability in any of the West
18 Virginia state sponsored pension systems as calculated in the
19 annual actuarial valuation for the plan during any fiscal year,

20 the additional unfunded actuarial accrued liability of the system
21 shall be fully amortized over no more than the six consecutive
22 fiscal years following the date the increase in benefits or new
23 benefits become effective as certified by the consolidated
24 public retirement board. Following the receipt of the certifica-
25 tion of additional actuarial accrued liability, the Governor shall
26 submit the amount of the amortization payment each year for
27 the system as part of the annual budget submission or in an
28 executive message to the Legislature.

29 (c) Notwithstanding the provisions of subsections (a) and
30 (b) of this section, the computation of annuities or benefits for
31 active members due to retirement, death or disability as
32 provided for in the system shall not be amended in such a
33 manner as to increase any existing benefits or to provide for
34 new benefits.

35 (d) The provisions of this section terminate effective the
36 first day of July, two thousand nineteen: *Provided*, That if
37 bonds are issued pursuant to article eight, chapter twelve of this
38 code, the provisions of this section shall not terminate while
39 any of the bonds are outstanding.

CHAPTER 202

**(Com. Sub. for S. B. 717 — By Senators Edgell, Jenkins,
Boley, Harrison and Kessler)**

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to amend and reenact §5-10-18 of the Code of West Virginia, 1931, as amended, relating to permitting Wetzel County

Hospital and Jobs for West Virginia's Graduates respectively to provide an alternative retirement plan for new employees in lieu of participation in the Public Employees Retirement System; establishing date; and permitting emergency services personnel to purchase service credit for the years one thousand nine hundred ninety to one thousand nine hundred ninety-five; specifying the cost of the service credit; specifying interest rate; and setting forth a limited time period for emergency services personnel to make the purchase.

Be it enacted by the Legislature of West Virginia:

That §5-10-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-18. Termination of membership; reentry.

1 (a) When a member of the retirement system retires or dies,
2 he or she ceases to be a member. When a member leaves the
3 employ of a participating public employer for any other reason,
4 he or she ceases to be a member and forfeits service credited to
5 him or her at that time. If he or she becomes reemployed by a
6 participating public employer he or she shall be reinstated as a
7 member of the retirement system and his or her credited service
8 last forfeited by him or her shall be restored to his or her credit:
9 *Provided*, That he or she must be reemployed for a period of
10 one year or longer to have the service restored: *Provided*,
11 *however*, That he or she returns to the members' deposit fund
12 the amount, if any, he or she withdrew from the fund, together
13 with regular interest on the withdrawn amount from the date of
14 withdrawal to the date of repayment, and that the repayment
15 begins within two years of the return to employment and that
16 the full amount is repaid within five years of the return to
17 employment.

18 (b) The Prestera Center for Mental Health Services, Valley
19 Comprehensive Mental Health Center, Westbrook Health
20 Services and Eastern Panhandle Mental Health Center, and their
21 successors in interest, shall provide for their employees a
22 pension plan in lieu of the Public Employees Retirement
23 System during the existence of the named mental health centers
24 and their successors in interest.

25 (c) The administrative bodies of the Prestera Center for
26 Mental Health Services, Valley Comprehensive Mental Health
27 Center, Westbrook Health Services and Eastern Panhandle
28 Mental Health Center shall, on or before the first day of May,
29 one thousand nine hundred ninety-seven, give written notice to
30 each employee who is a member of the Public Employees
31 Retirement System of the option to withdraw from or remain in
32 the system. The notice shall include a copy of this section and
33 a statement explaining the member's options regarding mem-
34 bership. The notice shall include a statement in plain language
35 giving a full explanation and actuarial projection figures in
36 support of the explanation regarding the individual member's
37 current account balance, vested and nonvested, and his or her
38 projected return upon remaining in the public employees
39 retirement system until retirement, disability or death, in
40 comparison with the projected return upon withdrawing from
41 the Public Employees Retirement System and joining a private
42 pension plan provided by the Community Mental Health Center
43 and remaining therein until retirement, disability or death. The
44 administrative bodies shall keep in their respective records a
45 permanent record of each employee's signature confirming
46 receipt of the notice.

47 (d) Effective the first day of March, two thousand three, and
48 ending the thirty-first day of December, two thousand four, any
49 member may purchase credited service previously forfeited by
50 him or her and the credited service shall be restored to his or
51 her credit: *Provided*, That he or she returns to the members'

52 deposit fund the amount, if any, he or she withdrew from the
53 fund, together with interest on the withdrawn amount from the
54 date of withdrawal to the date of repayment at a rate to be
55 determined by the Board . The repayment under this section
56 may be made by lump sum or repaid over a period of time not
57 to exceed sixty months. Where the member elects to repay the
58 required amount other than by lump sum, the member is
59 required to pay interest at the rate determined by the Board until
60 all sums are fully repaid.

61 (e) Effective the first day of July, two thousand five, and
62 ending the thirty-first day of December, two thousand six, any
63 emergency services personnel may purchase service credit for
64 the time period beginning the first day of January, one thousand
65 nine hundred ninety, and ending the thirty-first day of Decem-
66 ber, one thousand nine hundred ninety-five: *Provided*, That
67 person was employed as an emergency service person in this
68 state for that time period: *Provided, however*, That any person
69 obtaining service credit under this subsection is required to pay
70 the employee's share and the employer's share upon his or her
71 actual salary for the years in question plus interest at the
72 assumed actuarial rate of return for the plan year being repur-
73 chased.

74 (f) Jobs for West Virginia's Graduates and their successors
75 in interest shall provide a pension plan in lieu of the Public
76 Employees Retirement System for employees hired on or after
77 the first day of July, two thousand five.

78 (g) Wetzel County Hospital and their successors in interest
79 shall provide a pension plan in lieu of the Public Employees
80 Retirement System for employees hired on or after the first day
81 of July, two thousand five.

CHAPTER 203

(Com. Sub. for S. B. 514 — By Senators Kessler, Bailey, Sharpe,
Oliverio, Yoder, Unger and Love)

[Passed April 9, 2005; in effect July 1, 2005.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §6-7-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §50-1-3 of said code; to amend and reenact §51-1-10a of said code; to amend and reenact §51-2-13 of said code; and to amend and reenact §51-2A-6 of said code, all relating generally to the salaries of the Governor, Attorney General, State Treasurer, State Auditor, Commissioner of Agriculture, Secretary of State, Supreme Court Justices, judges of circuit courts, family court judges and magistrates; and effective dates.

Be it enacted by the Legislature of West Virginia:

That §6-7-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §50-1-3 of said code be amended and reenacted; that §51-1-10a of said code be amended and reenacted; that §51-2-13 of said code be amended and reenacted; and that §51-2A-6 of said code be amended and reenacted, all to read as follows:

CHAPTER 6. GENERAL PROVISIONS RESPECTING OFFICERS.

Chapter

- 6. General Provisions Respecting Officers.**
- 50. Magistrate Courts.**
- 51. Courts and Their Officers.**

ARTICLE 7. COMPENSATION AND ALLOWANCES.**§6-7-2. Salaries of certain state officers.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-3. Salaries of magistrates.

1 (a) The Legislature finds and declares that:

2 (1) The West Virginia Supreme Court of Appeals has held
3 that a salary system for magistrates which is based upon the
4 population that each magistrate serves does not violate the
5 equal protection clause of the Constitution of the United States;

6 (2) The West Virginia Supreme Court of Appeals has held
7 that a salary system for magistrates which is based upon the
8 population that each magistrate serves does not violate section
9 thirty-nine, article VI of the Constitution of West Virginia;

10 (3) The utilization of a two-tiered salary schedule for
11 magistrates is an equitable and rational manner by which
12 magistrates should be compensated for work performed;

13 (4) Organizing the two tiers of the salary schedule into one
14 tier for magistrates serving less than eight thousand four
15 hundred in population and the second tier for magistrates
16 serving eight thousand four hundred or more in population is
17 rational and equitable given current statistical information
18 relating to population and caseload; and

19 (5) That all magistrates who fall under the same tier should
20 be compensated equally.

21 (b) The salary of each magistrate shall be paid by the state.
22 Magistrates who serve fewer than eight thousand four hundred
23 in population shall be paid annual salaries of thirty thousand six
24 hundred twenty-five dollars and magistrates who serve eight
25 thousand four hundred or more in population shall be paid
26 annual salaries of thirty-seven thousand dollars: *Provided*, That
27 on and after the first day of July, two thousand three, magis-
28 trates who serve fewer than eight thousand four hundred in
29 population shall be paid annual salaries of thirty-three thousand
30 six hundred twenty-five dollars and magistrates who serve eight
31 thousand four hundred or more in population shall be paid
32 annual salaries of forty thousand dollars: *Provided, however*,
33 That on and after the first day of July, two thousand five,
34 magistrates who serve fewer than eight thousand four hundred
35 in population shall be paid annual salaries of forty-three
36 thousand six hundred twenty-five dollars and magistrates who
37 serve eight thousand four hundred or more in population shall
38 be paid annual salaries of fifty thousand dollars.

39 (c) For the purpose of determining the population served by
40 each magistrate, the number of magistrates authorized for each
41 county shall be divided into the population of each county. For
42 the purpose of this article, the population of each county is the
43 population as determined by the last preceding decennial census
44 taken under the authority of the United States government.

CHAPTER 51. COURTS AND THEIR OFFICERS.

Article

1. Supreme Court of Appeals.
2. Circuit Courts; Circuit Judges.
- 2A. Family Courts.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

1 The salary of each of the Justices of the Supreme Court of
2 Appeals shall be ninety-five thousand dollars per year:
3 *Provided*, That beginning the first day of July, two thousand
4 five, the salary of each of the Justices of the Supreme Court
5 shall be one hundred twenty-one thousand dollars per year.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.**§51-2-13. Salaries of judges of circuit courts.**

1 The salaries of the judges of the various circuit courts shall
2 be paid solely out of the State Treasury. No county, county
3 commission, board of commissioners or other political subdivi-
4 sion shall supplement or add to such salaries.

5 The annual salary of all circuit judges shall be ninety
6 thousand dollars per year: *Provided*, That beginning the first
7 day of July, two thousand five, the annual salary of all circuit
8 judges shall be one hundred sixteen thousand dollars per year.

ARTICLE 2A. FAMILY COURTS.**§51-2A-6. Compensation and expenses of family court judges
and their staffs.**

1 (a) A family court judge is entitled to receive as compensa-
2 tion for his or her services an annual salary of sixty-two
3 thousand five hundred dollars: *Provided*, That beginning the
4 first day of July, two thousand five, a family court judge is
5 entitled to receive as compensation for his or her services an
6 annual salary of eighty-two thousand five hundred dollars.

7 (b) The secretary-clerk of the family court judge is ap-
8 pointed by the family court judge and serves at his or her will
9 and pleasure. The secretary-clerk of the family court judge is
10 entitled to receive an annual salary of twenty-five thousand

11 three hundred thirty-two dollars. In addition, any person
12 employed as a secretary-clerk to a family court judge on the
13 effective date of the enactment of this section during the sixth
14 extraordinary session of the Legislature in the year two thou-
15 sand one who is receiving an additional five hundred dollars per
16 year up to ten years of a certain period of prior employment
17 under the provisions of the prior enactment of section eight of
18 this article during the second extraordinary session of the
19 Legislature in the year one thousand nine hundred ninety-nine
20 shall continue to receive such additional amount. Further, the
21 secretary-clerk will receive such percentage or proportional
22 salary increases as may be provided by general law for other
23 public employees and is entitled to receive the annual incre-
24 mental salary increase as provided in article five, chapter five
25 of this code.

26 (c) The family court judge may employ not more than one
27 family case coordinator who serves at his or her will and
28 pleasure. The annual salary of the family case coordinator of
29 the family court judge shall be established by the Administra-
30 tive Director of the Supreme Court of Appeals but may not
31 exceed thirty-six thousand sixty dollars. The family case
32 coordinator will receive such percentage or proportional salary
33 increases as may be provided by general law for other public
34 employees and is entitled to receive the annual incremental
35 salary increase as provided in article five, chapter five of this
36 code.

37 (d) The sheriff or his or her designated deputy shall serve
38 as a bailiff for a family court judge. The sheriff of each county
39 shall serve or designate persons to serve so as to assure that a
40 bailiff is available when a family court judge determines the
41 same is necessary for the orderly and efficient conduct of the
42 business of the family court.

43 (e) Disbursement of salaries for family court judges and
44 members of their staffs are made by or pursuant to the order of

45 the Director of the Administrative Office of the Supreme Court
46 of Appeals.

47 (f) Family court judges and members of their staffs are
48 allowed their actual and necessary expenses incurred in the
49 performance of their duties. The expenses and compensation
50 will be determined and paid by the Director of the Administra-
51 tive Office of the Supreme Court of Appeals under such
52 guidelines as he or she may prescribe, as approved by the
53 Supreme Court of Appeals.

54 (g) Notwithstanding any other provision of law, family
55 court judges are not eligible to participate in the retirement
56 system for judges under the provisions of article nine of this
57 chapter.

CHAPTER 204

(S. B. 640 — By Senators Fanning, Weeks, Hunter and Minard)

[Passed April 8, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2004.]

AN ACT to amend and reenact §29-4-15 of the Code of West Virginia, 1931, as amended, relating to commissioner seals; and providing for the use of a stamped imprint as an acceptable seal.

Be it enacted by the Legislature of West Virginia:

That §29-4-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. NOTARIES PUBLIC AND COMMISSIONERS.

§29-4-15. Seal of such commissioner.

1 Every such commissioner shall provide an official seal on
2 which shall be inscribed his or her name and residence and the
3 words "Commissioner for West Virginia". An impression or
4 stamped imprint of such seal, together with his or her signature,
5 shall be forthwith transmitted to and filed in the office of the
6 Secretary of State.

CHAPTER 205

(Com. Sub. for S. B. 154 — By Senator Bowman)

[Passed April 7, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-15-23, relating to the beneficial use of water treatment plant sludge; requiring promulgation of legislative rules; and setting forth minimum requirements for the legislative rules.

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 §22-15-23, to read as follows:

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-23. Water treatment plant sludge.

1 (a) Water treatment plant sludge determined by the Secre-
2 tary to have beneficial properties may be beneficially used in

3 accordance with requirements determined necessary by the
4 Secretary to protect human health and the environment.
5 Persons seeking to beneficially use water treatment plant sludge
6 shall meet the requirements of this article and the rules promul-
7 gated under this article.

8 (b) In order to enhance the resource recovery and recycling
9 goals of this article and to encourage the beneficial use of water
10 treatment plant sludge, the Secretary shall propose, for promul-
11 gation, legislative rules to effectuate the purposes of this section
12 in accordance with the provisions of article three, chapter
13 twenty-nine-a of this code. The Secretary shall, at a minimum,
14 include the following in the proposed rules:

15 (1) A mechanism to determine beneficial use characteristics
16 of water treatment plant sludge;

17 (2) A method to determine pollutant content of water
18 treatment plant sludge proposed for beneficial use;

19 (3) A method to determine that the beneficial properties of
20 the water treatment plant sludge are derived from the raw
21 material rather than additives;

22 (4) Buffer zones or other criteria necessary to adequately
23 protect ground and surface water;

24 (5) Necessary restrictions of pollutant levels in the water
25 treatment plant sludge;

26 (6) Analytical methods and storage requirements for water
27 treatment plant sludge;

28 (7) Permit requirements; and

29 (8) Appropriate fees.

CHAPTER 206

**(H. B. 3356 — By Delegates Michael, Doyle, Cann,
Kominar, Browning and Williams)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22C-3-26; and to amend said code by adding thereto a new section, designated §22C-4-9a, all relating generally to the powers and duties of the solid waste management board; providing for performance reviews of authorities and performance measures; requiring proposal of legislative rules for implementation of review process and system; authorizing solid waste management board to intervene under certain circumstances; providing intervention process; requiring State Auditor to establish certain accounting procedures to be adopted by all county and regional solid waste authorities; and requiring audits of authorities.

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 §22C-3-26; and that said code be amended by adding thereto a new section, designated §22C-4-9a, all to read as follows:

Article

- 3. Solid Waste Management Board.**
- 4. County and Regional Solid Waste Authorities.**

ARTICLE 3. SOLID WASTE MANAGEMENT BOARD.

§22C-3-26. Supersedure over county and regional solid waste authorities.

1 For purposes of exercising the authority provided under
2 section nine-a, article four of this chapter, the Board may by
3 resolution supersede and exercise, in part or whole, the powers
4 granted to only county or regional solid waste authorities that
5 operate solid waste facilities as provided in chapters seven,
6 twenty two, twenty two-c and twenty-four of this code. Actions
7 of the Board supersede those powers granted to only county or
8 regional solid waste authorities that operate solid waste
9 facilities.

ARTICLE 4. COUNTY AND REGIONAL SOLID WASTE AUTHORITIES.

§22C-4-9a. Findings, Solid Waste Management Board performance reviews and measures, legislative rules, intervention of impaired authorities, establishment of uniform chart of accounts, financial examination requirements.

1 (a) The Legislature finds that performance review and
2 performance measurement are valuable tools for identifying
3 serious impairments of commercial solid waste facilities
4 operated by county or regional solid waste authorities and
5 fostering accountability and effective and efficient facility
6 operations.

7 (b) The Solid Waste Management Board shall conduct a
8 biennial performance review of each county and regional solid
9 waste authority that operates a commercial solid waste facility.
10 *Provided,* That the Solid Waste Management Board may
11 conduct a performance review at any time it determines a
12 performance review to be necessary.

13 (c) The Solid Waste Management Board shall develop and
14 maintain a system of annual and quarterly or more frequent

15 performance measures useful in gauging the productivity and
16 operational health of county and regional solid waste authorities
17 operating commercial solid waste facilities. The authorities
18 shall provide the performance measurement data in accordance
19 with the legislative rule required under subsection (d) of this
20 section.

21 (d) No later than the first day of August, two-thousand six,
22 the Solid Waste Management Board in consultation and
23 collaboration with the Public Service Commission, shall
24 propose legislative rules for promulgation in accordance with
25 the provisions of article three, chapter twenty-nine-a of this
26 code, to implement a performance review process and system
27 of quarterly performance measures designed pursuant to
28 subsections (b) and (c) of this section.

29 (e) For the purposes of this section, “performance review”
30 means an accountability system which establishes benchmarks
31 to evaluate and determine the effective and efficient perfor-
32 mance of a county solid waste authority operating a commercial
33 solid waste facility or regional solid waste authority operating
34 a commercial solid waste facility.

35 (f) For the purposes of this section, “performance mea-
36 sures” means outcome and output measures. “Outcomes”
37 represent effects or results of programs. “Outputs” represent the
38 units of services or activities produced.

39 (g) In promulgating the rules required by subsection (d) of
40 this section, the Solid Waste Management Board shall establish
41 criteria to be considered in conducting performance reviews,
42 establish benchmarks to identify serious impairments, establish
43 a recommendation process for correcting impairments and
44 establish penalties for failure to comply, including a process for
45 temporary intervention by the Solid Waste Management Board
46 to correct impairments.

47 (h) When the Solid Waste Management Board determines
48 through a performance review or regular monitoring of perfor-
49 mance measures that an authority's commercial solid waste
50 facility is seriously impaired and the authority does not correct
51 the impairments, the intervention process may include, but is
52 not limited to, the following methods:

53 (1) Appointing a team of improvement consultants to
54 conduct on-site reviews and make strategic recommendations
55 toward remedy of the serious impairments;

56 (2) Directing the authority's board of directors to prioritize
57 and target its funds strategically toward alleviating the serious
58 impairments;

59 (3) Recommending to the agencies that appoint the mem-
60 bers of the authority's board of directors, as provided by
61 subsection (b), section three, and subsection (b), section four of
62 this article, that one or more members of the authority's board
63 of directors be replaced;

64 (4) The Director of the Solid Waste Management Board, or
65 his or her designee, may temporarily during intervention,
66 preside as chair of the county or regional solid waste authority
67 board meetings; and

68 (5) Exercising powers of supersedure provided under
69 section twenty-six, article three of this chapter.

70 (i) The State Auditor in consultation and collaboration with
71 the Solid Waste Management Board and the Public Service
72 Commission shall establish a uniform chart of accounts
73 delineating common revenue and expense account naming
74 conventions to be adopted by all county and regional solid
75 waste authorities, beginning no later than the first day of July,
76 two thousand six.

77 (j) The chief inspector and supervisor of local government
78 offices shall conduct an annual examination on the financial
79 report of county and regional solid waste authorities with an
80 audit occurring every third year. Additionally, the chief
81 inspector, upon request by the Solid Waste Management Board,
82 shall conduct an audit of any county or regional solid waste
83 authority that operates a commercial solid waste facility as a
84 part of the performance review required by this section. The
85 definitions of “examination”, “audit” and “review” provided in
86 section one-a, article nine, chapter six of this code apply to this
87 subsection.

CHAPTER 207

(S. B. 728 — By Senator Bowman)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §5A-3-45 of the Code of West Virginia, 1931, as amended, relating to the disposition of state surplus property generally; allowing cannibalization of commodities under certain circumstances; allowing the disposing of commodities as waste under certain circumstances; providing for procedures by legislative rules; defining cannibalization; allowing the state agency for surplus property to take possession of a commodity in certain circumstances and dispose of the commodity using any method authorized in the section; and providing that the cost of disposal in certain circumstances is the responsibility of the agency from which the state agency for surplus property received the commodity.

Be it enacted by the Legislature of West Virginia:

That §5A-3-45 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-45. Disposition of surplus state property; semiannual report; application of proceeds from sale.

1 (a) The state agency for surplus property has the exclusive
2 power and authority to make disposition of commodities or
3 expendable commodities now owned or in the future acquired
4 by the state when the commodities are or become obsolete or
5 unusable or are not being used or should be replaced.

6 (b) The agency shall determine what commodities or
7 expendable commodities should be disposed of and make
8 disposition in the manner which will be most advantageous to
9 the state. The disposition may include:

10 (1) Transferring the particular commodities or expendable
11 commodities between departments;

12 (2) Selling the commodities to county commissions, county
13 boards of education, municipalities, public service districts,
14 county building commissions, airport authorities, parks and
15 recreation commissions, nonprofit domestic corporations
16 qualified as tax exempt under Section 501(c)(3) of the Internal
17 Revenue Code of 1986, as amended, or volunteer fire depart-
18 ments in this state when the volunteer fire departments have
19 been held exempt from taxation under Section 501(c) of the
20 Internal Revenue Code;

21 (3) Trading in the commodities as a part payment on the
22 purchase of new commodities;

23 (4) Cannibalizing the commodities pursuant to procedures
24 established under subsection (g) of this section;

25 (5) Properly disposing of the commodities as waste; or

26 (6) Selling the commodities to the highest bidder by means
27 of public auctions or sealed bids, after having first advertised
28 the time, terms and place of the sale as a Class II legal adver-
29 tisement in compliance with the provisions of article three,
30 chapter fifty-nine of this code. The publication area for the
31 publication is the county in which the sale is to be conducted.
32 The sale may also be advertised in other advertising media that
33 the agency considers advisable. The agency may sell to the
34 highest bidder or to any one or more of the highest bidders, if
35 there is more than one, or, if the best interest of the state will be
36 served, reject all bids.

37 (c) Upon the transfer of commodities or expendable
38 commodities between departments, or upon the sale of com-
39 modities or expendable commodities to an eligible organiza-
40 tion, the agency shall set the price to be paid by the receiving
41 eligible organization, with due consideration given to current
42 market prices.

43 (d) The agency may sell expendable, obsolete or unused
44 motor vehicles owned by the state to an eligible organization,
45 other than volunteer fire departments. In addition, the agency
46 may sell expendable, obsolete or unused motor vehicles owned
47 by the state with a gross weight in excess of four thousand
48 pounds to an eligible volunteer fire department. The agency,
49 with due consideration given to current market prices, shall set
50 the price to be paid by the receiving eligible organization for
51 motor vehicles sold pursuant to this provision: *Provided*, That
52 the sale price of any motor vehicle sold to an eligible organiza-
53 tion may not be less than the "average loan" value, as published
54 in the most recent available eastern edition of the National

55 Automobile Dealer's Association (N. A. D. A.) Official Used
56 Car Guide, if the value is available, unless the fair market value
57 of the vehicle is less than the N. A. D. A. "average loan"
58 value, in which case the vehicle may be sold for less than the
59 "average loan" value. The fair market value shall be based on
60 a thorough inspection of the vehicle by an employee of the
61 agency who shall consider the mileage of the vehicle and the
62 condition of the body, engine and tires as indicators of its fair
63 market value. If no fair market value is available, the agency
64 shall set the price to be paid by the receiving eligible organiza-
65 tion with due consideration given to current market prices. The
66 duly authorized representative of the eligible organization, for
67 whom the motor vehicle or other similar surplus equipment is
68 purchased or otherwise obtained, shall cause ownership and
69 proper title to the motor vehicle to be vested only in the official
70 name of the authorized governing body for whom the purchase
71 or transfer was made. The ownership or title, or both, shall
72 remain in the possession of that governing body and be
73 nontransferable for a period of not less than one year from the
74 date of the purchase or transfer. Resale or transfer of ownership
75 of the motor vehicle or equipment prior to an elapsed period of
76 one year may be made only by reason of certified unserviceability.
77

78 (e) The agency shall report to the Legislative Auditor,
79 semiannually, all sales of commodities or expendable commod-
80 ities made during the preceding six months to eligible organiza-
81 tions. The report shall include a description of the commodities
82 sold, the price paid by the eligible organization which received
83 the commodities and to whom each commodity was sold.

84 (f) The proceeds of the sales or transfers shall be deposited
85 in the State Treasury to the credit on a pro rata basis of the fund
86 or funds out of which the purchase of the particular commodi-
87 ties or expendable commodities was made: *Provided*, That the
88 agency may charge and assess fees reasonably related to the

89 costs of care and handling with respect to the transfer, ware-
90 housing, sale and distribution of state property disposed of or
91 sold pursuant to the provisions of this section.

92 (g)(1) For purposes of this section, "cannibalization" means
93 the removal of parts from one commodity to use in the creation
94 or repair of another commodity.

95 (2) The Director of the Purchasing Division shall propose
96 for promulgation legislative rules to establish procedures that
97 permit the cannibalization of a commodity when it is in the best
98 interests of the state. The procedures shall require the approval
99 of the Director prior to the cannibalization of the commodity
100 under such circumstances as the procedures may prescribe.

101 (3)(A) Under circumstances prescribed by the procedures,
102 state agencies shall be required to submit a form, in writing or
103 electronically, that, at a minimum, elicits the following infor-
104 mation for the commodity the agency is requesting to cannibal-
105 ize:

106 (i) The commodity identification number;

107 (ii) The commodity's acquisition date;

108 (iii) The commodity's acquisition cost;

109 (iv) A description of the commodity;

110 (v) Whether the commodity is operable and, if so, how well
111 it operates;

112 (vi) How the agency will dispose of the remaining parts of
113 the commodity; and

114 (vii) Who will cannibalize the commodity and how the
115 person is qualified to remove and reinstall the parts.

116 (B) If the agency has immediate plans to use the cannibal-
117 ized parts, the form shall elicit the following information for the
118 commodity or commodities that will receive the cannibalized
119 part or parts:

120 (i) The commodity identification number;

121 (ii) The commodity's acquisition date;

122 (iii) The commodity's acquisition cost;

123 (iv) A description of the commodity;

124 (v) Whether the commodity is operable;

125 (vi) Whether the part restores the commodity to an operable
126 condition; and

127 (vii) The cost of the parts and labor to restore the commod-
128 ity to an operable condition without cannibalization.

129 (C) If the agency intends to retain the cannibalized parts for
130 future use, it shall provide information justifying its request.

131 (D) The procedures shall provide for the disposal of the
132 residual components of cannibalized property.

133 (h)(1) The Director of the Purchasing Division shall
134 propose for promulgation legislative rules to establish proce-
135 dures that allow state agencies to dispose of commodities in a
136 landfill, or by other lawful means of waste disposal, if the value
137 of the commodity is less than the benefit that may be realized
138 by the state by disposing of the commodity using another
139 method authorized in this section. The procedures shall specify
140 circumstances where the state agency for surplus property shall
141 inspect the condition of the commodity prior to authorizing the

142 disposal and those circumstances when the inspection is not
143 necessary prior to the authorization.

144 (2) Whenever a state agency requests permission to dispose
145 of a commodity in a landfill, or by other lawful means of waste
146 disposal, the state agency for surplus property has the right to
147 take possession of the commodity and to dispose of the com-
148 modity using any other method authorized in this section.

149 (3) If the state agency for surplus property determines,
150 within fifteen days of receiving a commodity, that disposing of
151 the commodity in a landfill or by other lawful means of waste
152 disposal would be more beneficial to the state than disposing of
153 the commodity using any other method authorized in this
154 section, the cost of the disposal is the responsibility of the
155 agency from which it received the commodity.

CHAPTER 208

**(H. B. 3361 — By Delegates Beane, Ennis, Butcher, Hatfield,
Hunt, Iaquina, Martin, Perdue, Frich and Walters)**

[Passed April 9, 2005; in effect July 1, 2005.]

[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §4-10-4, §4-10-4a, §4-10-5, §4-10-5a and §4-10-5b of the Code of West Virginia, 1931, as amended, all relating to the West Virginia sunset law; terminating agencies following full performance evaluations; terminating agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates; terminating agencies following preliminary performance reviews; terminating

agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates; and terminating boards created to regulate professions and occupations.

Be it enacted by the Legislature of West Virginia:

That §4-10-4, §4-10-4a, §4-10-5, §4-10-5a and §4-10-5b of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 10. THE WEST VIRGINIA SUNSET LAW.

§4-10-4. Termination of agencies following full performance evaluations.

§4-10-4a. Termination of agencies previously subject to full performance evaluations following compliance monitoring and further inquiry updates.

§4-10-5. Termination of agencies following preliminary performance reviews.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

§4-10-5b. Termination of boards created to regulate professions and occupations.

§4-10-4. Termination of agencies following full performance evaluations.

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a full perfor-
3 mance evaluation has been conducted upon the agency:

4 (1) On the first day of July, two thousand six: Division of
5 Motor Vehicles; Department of Revenue; Department of Health
6 and Human Resources; Department of Environmental Protec-
7 tion; State Police; Consolidated Public Retirement Board; and
8 Workers' Compensation.

9 (2) On the first day of July, two thousand seven: Office of
10 Health Facilities Licensure and Certification within the Depart-
11 ment of Health and Human Resources; Development Office;
12 Parkways, Economic Development and Tourism Authority;

13 Division of Highways; Division of Personnel; Office of the
14 Insurance Commissioner; and Division of Culture and
15 History.

16 (3) On the first day of July, two thousand eight: Purchasing
17 Division within the Department of Administration; Division of
18 Rehabilitation Services; Division of Corrections; Division of
19 Labor; Investment Management Board; and Division of Natural
20 Resources.

21 (4) On the first day of July, two thousand nine: Office of
22 Judges in Workers' Compensation; and Public Land Corpora-
23 tion.

**§4-10-4a. Termination of agencies previously subject to full
performance evaluations following compliance
monitoring and further inquiry updates.**

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a compliance
3 monitoring and further inquiry update has been completed on
4 the agency subsequent to the prior completion of a full perfor-
5 mance evaluation:

6 (1) On the first day of July, two thousand six: Tourism
7 Commission within the Development Office.

8 (2) On the first day of July, two thousand seven: School
9 Building Authority.

10 (3) On the first day of July, two thousand eight: James
11 "Tiger" Morton Catastrophic Illness Commission.

**§4-10-5. Termination of agencies following preliminary perfor-
mance reviews.**

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a preliminary
3 performance review has been conducted upon the agency:

4 (1) On the first day of July, one thousand nine hundred
5 ninety-six: Juvenile Facilities Review Panel.

6 (2) On the first day of July, one thousand nine hundred
7 ninety-seven: Public Employees Insurance Agency Advisory
8 Board; Cable Television Advisory Board.

9 (3) On the first day of July, one thousand nine hundred
10 ninety-nine: Tree Fruit Industry Self-improvement Assessment
11 Program.

12 (4) On the first day of July, two thousand: Terms of Family
13 Law Master and Family Law Master System.

14 (5) On the first day of July, two thousand three: Advisory
15 Council on Public Health; Governor's Office of Fiscal Risk
16 Analysis and Management.

17 (6) On the first day of July, two thousand four: Workers'
18 Compensation Appeal Board.

19 (7) On the first day of July, two thousand five: Clean Coal
20 Technology Council; and Steel Advisory Commission and Steel
21 Futures Program.

22 (8) On the first day of July, two thousand six: Family
23 Protection Services Board; Medical Services Fund Advisory
24 Council; West Virginia Stream Partners Program; Ohio River
25 Valley Water Sanitation Commission; State Lottery Commis-
26 sion; Whitewater Commission within the Division of Natural
27 Resources; Unemployment Compensation; Women's Commis-
28 sion; Personal Assistance Services Program; Contractor
29 Licensing Board; State Rail Authority; Office of Explosives and

30 Blasting; Waste Tire Fund; Care Home Advisory Board;
31 Capitol Building Commission; Records Management and
32 Preservation Board; Public Employees Insurance Agency; Soil
33 Conservation Committee; and Rural Health Advisory Panel.

34 (9) On the first day of July, two thousand seven: Human
35 Rights Commission; Office of Coalfield Community Develop-
36 ment; State Fire Commission; Children's Health Insurance
37 Board; Board of Banking and Financial Institutions; Lending
38 and Credit Rate Board; Governor's Cabinet on Children and
39 Families; State Geological and Economic Survey; and Public
40 Energy Authority and Board.

41 (10) On the first day of July, two thousand eight: Ethics
42 Commission; Public Service Commission; Parks section and
43 parks function of the Division of Natural Resources; Office of
44 Water Resources of the Department of Environmental Protec-
45 tion; Marketing and Development Division of Department of
46 Agriculture; Public Defender Services; Health Care Authority;
47 Public Employees Insurance Agency Finance Board; West
48 Virginia Prosecuting Attorneys Institute; and Design-Build
49 Board.

50 (11) On the first day of July, two thousand nine: Driver's
51 Licensing Advisory Board; West Virginia Commission for
52 National and Community Service; Membership in the Southern
53 Regional Education Board; Bureau of Senior Services; Oil and
54 Gas Inspector's Examining Board; Division of Protective
55 Services; Motorcycle Safety Awareness Board; Commission on
56 Holocaust Education; and Commission for the Deaf and Hard
57 of Hearing.

58 (12) On the first day of July, two thousand ten: Meat
59 Inspection Program of the Department of Agriculture; Motor
60 Vehicle Dealers Advisory Board; Interstate Commission on
61 Uniform State Laws; Center for Professional Development

62 Board; Interstate Commission on the Potomac River Basin; and
63 Bureau for Child Support Enforcement.

64 (13) On the first day of July, two thousand eleven: Manu-
65 factured Housing Construction and Safety Standards Board.

§4-10-5a. Termination of agencies previously subject to preliminary performance reviews following compliance monitoring and further inquiry updates.

1 The following agencies terminate on the date indicated, but
2 no agency terminates under this section unless a compliance
3 monitoring and further inquiry update has been completed on
4 the agency subsequent to the prior completion of a preliminary
5 performance review:

6 (1) On the first day of July, two thousand: State Building
7 Commission.

8 (2) On the first day of July, two thousand six: State Board
9 of Risk and Insurance Management.

10 (3) On the first day of July, two thousand seven: Office of
11 the Environmental Advocate; Racing Commission; Educational
12 Broadcasting Authority; and Oral Health Program.

13 (4) On the first day of July, two thousand eight: Environ-
14 mental Quality Board; and Emergency Medical Services
15 Advisory Council.

16 (5) On the first day of July, two thousand ten: Veterans'
17 council; and Oil and Gas Conservation Commission.

§4-10-5b. Termination of boards created to regulate professions and occupations.

1 (a) The Legislative Auditor shall evaluate each board
2 created under chapter thirty of this code to regulate professions

3 and occupations, at least once every twelve years. The evalua-
4 tion shall assess whether the board complies with the policies
5 and provisions of chapter thirty of this code and other applica-
6 ble laws and rules, whether the board follows a disciplinary
7 procedure which observes due process rights and protects the
8 public interest and whether the public interest requires that the
9 board be continued.

10 (b) The following boards terminate on the date indicated,
11 but no board terminates under this section unless a regulatory
12 board evaluation has been conducted upon the board:

13 (1) On the first day of July, two thousand six: Board of
14 Examiners in Counseling; Board of Osteopathy; Board of
15 Examiners of Land Surveyors; Board of Dental Examiners;
16 Board of Licensed Dietitians; Board of Examiners of Psycholo-
17 gists; and Real Estate Commission.

18 (2) On the first day of July, two thousand seven: Board of
19 Registration for Sanitarians; Board of Embalmers and Funeral
20 Directors; Board of Optometry; Board of Social Work Examin-
21 ers; Board of Respiratory Care Practitioners; Board of Veteri-
22 nary Medicine; and Board of Accountancy.

23 (3) On the first day of July, two thousand eight: Nursing
24 Home Administrators Board; Board of Hearing Aid Dealers;
25 Board of Pharmacy; Board of Medicine; Board of Barbers and
26 Cosmetologists; and Board of Acupuncture.

27 (4) On the first day of July, two thousand nine: Board of
28 Physical Therapy; Board of Chiropractic Examiners; Board of
29 Landscape Architects; and Board of Occupational Therapy.

30 (5) On the first day of July, two thousand ten: Board of
31 Registration for Professional Engineers; Board of Examiners
32 for Registered Professional Nurses; Board of Examiners for
33 Licensed Practical Nurses; Board of Examiners for Speech

34 Language Pathology and Audiology; Board of Registration for
35 Foresters; and Radiologic Technology Board of Examiners.

36 (6) On the first day of July, two thousand thirteen: Real
37 Estate Appraiser Licensure and Certification Board.

38 (7) On the first day of July, two thousand fourteen: Board
39 of Architects.

40 (8) On the first day of July, two thousand fifteen: Massage
41 Therapy Licensure Board.

CHAPTER 209

(H. B. 2667 — By Delegates Beane, Ennis, Iaquina and Rowan)

[Passed March 23, 2005; in effect July 1, 2005.]

[Approved by the Governor on April 1, 2005.]

AN ACT to amend and reenact §5-14-12 of the Code of West Virginia, 1931, as amended, relating to continuation of the West Virginia Commission for the Deaf and Hard of Hearing.

Be it enacted by the Legislature of West Virginia:

That §5-14-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 14. WEST VIRGINIA COMMISSION FOR THE DEAF AND
HARD OF HEARING.**

**§5-14-12. West Virginia Commission for the Deaf and Hard of
Hearing continued.**

1 Pursuant to the provisions of article ten, chapter four of this
 2 code, the West Virginia Commission for the Deaf and Hard of
 3 Hearing shall continue to exist until the first day of July, two
 4 thousand nine, unless sooner terminated, continued or reestab-
 5 lished.

CHAPTER 210

(H. B. 2958 — By Delegates Beane, Ennis, Barker and Yost)

[Passed April 7, 2005; in effect July 1, 2005.]
 [Approved by the Governor on April 20, 2005.]

AN ACT to amend and reenact §5-16-4a of the Code of West Virginia, 1931, as amended, relating to continuing the Public Employees Insurance Agency Finance Board.

Be it enacted by the Legislature of West Virginia:

That §5-16-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-4a. Public Employees Insurance Agency Finance Board continued.

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

CHAPTER 211

(H. B. 2534 — By Delegates Beane, Ennis, Hatfield,
Hunt, Iaquina, Trump and Walters)

[Passed April 7, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 20, 2005.]

AN ACT to amend and reenact §5B-2-13 of the Code of West Virginia, 1931, as amended, relating to continuation of the Tourism Commission.

Be it enacted by the Legislature of West Virginia:

That §5B-2-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-13. Tourism Commission continued.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the Tourism Commission shall continue to exist until the
- 3 first day of July, two thousand six, unless sooner terminated,
- 4 continued or reestablished.

CHAPTER 212

(H. B. 2666 — By Delegates Beane, Ennis,
Argento, Frich and Rowan)

[Passed March 23, 2005; in effect July 1, 2005.]

[Approved by the Governor on April 1, 2005.]

AN ACT to amend and reenact §9-2-1a of the Code of West Virginia, 1931, as amended, relating to continuation of the Department of Health and Human Resources.

Be it enacted by the Legislature of West Virginia:

That §9-2-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. DEPARTMENT OF HEALTH AND HUMAN RESOURCES,
AND OFFICE OF COMMISSIONER OF HUMAN SERVICES;
POWERS, DUTIES AND RESPONSIBILITIES
GENERALLY.**

§9-2-1a. Department of Health and Human Resources continued.

1 The Department of Health and Human Resources shall be
2 charged with the administration of this chapter. Pursuant to the
3 provisions of article ten, chapter four of this code, the Depart-
4 ment of Health and Human Resources shall continue to exist
5 until the first day of July, two thousand six, unless sooner
6 terminated, continued or reestablished.

CHAPTER 213

(S. B. 281 — By Senators Bowman, Bailey, Chafin, Jenkins, Kessler,
McCabe, Minard, Boley, Harrison, Minear and Weeks)

[Passed April 8, 2005; in effect July 1, 2005.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §16-4C-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §16-4C-5a, all relating to continuation of the Emergency Medical Services Advisory Council.

Be it enacted by the Legislature of West Virginia:

That §16-4C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §16-4C-5a, all to read as follows:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT

§16-4C-5. Emergency Medical Services Advisory Council; duties; composition; appointment; meetings; compensation and expenses.

§16-4C-5a. Continuation of the Emergency Medical Services Advisory Council.

§16-4C-5. Emergency Medical Services Advisory Council; duties; composition; appointment; meetings; compensation and expenses.

- 1 (a) The Emergency Medical Services Advisory Council,
- 2 heretofore created and established by former section seven of
- 3 this article, is continued for the purpose of developing, with the
- 4 Commissioner, standards for emergency medical service
- 5 personnel and for the purpose of providing advice to the Office

6 of Emergency Medical Services and the Commissioner with
7 respect to reviewing and making recommendations for, and
8 providing assistance to, the establishment and maintenance of
9 adequate emergency medical services for all portions of this
10 state.

11 (b) The Council shall have the duty to advise the Commis-
12 sioner in all matters pertaining to his or her duties and functions
13 in relation to carrying out the purposes of this article.

14 (c) The Council shall be composed of fifteen members
15 appointed by the Governor by and with the advice and consent
16 of the Senate. The Mountain State Emergency Medical Services
17 Association shall submit to the Governor a list of six names of
18 representatives from its Association and a list of three names
19 shall be submitted to the Governor of representatives of their
20 respective organizations by the County Commissioners' Association of West Virginia, the West Virginia State Firemen's Association, the West Virginia Hospital Association, the West Virginia Chapter of the American College of Emergency Physicians, the West Virginia Emergency Medical Services Administrators Association, the West Virginia Emergency Medical Services Coalition, the Ambulance Association of West Virginia and the state Department of Education. The
28 Governor shall appoint from the respective lists submitted two
29 persons who represent the Mountain State Emergency Medical
30 Services Association, one of whom shall be a paramedic and
31 one of whom shall be an emergency medical technician-basic;
32 and one person from the County Commissioners' Association
33 of West Virginia, the West Virginia State Firemen's Association, the West Virginia Hospital Association, the West Virginia Chapter of the American College of Emergency Physicians, the West Virginia Emergency Medical Services Administrators Association, the West Virginia Emergency Medical Services Coalition, the Ambulance Association of West Virginia and the
39 state Department of Education. In addition, the Governor shall
40 appoint one person to represent emergency medical service

41 providers operating within the state, one person to represent
42 small emergency medical service providers operating within
43 this state and three persons to represent the general public. Not
44 more than six of the members may be appointed from any one
45 congressional district.

46 (d) Each term is to be for three years and no member may
47 serve more than four consecutive terms.

48 (e) The Council shall choose its own chairman and meet at
49 the call of the Commissioner at least twice a year.

50 (f) The members of the Council shall receive compensation
51 and expense reimbursement in an amount not to exceed the
52 same compensation and expense reimbursement as is paid to
53 members of the Legislature for their interim duties as recom-
54 mended by the Citizens Legislative Compensation Commission
55 and authorized by law for each day or substantial portion
56 thereof engaged in the performance of official duties.

**§16-4C-5a. Continuation of the Emergency Medical Services
Advisory Council.**

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the Emergency Medical Services Advisory Council shall
3 continue to exist until the first day of July, two thousand eight,
4 unless sooner terminated, continued or reestablished.

CHAPTER 214

(H. B. 2893 — By Delegates Beane, Ennis, Iaquina, Talbott and Yost)

[Passed March 23, 2005; in effect July 1, 2005.]

[Approved by the Governor on April 1, 2005.]

AN ACT to amend and reenact §16-5Q-3 of the Code of West Virginia, 1931, as amended, relating to continuation of the James “Tiger” Morton Catastrophic Illness Commission.

Be it enacted by the Legislature of West Virginia:

That §16-5Q-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5Q. THE JAMES “TIGER” MORTON CATASTROPHIC ILLNESS FUND.

§16-5Q-3. James “Tiger” Morton Catastrophic Illness Commission continued.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the James “Tiger” Morton Catastrophic Illness Commis-
3 sion shall continue to exist until the first day of July, two
4 thousand eight, unless sooner terminated, continued or reestab-
5 lished.

CHAPTER 215

(S. B. 283 — By Senators Bowman, Bailey, Chafin, Jenkins, Kessler, McCabe, Minard, Boley, Harrison, Minear and Weeks)

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §16-29B-28 of the Code of West Virginia, 1931, as amended, relating to continuation of the Health Care Authority.

Be it enacted by the Legislature of West Virginia:

That §16-29B-28 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 29B. HEALTH CARE AUTHORITY.

§16-29B-28. Continuation of the Health Care Authority.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the Health Care Authority shall continue to exist until the
3 first day of July, two thousand eight, unless sooner terminated,
4 continued or reestablished.

CHAPTER 216

**(S. B. 213 — By Senators Bowman, Bailey, Chafin, Jenkins,
Kessler, McCabe, Minard, Plymale, White, Boley,
Harrison, Lanham, Minear and Weeks)**

[Passed April 8, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §16-41-7 of the Code of West Virginia, 1931, as amended, relating to continuation of the Oral Health Program.

Be it enacted by the Legislature of West Virginia:

That §16-41-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 41. ORAL HEALTH IMPROVEMENT ACT.

§16-41-7. Continuation of the Oral Health Program.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the Oral Health Program shall continue to exist until the
- 3 first day of July, two thousand seven, unless sooner terminated,
- 4 continued or reestablished.

CHAPTER 217

**(S. B. 282 — By Senators Bowman, Bailey, Chafin, Jenkins,
Kessler, McCabe, Minard, Boley and Minear)**

[Passed April 9, 2005; in effect July 1, 2005.]

[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §18-9D-18 of the Code of West Virginia, 1931, as amended, relating to continuation of the School Building Authority.

Be it enacted by the Legislature of West Virginia:

That §18-9D-18 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-18. Continuation of the School Building Authority.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the School Building Authority shall continue to exist until
- 3 the first day of July, two thousand seven, unless sooner termi-
- 4 nated, continued or reestablished.

CHAPTER 218

(H. B. 2623 — By Delegates Beane, Ennis, Argento and Frich)

[Passed April 9, 2005; in effect July 1, 2005.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §20-1A-9 of the Code of West Virginia, 1931, as amended, relating to continuation of the Public Land Corporation.

Be it enacted by the Legislature of West Virginia:

That §20-1A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1A. REAL ESTATE MANAGEMENT AND PROCEDURES.

§20-1A-9. Continuation of the Public Land Corporation.

1 The Public Land Corporation shall continue to exist,
2 pursuant to the provisions of article ten, chapter four of this
3 code, until the first day of July, two thousand nine, unless
4 sooner terminated, continued or reestablished pursuant to the
5 provisions of that article.

CHAPTER 219

**(H. B. 2449 — By Delegates Beane, Ennis, Butcher,
Martin, Tucker, Porter and Schoen)**

[Passed April 7, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 20, 2005.]

AN ACT to amend and reenact §21-9-13 of the Code of West Virginia, 1931, as amended, relating to continuation of West Virginia Board of Manufactured Housing Construction and Safety.

Be it enacted by the Legislature of West Virginia:

That §21-9-13 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY
STANDARDS.**

§21-9-13. West Virginia Board of Manufactured Housing Construction and Safety continued.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the West Virginia Board of Manufactured Housing
- 3 Construction and Safety shall continue to exist until the first
- 4 day of July, two thousand eleven, unless sooner terminated,
- 5 continued or reestablished.

CHAPTER 220

**(S. B. 285 — By Senators Bowman, Bailey, Chafin,
Jenkins, Kessler, McCabe, Minard, Boley,
Harrison, Minear and Weeks)**

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §29-1-1b of the Code of West Virginia, 1931, as amended, relating to continuation of the Division of Culture and History.

Be it enacted by the Legislature of West Virginia:

That §29-1-1b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF CULTURE AND HISTORY.

§29-1-1b. Continuation of the Division of Culture and History.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the Division of Culture and History shall continue to exist
- 3 until the first day of July, two thousand seven, unless sooner
- 4 terminated, continued or reestablished.

CHAPTER 221

**(S. B. 452 — By Senators Bowman, Bailey, Chafin, Jenkins,
Kessler, McCabe, Minard, Plymale, White, Boley,
Harrison, Lanham, Minear and Weeks)**

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 29, 2005.]

AN ACT to amend and reenact §29-12-12 of the Code of West Virginia, 1931, as amended, relating to continuation of the state Board of Risk and Insurance Management.

Be it enacted by the Legislature of West Virginia:

That §29-12-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. STATE INSURANCE.

§29-12-12. Continuation of state Board of Risk and Insurance Management.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the state Board of Risk and Insurance Management shall
- 3 continue to exist until the first day of July, two thousand six,
- 4 unless sooner terminated, continued or reestablished.

CHAPTER 222

(S. B. 286 — By Senators Bowman, Bailey, Chafin, Jenkins, Kessler, McCabe, Minard, Boley, Harrison, Minear and Weeks)

[Passed April 9, 2005; in effect July 1, 2005.]
[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §29-21-3a of the Code of West Virginia, 1931, as amended, relating to continuation of Public Defender Services.

Be it enacted by the Legislature of West Virginia:

That §29-21-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-3a. Continuation of Public Defender Services.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, Public Defender Services shall continue to exist until the
- 3 first day of July, two thousand eight, unless sooner terminated,
- 4 continued or reestablished.

CHAPTER 223

**(S. B. 215 — By Senators Bowman, Bailey, Chafin, Jenkins, Kessler,
McCabe, Minard, Plymale, White, Boley, Harrison,
Lanham, Minear and Weeks)**

[Passed April 8, 2005; in effect July 1, 2005.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §30-9-32 of the Code of West Virginia, 1931, as amended, relating to continuation of the West Virginia Board of Accountancy.

Be it enacted by the Legislature of West Virginia:

That §30-9-32 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. ACCOUNTANTS.

§30-9-32. Continuation of the West Virginia Board of Accountancy.

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

CHAPTER 224

(H. B. 3046 — By Delegates Beane, Ennis,
Barker, Yost and Rowan)

[Passed April 7, 2005; in effect July 1, 2005.]

[Approved by the Governor on April 20, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-10-20, relating to continuation of the Board of Veterinary Medicine.

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 §30-10-20, to read as follows:

ARTICLE 10. VETERINARIANS.

§30-10-20. West Virginia Board of Veterinary Medicine continued.

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

CHAPTER 225

**(S. B. 214 — By Senators Bowman, Bailey, Chafin,
Jenkins, Kessler, McCabe, Minard, Plymale,
White, Boley, Lanham, Minear and Weeks)**

[Passed April 8, 2005; in effect July 1, 2005.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-36-20, relating to the continuation of the West Virginia Acupuncture Board.

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 §30-36-20, to read as follows:

ARTICLE 36. ACUPUNCTURISTS.

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

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

CHAPTER 226

(H. B. 2846 — By Delegates Beane, Ennis,
Argento, Barker and Frich)

[Passed March 23, 2005, in effect July 1, 2005.]

[Approved by the Governor on April 1, 2005.]

AN ACT to amend and reenact §30-38-19 of the Code of West Virginia, 1931, as amended, relating to continuation of the Real Estate Appraiser Licensing and Certification Board.

Be it enacted by the Legislature of West Virginia:

That §30-38-19 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§30-38-19. Real Estate Appraiser Licensing and Certification Board continued.

1 Pursuant to the provisions of article ten, chapter four of this
2 code, the Real Estate Appraiser Licensing and Certification
3 Board shall continue to exist until the first day of July, two
4 thousand thirteen, unless sooner terminated, continued or
5 reestablished.

CHAPTER 227

(H. B. 2892 — By Delegates Beane, Ennis, Yost and Frich)

[Passed March 23, 2005; in effect July 1, 2005.]

[Approved by the Governor on April 1, 2005.]

AN ACT to amend and reenact §48-18-134 of the Code of West Virginia, 1931, as amended, relating to continuation of the Bureau for Child Support Enforcement.

Be it enacted by the Legislature of West Virginia:

That §48-18-134 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-134. Bureau for Child Support Enforcement continued.

- 1 Pursuant to the provisions of article ten, chapter four of this
- 2 code, the Bureau for Child Support Enforcement shall continue
- 3 to exist until the first day of July, two thousand ten, unless
- 4 sooner terminated, continued or reestablished.

CHAPTER 228

(Com. Sub. for H. B. 3023 — By Delegates Michael, Argento, Beach, DeLong, Ennis, Perry, Pethtel, Stemple, Swartzmiller, Varner and Yost)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 29, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §7-7-6e, relating to assessments and collections of assessment on all breeding age sheep and all breeding age goats; allocation of assessment proceeds; duties of county assessors and Commissioner of Agriculture; creation of special revenue funds; and purposes for which proceeds to be expended.

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 §7-7-6e, to read as follows:

ARTICLE 7. COMPENSATION OF ELECTED COUNTY OFFICIALS.

§7-7-6e. Collection of head tax on sheep and goats; duties of county assessors and Commissioner of Agriculture; deposit of tax collections; creation of special revenue fund; purposes.

1 After the thirtieth day of June, two thousand five, it shall be
2 the duty of the county assessor and his or her deputies of each
3 county within the state, at the time they are making assessments
4 of the personal property within such county, to assess and
5 collect an assessment of one dollar on all breeding age sheep
6 and one dollar on all breeding age goats.

7 The assessor collecting the assessment on breeding age
8 sheep and goats shall be allowed a commission of ten percent
9 upon all such taxes collected and shall send the Commissioner
10 of Agriculture ninety percent of such taxes so collected, who
11 shall deposit the same in a special account in the State Treasury
12 to be known as the "Integrated Predation Management Fund."
13 Expenditures from the Fund shall be for the purposes set forth
14 in this section and are not authorized from collections but are to
15 be made only in accordance with appropriation by the Legisla-

16 ture and in accordance with the provisions of article three,
17 chapter twelve of this code and upon the fulfillment of the
18 provisions set forth in article two, chapter eleven-b of this code:
19 *Provided*, That for the fiscal year ending the thirtieth day of
20 June, two thousand six, expenditures are authorized from
21 collections rather than pursuant to an appropriation by the
22 Legislature.

23 The money in the Fund shall be used by the Commissioner
24 solely to enter into a cooperative service agreement with the
25 United States Department of Agriculture Animal and Plant
26 Health Inspection Service (APHIS) and Wildlife Services (WS)
27 to expand the Coyote Control Program statewide.

28 Any person who does not pay this assessment is not eligible
29 for the services provided by this cooperative agreement.

CHAPTER 229

(S. B. 463 — By Senators Minard and Sharpe)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §11-3-5 of the Code of West Virginia, 1931, as amended, relating to allowing a supplemental assessment on all personal property when personal property has been omitted from the record books.

Be it enacted by the Legislature of West Virginia:

That §11-3-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.**§11-3-5. Correction of previous property books; entry of omitted property.**

1 The assessor, in making out the land and personal property
2 books, shall correct any and every mistake he or she shall
3 discover in the books for any previous year.

4 When the assessor shall ascertain that any real or personal
5 property in his or her county liable to taxation, other than that
6 mentioned in the next succeeding paragraph, has been omitted
7 from the land or personal property books for a period of less
8 than five years, he or she shall make an entry thereof in the
9 proper book of the year in which the omission was discovered
10 and assess the same, according to the rule prescribed in section
11 one of this article, and shall charge the same with all taxes
12 chargeable against it at the rate of levy for the year or years the
13 same was omitted, together with interest thereon at the rate of
14 six percent per annum for the years the same was omitted from
15 the books: *Provided*, That if the taxpayer requires proof of
16 payment of personal property taxes pursuant to section three-a,
17 article three, chapter seventeen-a of this code, then the taxpayer
18 shall file a listing of all personal property owned on the
19 assessment date preceding the tax year or years for which proof
20 must be shown. The assessor shall then create a supplemental
21 assessment for the year or years required for proof of payment
22 for all personal property taxes provided on the listing and
23 present the supplemental assessment to the sheriff who shall
24 apply the levy rate or rates for the year or years so assessed and
25 prepare a tax bill and collect the taxes together with interest
26 thereon at the rate of six percent per annum for the years the
27 same was omitted from the books and any penalties included
28 thereon: *Provided, however*, That any person who has been a
29 resident of the state less than one year prior to the assessment
30 date shall not be required to pay any interest or penalty.

31 And when the assessor shall ascertain that any notes, bonds,
32 bills and accounts receivable, stocks and other intangible
33 personal property in his or her county liable to taxation has
34 been omitted from the personal property books for a period of
35 five years or less after the thirty-first day of December, one
36 thousand nine hundred thirty-two, he or she shall make entry
37 thereof in the personal property book of the year in which the
38 omission was discovered and assess the same at its true and
39 actual value, according to the rule prescribed in section one of
40 this article, and shall charge the same with all taxes chargeable
41 against it after the year last aforesaid at the rate of levy for the
42 year or years the same was omitted after the year aforesaid,
43 together with interest thereon at the rate of six percent per
44 annum for the years the same was omitted from the books.

45 Any assessor failing to make an entry as in this section
46 provided, when discovered by him or her or called to his or her
47 attention by any taxpayer interested therein, shall forfeit one
48 hundred dollars.

CHAPTER 230

**(Com. Sub. for H. B. 3012 — By Mr. Speaker, Mr. Kiss, and
Delegates Michael, Kominar, H. White and Palumbo)**

[Passed April 6, 2005; in effect from passage.]

[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §11-3-9 of the Code of West Virginia, 1931, as amended, relating to exempting property acquired by lease purchase agreement by the state, a county, district, city, village, town or other political subdivision, state college or university, from property tax.

Be it enacted by the Legislature of West Virginia:

That §11-3-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-9. Property exempt from taxation.

1 (a) All property, real and personal, described in this
2 subsection, and to the extent herein limited, is exempt from
3 taxation:

4 (1) Property belonging to the United States, other than
5 property permitted by the United States to be taxed under state
6 law;

7 (2) Property belonging exclusively to the state;

8 (3) Property belonging exclusively to any county, district,
9 city, village or town in this state, and used for public purposes;

10 (4) Property located in this state, belonging to any city,
11 town, village, county or any other political subdivision of
12 another state, and used for public purposes;

13 (5) Property used exclusively for divine worship;

14 (6) Parsonages and the household goods and furniture
15 pertaining thereto;

16 (7) Mortgages, bonds and other evidence of indebtedness in
17 the hands of bona fide owners and holders hereafter issued and
18 sold by churches and religious societies for the purposes of
19 securing money to be used in the erection of church buildings
20 used exclusively for divine worship, or for the purpose of
21 paying indebtedness thereon;

22 (8) Cemeteries;

23 (9) Property belonging to, or held in trust for, colleges,
24 seminaries, academies and free schools, if used for educational,
25 literary or scientific purposes, including books, apparatus,
26 annuities and furniture;

27 (10) Property belonging to, or held in trust for, colleges or
28 universities located in West Virginia, or any public or private
29 nonprofit foundation or corporation which receives contribu-
30 tions exclusively for such college or university, if the property
31 or dividends, interest, rents or royalties derived therefrom are
32 used or devoted to educational purposes of such college or
33 university;

34 (11) Public and family libraries;

35 (12) Property used for charitable purposes, and not held or
36 leased out for profit;

37 (13) Property used for the public purposes of distributing
38 water or natural gas, or providing sewer service by a duly
39 chartered nonprofit corporation when such property is not held,
40 leased out or used for profit;

41 (14) Property used for area economic development pur-
42 poses by nonprofit corporations when such property is not
43 leased out for profit;

44 (15) All real estate not exceeding one acre in extent, and the
45 buildings thereon, used exclusively by any college or university
46 society as a literary hall, or as a dormitory or clubroom, if not
47 used with a view to profit, including, but not limited to,
48 property owned by a fraternity or sorority organization affili-
49 ated with a university or college, or property owned by a
50 nonprofit housing corporation or similar entity on behalf of a
51 fraternity or sorority organization affiliated with a university or

52 college, when the property is used as residential accommoda-
53 tions, or as a dormitory for members of the organization;

54 (16) All property belonging to benevolent associations, not
55 conducted for private profit;

56 (17) Property belonging to any public institution for the
57 education of the deaf, dumb or blind, or any hospital not held or
58 leased out for profit;

59 (18) Houses of refuge and mental health facility or orphan-
60 age;

61 (19) Homes for children or for the aged, friendless or
62 infirm, not conducted for private profit;

63 (20) Fire engines and implements for extinguishing fires,
64 and property used exclusively for the safekeeping thereof, and
65 for the meeting of fire companies;

66 (21) All property on hand to be used in the subsistence of
67 livestock on hand at the commencement of the assessment year;

68 (22) Household goods to the value of two hundred dollars,
69 whether or not held or used for profit;

70 (23) Bank deposits and money;

71 (24) Household goods, which for purposes of this section
72 means only personal property and household goods commonly
73 found within the house and items used to care for the house and
74 its surrounding property, when not held or used for profit;

75 (25) Personal effects, which for purposes of this section
76 means only articles and items of personal property commonly
77 worn on or about the human body, or carried by a person and
78 normally thought to be associated with the person when not
79 held or used for profit;

80 (26) Dead victuals laid away for family use;

81 (27) All property belonging to the state, any county,
82 district, city, village, town or other political subdivision, or any
83 state college or university which is subject to a lease purchase
84 agreement and which provides that, during the term of the lease
85 purchase agreement, title to the leased property rests in the
86 lessee so long as lessee is not in default or shall not have
87 terminated the lease as to the property; and

88 (28) Any other property or security exempted by any other
89 provision of law.

90 (b) Notwithstanding the provisions of subsection (a) of this
91 section, no property is exempt from taxation which has been
92 purchased or procured for the purpose of evading taxation,
93 whether temporarily holding the same over the first day of the
94 assessment year or otherwise.

95 (c) Real property which is exempt from taxation by
96 subsection (a) of this section shall be entered upon the asses-
97 sor's books, together with the true and actual value thereof, but
98 no taxes may be levied upon the property or extended upon the
99 assessor's books.

100 (d) Notwithstanding any other provisions of this section,
101 this section does not exempt from taxation any property owned
102 by, or held in trust for, educational, literary, scientific, religious
103 or other charitable corporations or organizations, including any
104 public or private nonprofit foundation or corporation existing
105 for the support of any college or university located in West
106 Virginia, unless such property, or the dividends, interest, rents
107 or royalties derived therefrom, is used primarily and immedi-
108 ately for the purposes of the corporations or organizations.

109 (e) The Tax Commissioner shall, by issuance of rules,
110 provide each assessor with guidelines to ensure uniform

111 assessment practices statewide to effect the intent of this
112 section.

113 (f) Inasmuch as there is litigation pending regarding
114 application of this section to property held by fraternities and
115 sororities, amendments to this section enacted in the year one
116 thousand nine hundred ninety-eight shall apply to all cases and
117 controversies pending on the date of such enactment.

118 (g) The amendment to subdivision (27), subsection (a) of
119 this section, passed during the two thousand five regular session
120 of the Legislature, shall apply to all applicable lease purchase
121 agreements in existence upon the effective date of the amend-
122 ment.

CHAPTER 231

(S. B. 657 — By Senators Sharpe and Helmick)

[Passed April 6, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §11-10A-9 of the Code of West Virginia, 1931, as amended, relating to the Office of Tax Appeals; and providing for certain exceptions to the sixty-day time limit for filing a petition to appeal a decision of the Tax Commissioner.

Be it enacted by the Legislature of West Virginia:

That §11-10A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-9. Appeal to Office of Tax Appeals; petition; answer.

1 (a) A proceeding before the Office of Tax Appeals appeal-
2 ing a tax assessment, a denial of a tax refund or credit or any
3 other order of the Tax Commissioner, or requesting a hearing
4 pursuant to the provisions of any article of this chapter which
5 is administered pursuant to article ten of this chapter, shall be
6 initiated by a person timely filing a written petition that
7 succinctly states:

8 (1) The nature of the case;

9 (2) The facts on which the appeal is based; and

10 (3) Each question presented for review by the Office of Tax
11 Appeals.

12 (b) Except where a different time for filing a petition is
13 specified elsewhere in this code, a petition filed pursuant to
14 subsection (a) of this section is timely filed if postmarked or
15 hand delivered to the Office of Tax Appeals within sixty days
16 of the date a person received written notice of an assessment,
17 denial of a refund or credit, order or other decision of the Tax
18 Commissioner.

19 (c) The Office of Tax Appeals shall, within five days of
20 receipt of a timely petition filed pursuant to subsection (a) of
21 this section, provide the Tax Commissioner with a copy of the
22 petition. The Tax Commissioner shall submit a written answer
23 to the petition within forty days of his or her receipt of the
24 petition. The answer shall succinctly state:

25 (1) The nature of the case;

26 (2) The facts relied upon by the Commissioner;

27 (3) An answer to each question presented for review.

28 (d) A proceeding before the Office of Tax Appeals in other
29 matters conferred by statute or legislatively approved rules shall
30 be initiated by filing a petition with the Office of Tax Appeals
31 in accordance with the provisions of the applicable statute or
32 rule.

CHAPTER 232

(S. B. 650 — By Senators Sharpe and Helmick)

[Passed April 7, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §11-10A-11 of the Code of West Virginia, 1931, as amended, relating to small claims hearings by the Office of Tax Appeals; and requiring concurrence of both the Tax Commissioner and the Office of Tax Appeals for a dispute to be conducted in a small claims hearing.

Be it enacted by the Legislature of West Virginia:

That §11-10A-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-11. Small claims hearing.

1 (a) If the amount in dispute in any petition filed with the
2 Office of Tax Appeals does not exceed ten thousand dollars for
3 any one taxable year, then, at the option of the taxpayer and
4 with the concurrence of the Tax Commissioner and the Office
5 of Tax Appeals, the hearing shall be conducted under this
6 section. Notwithstanding the provisions of section fourteen of

7 this article, a hearing under this section shall be conducted in an
8 informal manner and in accordance with the rules of practice
9 and procedure as the Office of Tax Appeals may prescribe.

10 (b) At any time before commencement of the hearing held
11 under this section, the petitioner may unilaterally withdraw the
12 election made under subsection (a) of this section. Upon a
13 change of election, a hearing shall be held in the same manner
14 as other contested matters to which this article applies.

15 (c) A decision entered in any hearing conducted under this
16 section is not subject to administrative or judicial review under
17 this article, article ten of this chapter or article five, chapter
18 twenty-nine-a of this code and may not be treated as precedent
19 for any other contested matter. The amount, if any, owed by the
20 taxpayer to the state shall be paid within thirty days after notice
21 of the decision is served on the taxpayer. The amount, if any,
22 of overpayment by the taxpayer shall be promptly refunded or
23 credited to the taxpayer.

24 (d) For purposes of this section, the amount in dispute
25 includes tax, additions to tax and penalties, but excludes
26 interest.

CHAPTER 233

(Com. Sub. for S. B. 646 — By Senators Unger and Minard)

[Passed April 8, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §11-13-1 and §11-13-3 of the Code of
West Virginia, 1931, as amended, all relating generally to

business and occupation tax; exempting from tax gross income received by nonprofit homeowners associations for community services to members; deleting obsolete language; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §11-13-1 and §11-13-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-1. Definitions.

§11-13-3. Exemptions; annual exemption and periods thereof.

§11-13-1. Definitions.

1 (a) *General.* — When used in this article, or in the adminis-
2 tration of this article, the terms defined in subsection (b) shall
3 have the meanings ascribed to them by this section, unless a
4 different meaning is clearly required by either the context in
5 which the term is used or by specific definition.

6 (b) *Terms defined.* —

7 (1) “Person”, or the term “company”, used in this article
8 interchangeably, includes any individual, firm, copartnership,
9 joint adventure, association, corporation, trust or any other
10 group or combination acting as a unit, and the plural as well as
11 the singular number, unless the intention to give a more limited
12 meaning is disclosed by the context.

13 (2) “Sale”, “sales” or “selling” includes any transfer of or
14 title to property or electricity, whether for money or in ex-
15 change for other property.

16 (3) “Taxpayer” means any person liable for any tax
17 hereunder.

18 (4) "Gross income" means the gross receipts of the tax-
19 payer, received as compensation for personal services and the
20 gross receipts of the taxpayer derived from trade, business,
21 commerce or sales and the value proceeding or accruing from
22 the sale of tangible property (real or personal) or service, or
23 both, and all receipts by reason of the investment of the capital
24 of the business engaged in, including rentals, royalties, fees,
25 reimbursed costs or expenses or other emoluments however
26 designated and including all interest, carrying charges, fees or
27 other like income, however denominated, derived by the
28 taxpayer from repetitive carrying of accounts, in the regular
29 course and conduct of his or her business, and extension of
30 credit in connection with the sale of any tangible personal
31 property or service and without any deductions on account of
32 the cost of property sold, the cost of materials used, labor costs,
33 taxes, royalties paid in cash or in kind or otherwise, interest or
34 discount paid or any other expenses whatsoever.

35 (5) "Gross proceeds of sales" means the value, whether in
36 money or other property, actually proceeding from the sale of
37 tangible property without any deduction on account of the cost
38 of property sold or expenses of any kind.

39 (6) "Business" shall include all activities engaged in or
40 caused to be engaged in with the object of gain or economic
41 benefit, either direct or indirect. "Business" shall include the
42 rendering of gas storage service by any person for the gain or
43 economic benefit of any person, including, but not limited to,
44 the storage operator, whether or not incident to any other
45 business activity.

46 (7) "Gas" means either natural gas unmixed or any mixture
47 of natural and artificial gas or any other gas.

48 (8) "Storage reservoir" means that portion of any subterra-
49 nean sand or rock stratum or strata into which gas has been

50 injected for the purpose of storage prior to the first day of
51 March, one thousand nine hundred eighty-nine.

52 (9) "Gas storage service" means the injection of gas into a
53 storage reservoir, the storage of gas for any period of time in a
54 storage reservoir or the withdrawal of gas from a storage
55 reservoir. The gas may be owned by the storage operator or any
56 other person.

57 (10) "Net number of dekatherms of gas injected" means the
58 sum of the daily injection of dekatherms of gas in excess of the
59 sum of the daily withdrawals of dekatherms of gas during a tax
60 month.

61 (11) "Net number of dekatherms of gas withdrawn" means
62 the sum of the daily withdrawal of dekatherms of gas in excess
63 of the sum of the daily injection of dekatherms of gas during a
64 tax month.

65 (12) "Gas storage operator" means any person who operates
66 a storage reservoir or provides a storage service as defined in
67 this subsection either as owner or lessee.

68 (13) "Month" or "tax month" means the calendar month.

69 (14) "Dekatherm" means the thermal energy unit equal to
70 one million British thermal units (BTU's) or the equivalent of
71 one thousand cubic feet of gas having a heating content of one
72 thousand BTU's per cubic foot.

73 (15) "Taxable year" means the calendar year, or the fiscal
74 year ending during the calendar year, upon the basis of which
75 tax liability is computed under this article. "Taxable year"
76 means, in case of a return made for a fractional part of a year
77 under the provisions of this article, or under regulations
78 promulgated by the Tax Commissioner, the period for which
79 the return is made.

80 (16) "Homeowners' association" means a homeowners'
81 association as defined in Section 528 of the Internal Revenue
82 Code of 1986, as amended. The term "homeowners' associa-
83 tion" also includes any unit owners' association organized
84 under section one hundred one, article three, chapter thirty-six-b
85 of this code.

86 (17) "Member", for purposes of the exemption provided in
87 subdivision (7), subsection (b), section three of this article,
88 means a person having membership rights in a homeowners'
89 association, in accordance with the provisions of its articles of
90 incorporation, bylaws or other instruments creating its form and
91 organization; and having bona fide rights and privileges in the
92 organization ordinarily conferred on members of the homeown-
93 ers association, such as the right to vote, the right to elect
94 officers and directors and the right to hold office within the
95 organization. The term "member" also includes a "unit owner"
96 as that term is defined in section one hundred three, article one,
97 chapter thirty-six-b of this code.

§11-13-3. Exemptions; annual exemption and periods thereof.

1 (a) *Monthly exemption.* — For any tax imposed under the
2 provisions of this article with respect to any period beginning
3 on or after the first day of July, one thousand nine hundred
4 eighty-five, there shall be an exemption in every case of forty-
5 one dollars and sixty-seven cents per month in amount of tax
6 computed under the provisions of this article. Only one
7 exemption shall be allowed to any one person, whether the
8 person exercises one or more privileges taxable hereunder.

9 (b) *Exemptions from tax.* — The provisions of this article
10 shall not apply to:

11 (1) Insurance companies which pay the State of West
12 Virginia a tax upon premiums: *Provided*, That said exemption
13 shall not extend to that part of the gross income of insurance

14 companies which is received for the use of real property, other
15 than property in which any company maintains its office or
16 offices, in this state, whether the income be in the form of
17 rentals or royalties;

18 (2) Nonprofit cemetery companies organized and operated
19 for the exclusive benefit of their members;

20 (3) Fraternal societies, organizations and associations
21 organized and operated for the exclusive benefit of their
22 members and not for profit: *Provided*, That the exemption shall
23 not extend to that part of the gross income arising from the sale
24 of alcoholic liquor, food and related services of fraternal
25 societies, organizations and associations which are licensed as
26 private clubs under the provisions of article seven, chapter sixty
27 of this code;

28 (4) Corporations, associations and societies organized and
29 operated exclusively for religious or charitable purposes and
30 production credit associations, organized under the provisions
31 of the federal Farm Credit Act of 1933;

32 (5) Any credit union organized under the provisions of
33 chapter thirty-one of this code or any other chapter of this code:
34 *Provided*, That the exemptions of this section shall not apply to
35 corporations or cooperative associations organized under the
36 provisions of article four, chapter nineteen of this code;

37 (6) Gross income derived from advertising service rendered
38 in the business of radio and television broadcasting; and

39 (7) Gross income of a nonprofit homeowners' association
40 received from assessments on its members for community
41 services such as road maintenance, common area maintenance,
42 water service, sewage service and security service.

CHAPTER 234

(S. B. 667 — By Senators Helmick and Plymale)

[Passed April 8, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 28, 2005.]

AN ACT to amend and reenact §11-14C-9 and §11-14C-31 of the Code of West Virginia, 1931, as amended, all relating generally to motor fuel excise tax; clarifying exemption for motor fuel sold to United States, its agencies and instrumentalities; providing procedure for sellers of tax-paid fuel to the United States, its agencies and instrumentalities to obtain refund of tax on such fuel; changing time for filing certain claims for refund; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

That §11-14C-9 and §11-14C-31 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-9. Exemptions from tax; claiming refunds of tax.

§11-14C-31. Claiming refunds.

§11-14C-9. Exemptions from tax; claiming refunds of tax.

- 1 (a) *Per se exemptions from flat rate component of tax.* —
- 2 Sales of motor fuel to the following, or as otherwise stated in
- 3 this subsection, are exempt per se from the flat rate of the tax
- 4 levied by section five of this article and the flat rate may not be
- 5 paid at the rack:

6 (1) All motor fuel exported from this state to any other state
7 or nation: *Provided*, That the supplier collects and remits to the
8 destination state or nation the appropriate amount of tax due on
9 the motor fuel transported to that state or nation: *Provided*,
10 *however*, That this exemption does not apply to any motor fuel
11 which is transported and delivered outside this state in the
12 motor fuel supply tank of a highway vehicle;

13 (2) Sales of aviation fuel;

14 (3) Sales of dyed special fuel; and

15 (4) Sales of propane.

16 (b) *Per se exemptions from variable component of tax.* —
17 Sales of motor fuel to the following are exempt per se from the
18 variable component of the tax levied by section five of this
19 article and the variable component may not be paid at the rack:

20 All motor fuel exported from this state to any other state or
21 nation: *Provided*, That the supplier collects and remits to the
22 destination state or nation the appropriate amount of tax due on
23 the motor fuel transported to that state or nation: *Provided*,
24 *however*, That this exemption does not apply to any motor fuel
25 which is transported and delivered outside this state in the
26 motor fuel supply tank of a highway vehicle.

27 (c) *Refundable exemptions from flat rate component of tax.*
28 — Any person having a right or claim to any of the following
29 exemptions from the flat rate component of the tax levied by
30 section five of this article shall first pay the tax levied by this
31 article and then apply to the Tax Commissioner for a refund:

32 (1) The United States or any agency thereof: *Provided*, That
33 if the United States government, or any agency or instrumental-
34 ity thereof, does not pay the seller the tax imposed by section
35 five of this article on any purchase of motor fuel, the person

36 selling tax previously paid motor fuel to the United States
37 government, or its agencies or instrumentalities, may then claim
38 a refund of the flat rate component of tax imposed by said
39 section on those sales;

40 (2) Any county government or unit or agency thereof;

41 (3) Any municipal government or any agency thereof;

42 (4) Any county boards of education;

43 (5) Any urban mass transportation authority created
44 pursuant to the provisions of article twenty-seven, chapter eight
45 of this code;

46 (6) Any municipal, county, state or federal civil defense or
47 emergency service program pursuant to a government contract
48 for use in conjunction therewith, or to any person on whom is
49 imposed a requirement to maintain an inventory of motor fuel
50 for the purpose of the program: *Provided*, That motor fueling
51 facilities used for these purposes are not capable of fueling
52 motor vehicles and the person in charge of the program has in
53 his or her possession a letter of authority from the Tax Commis-
54 sioner certifying his or her right to the exemption: *Provided*,
55 *however*, That in order for this exemption to apply, motor fuel
56 sold under this subdivision and subdivisions (1) through (5),
57 inclusive, of this subsection shall be used in vehicles or
58 equipment owned and operated by the respective government
59 entity or government agency or authority;

60 (7) All invoiced gallons of motor fuel purchased by a
61 licensed exporter and subsequently exported from this state to
62 any other state or nation: *Provided*, That the exporter has paid
63 the applicable motor fuel tax to the destination state or nation
64 prior to claiming this refund or the exporter has reported to the
65 destination state or nation that the motor fuel was sold in a
66 transaction not subject to tax in that state or nation: *Provided*,

67 *however*, That a refund may not be granted on any motor fuel
68 which is transported and delivered outside this state in the
69 motor fuel supply tank of a highway vehicle;

70 (8) All gallons of motor fuel used and consumed in station-
71 ary off-highway turbine engines;

72 (9) All gallons of special fuel used for heating any public or
73 private dwelling, building or other premises;

74 (10) All gallons of special fuel used for boilers;

75 (11) All gallons of motor fuel used as a dry cleaning solvent
76 or commercial or industrial solvent;

77 (12) All gallons of motor fuel used as lubricants, ingredi-
78 ents or components of any manufactured product or compound;

79 (13) All gallons of motor fuel sold for use or used as a
80 motor fuel for commercial watercraft;

81 (14) All gallons of special fuel sold for use or consumed in
82 railroad diesel locomotives;

83 (15) All gallons of motor fuel purchased in quantities of
84 twenty-five gallons or more for use as a motor fuel for internal
85 combustion engines not operated upon highways of this state;

86 (16) All gallons of motor fuel purchased in quantities of
87 twenty-five gallons or more and used to power a power take-off
88 unit on a motor vehicle. When a motor vehicle with auxiliary
89 equipment uses motor fuel and there is no auxiliary motor for
90 the equipment or separate tank for a motor, the person claiming
91 the refund may present to the Tax Commissioner a statement of
92 his or her claim and is allowed a refund for motor fuel used in
93 operating a power take-off unit on a cement mixer truck or
94 garbage truck equal to twenty-five percent of the tax levied by
95 this article paid on all motor fuel used in such a truck;

96 (17) Motor fuel used by any person regularly operating any
97 vehicle under a certificate of public convenience and necessity
98 or under a contract carrier permit for transportation of persons
99 when purchased in an amount of twenty-five gallons or more:
100 *Provided*, That the amount refunded is equal to six cents per
101 gallon: *Provided, however*, That the gallons of motor fuel have
102 been consumed in the operation of urban and suburban bus lines
103 and the majority of passengers use the bus for traveling a
104 distance not exceeding forty miles, measured one way, on the
105 same day between their places of abode and their places of
106 work, shopping areas or schools; and

107 (18) All gallons of motor fuel that are not otherwise exempt
108 under subdivisions (1) through (6), inclusive, of this subsection
109 and that are purchased and used by any bona fide volunteer fire
110 department, nonprofit ambulance service or emergency rescue
111 service that has been certified by the municipality or county
112 wherein the bona fide volunteer fire department, nonprofit
113 ambulance service or emergency rescue service is located.

114 (d) *Refundable exemptions from variable rate component*
115 *of tax.* — Any of the following persons may claim an exemp-
116 tion from the variable rate component of the tax levied by
117 section five of this article on the purchase and use of motor fuel
118 by first paying the tax levied by this article and then applying
119 to the Tax Commissioner for a refund.

120 (1) The United States or any agency thereof: *Provided*,
121 That if the United States government, or any agency or instru-
122 mentality thereof, does not pay the seller the tax imposed by
123 section five of this article on any purchase of motor fuel, the
124 person selling tax previously paid motor fuel to the United
125 States government, or its agencies or instrumentalities, may
126 then claim a refund of the variable rate of tax imposed by said
127 section on those sales.

- 128 (2) This state and its institutions;
- 129 (3) Any county government or unit or agency thereof;
- 130 (4) Any municipal government or any agency thereof;
- 131 (5) Any county boards of education;
- 132 (6) Any urban mass transportation authority created
133 pursuant to the provisions of article twenty-seven, chapter eight
134 of this code;
- 135 (7) Any municipal, county, state or federal civil defense or
136 emergency service program pursuant to a government contract
137 for use in conjunction therewith, or to any person on whom is
138 imposed a requirement to maintain an inventory of motor fuel
139 for the purpose of the program: *Provided*, That fueling facili-
140 ties used for these purposes are not capable of fueling motor
141 vehicles and the person in charge of the program has in his or
142 her possession a letter of authority from the Tax Commissioner
143 certifying his or her right to the exemption;
- 144 (8) Any bona fide volunteer fire department, nonprofit
145 ambulance service or emergency rescue service that has been
146 certified by the municipality or county wherein the bona fide
147 volunteer fire department, nonprofit ambulance service or
148 emergency rescue service is located; or
- 149 (9) All invoiced gallons of motor fuel purchased by a
150 licensed exporter and subsequently exported from this state to
151 any other state or nation: *Provided*, That the exporter has paid
152 the applicable motor fuel tax to the destination state or nation
153 prior to claiming this refund: *Provided, however*, That a refund
154 may not be granted on any motor fuel which is transported and
155 delivered outside this state in the motor fuel supply tank of a
156 highway vehicle.

157 (e) The provision in subdivision (9), subsection (a), section
158 nine, article fifteen of this chapter that exempts as a sale for
159 resale those sales of gasoline and special fuel by a distributor or
160 importer to another distributor does not apply to sales of motor
161 fuel under this article.

§11-14C-31. Claiming refunds.

1 (a) Any person seeking a refund pursuant to subsection (c)
2 or (d), section nine of this article shall present to the Commis-
3 sioner a petition for refund in the form required by the Commis-
4 sioner and provide the information required by the Commis-
5 sioner. The Tax Commissioner may require the petitioner to
6 provide the original or duplicate original sales slips or invoices
7 from the distributor or producer or retail dealer, as the case may
8 be, showing the amount of the purchases, together with evi-
9 dence of payment thereof, and a statement stating how the
10 motor fuel was used: *Provided*, That sales slips or invoices
11 marked "duplicate" are not acceptable: *Provided, however*,
12 That certified copies of sales slips or invoices are acceptable:
13 *Provided further*, That copies of sales slips and invoices may be
14 used with any application for refund made under authority of
15 subdivision (15), subsection (c), section nine of this article
16 when the motor fuel is used to operate tractors and gas engines
17 or threshing machines for agricultural purposes: *And provided*
18 *further*, That a refund claim made under the authority of
19 subdivision (1), subsection (c), section nine of this article and
20 a refund claim made under the authority of subdivision (1),
21 subsection (d) of said section shall be accompanied by such
22 verification as prescribed by the Tax Commissioner: *And*
23 *provided further*, That billing statements and electronic
24 invoices are acceptable in lieu of original invoices at the
25 discretion of the Tax Commissioner: *And provided further*,
26 That the person claiming a refund under subsection (c) or (d) of
27 said section shall retain for at least three years following the
28 postmark date of the application for refund a copy of the

29 invoices, sales slips and billing statements for which the refund
30 was claimed.

31 (b) Any person claiming a refund pursuant to section thirty
32 of this article shall file a petition in writing with the Commis-
33 sioner. The petition shall be in the form and with supporting
34 records as required by the Commissioner and made under the
35 penalty of perjury.

36 (c) The right to receive any refund under the provisions of
37 this section is not assignable and any assignment thereof is void
38 and of no effect. No payment of any refund may be made to
39 any person other than the original person entitled to claim the
40 refund except as otherwise expressly provided in this article.
41 The Commissioner shall cause a refund to be made under the
42 authority of this section only when the claim for refund is filed
43 with the Commissioner within the following time periods:

44 (1) A petition for refund under section thirty of this article,
45 other than for evaporation loss, shall be filed with the Commis-
46 sioner within three years from the end of the month in which:
47 (A) The tax was erroneously or illegally paid; (B) the gallons
48 were exported or lost by casualty; or (C) a change of rate took
49 effect;

50 (2) A petition for refund under section thirty of this article
51 for evaporation loss shall be filed within three years from the
52 end of the year in which the evaporation occurred;

53 (3) A petition for refund under subsection (c) or (d), section
54 nine of this article shall be filed with the Commissioner on or
55 before the last day of January, April, July and October for
56 purchases of motor fuel during the immediately preceding
57 calendar quarter: *Provided*, That any application for refund
58 made under authority of subdivision (15), subsection (c) of said
59 section when the motor fuel is used to operate tractors and gas
60 engines or threshing machines for agricultural purposes shall be

61 filed within twelve months from the month of purchase or
62 delivery of the motor fuel: *Provided, however,* That all persons
63 authorized to claim a refundable exemption under the authority
64 of subdivisions (1) through (6), inclusive, subsection (c),
65 section nine of this article and subdivisions (1) through (6),
66 inclusive, subsection (d) of said section shall do so no later than
67 the thirty-first day of August for the purchases of motor fuel
68 made during the preceding fiscal year ending the thirtieth day
69 of June.

70 (d) Any petition for a refund not timely filed is not con-
71 strued to be or constitute a moral obligation of the state of West
72 Virginia for payment. Every petition for refund is subject to the
73 provisions of section fourteen, article ten of this chapter.

74 (e) The Commissioner may make any investigation
75 considered necessary before refunding to a person the tax levied
76 by section five of this article. The Commissioner may also
77 subject to audit the records related to a refund of the tax levied
78 by section five of this article.

CHAPTER 235

**(H. B. 3357 — By Delegates Michael, Doyle, Kominar,
Proudfoot, Boggs, Stalnaker and Williams)**

[Passed April 6, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 18, 2005.]

AN ACT to amend and reenact §11-15B-2 and §11-15B-2a of the Code of West Virginia, 1931, as amended; and to further amend said code by adding thereto a new section, designated §11-15B-4a, all relating generally to streamlined sales and use tax adminis-

tration; defining certain terms; and providing for representation on governing board of streamlined sales and use tax agreement.

Be it enacted by the Legislature of West Virginia:

That §11-15B-2 and §11-15B-2a 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 §11-15B-4a, all to read as follows:

**ARTICLE 15B. STREAMLINED SALES AND USE TAX ADMINISTRATION
ACT.**

§11-15B-2. Definitions.

§11-15B-2a. Streamlined sales and use tax agreement defined.

§11-15B-4a. Representatives to governing board of streamlined sales and use tax agreement.

§11-15B-2. Definitions.

1 (a) *General.* — When used in this article and articles fifteen
2 and fifteen-a of this chapter, words defined in subsection (b) of
3 this section shall have the meanings ascribed to them in this
4 section, except in those instances where a different meaning is
5 distinctly expressed or the context in which the term is used
6 clearly indicates that a different meaning is intended by the
7 Legislature.

8 (b) *Terms defined.*

9 (1) “Agent” means a person appointed by a seller to
10 represent the seller before the member states.

11 (2) “Agreement” means the streamlined sales and use tax
12 agreement, as defined in section two-a of this article.

13 (3) “Alcoholic beverages” means beverages that are
14 suitable for human consumption and contain one half of one
15 percent or more of alcohol by volume.

16 (4) “Certified automated system” or “CAS” means software
17 certified under the agreement to calculate the tax imposed by
18 each jurisdiction on a transaction, determine the amount of tax
19 to remit to the appropriate state, and maintain a record of the
20 transaction.

21 (5) “Certified service provider” or “CSP” means an agent
22 certified under the agreement to perform all of the seller’s sales
23 tax functions.

24 (6) “Computer” means an electronic device that accepts
25 information in digital or similar form and manipulates the
26 information for a result based on a sequence of instructions.

27 (7) “Computer software” means a set of coded instructions
28 designed to cause a “computer” or automatic data processing
29 equipment to perform a task.

30 (8) “Delivered electronically” means delivered to the
31 purchaser by means other than tangible storage media.

32 (9) “Delivery charges” means charges by the seller of
33 personal property or services for preparation and delivery to a
34 location designated by the purchaser of personal property or
35 services including, but not limited to, transportation, shipping,
36 postage, handling, crating, and packing.

37 (10) “Dietary supplement” means any product, other than
38 “tobacco”, intended to supplement the diet that:

39 (A) Contains one or more of the following dietary ingredi-
40 ents:

41 (i) A vitamin;

42 (ii) A mineral;

43 (iii) A herb or other botanical;

44 (iv) An amino acid;

45 (v) A dietary substance for use by humans to supplement
46 the diet by increasing the total dietary intake; or

47 (vi) A concentrate, metabolite, constituent, extract or
48 combination of any ingredient described in subparagraph (i)
49 through (v) of this subdivision;

50 (B) Is intended for ingestion in tablet, capsule, powder,
51 softgel, gelcap, or liquid form, or if not intended for ingestion
52 in such a form, is not represented as conventional food and is
53 not represented for use as a sole item of a meal or of the diet;
54 and

55 (C) Is required to be labeled as a dietary supplement,
56 identifiable by the "Supplemental Facts" box found on the label
57 as required pursuant to 21 CFR §101.36, or in any successor
58 section of the code of federal regulations.

59 (11) "Direct mail" means printed material delivered or
60 distributed by United States mail or other delivery service to a
61 mass audience or to addressees on a mailing list provided by the
62 purchaser or at the direction of the purchaser when the cost of
63 the items are not billed directly to the recipients. "Direct mail"
64 includes tangible personal property supplied directly or
65 indirectly by the purchaser to the direct mail seller for inclusion
66 in the package containing the printed material. "Direct mail"
67 does not include multiple items of printed material delivered to
68 a single address.

69 (12) "Drug" means a compound, substance or preparation,
70 and any component of a compound, substance or preparation,
71 other than food and food ingredients, dietary supplements or
72 alcoholic beverages:

73 (A) Recognized in the official United States pharmaco-
74 poeia, official homeopathic pharmacopoeia of the United

75 States, or official national formulary, and supplement to any of
76 them;

77 (B) Intended for use in the diagnosis, cure, mitigation,
78 treatment, or prevention of disease in humans; or

79 (C) Intended to affect the structure or any function of the
80 human body.

81 (13) "Durable medical equipment" means equipment
82 including repair and replacement parts for the equipment, but
83 does not include "mobility-enhancing equipment", which:

84 (A) Can withstand repeated use;

85 (B) Is primarily and customarily used to serve a medical
86 purpose;

87 (C) Generally is not useful to a person in the absence of
88 illness or injury; and

89 (D) Is not worn in or on the body.

90 (14) "Electronic" means relating to technology having
91 electrical, digital, magnetic, wireless, optical, electromagnetic,
92 or similar capabilities.

93 (15) "Entity-based exemption" means an exemption based
94 on who purchases the product or service or who sells the
95 product or service.

96 (16) "Food and food ingredients" means substances,
97 whether in liquid, concentrated, solid, frozen, dried or dehy-
98 drated form, that are sold for ingestion or chewing by humans
99 and are consumed for their taste or nutritional value. "Food and
100 food ingredients" does not include alcoholic beverages or
101 tobacco.

102 (17) "Includes" and "including" when used in a definition
103 contained in this article is not considered to exclude other
104 things otherwise within the meaning of the term being defined.

105 (18) "Lease" includes rental, hire and license. "Lease"
106 means any transfer of possession or control of tangible personal
107 property for a fixed or indeterminate term for consideration. A
108 lease or rental may include future options to purchase or extend.

109 (A) "Lease" does not include:

110 (i) A transfer of possession or control of property under a
111 security agreement or deferred payment plan that requires the
112 transfer of title upon completion of the required payments;

113 (ii) A transfer or possession or control of property under an
114 agreement that requires the transfer of title upon completion of
115 required payments and payment of an option price does not
116 exceed the greater of one hundred dollars or one percent of the
117 total required payments; or

118 (iii) Providing tangible personal property along with an
119 operator for a fixed or indeterminate period of time. A condi-
120 tion of this exclusion is that the operator is necessary for the
121 equipment to perform as designed. For the purpose of this
122 subparagraph, an operator must do more than maintain, inspect,
123 or set-up the tangible personal property.

124 (B) This definition shall be used for sales and use tax
125 purposes regardless if a transaction is characterized as a lease
126 or rental under generally accepted accounting principles, the
127 Internal Revenue Code, the uniform commercial code, or other
128 provisions of federal, state or local law.

129 (19) "Load and leave" means delivery to the purchaser by
130 use of a tangible storage media where the tangible storage
131 media is not physically transferred to the purchaser.

132 (20) "Mobility enhancing equipment" means equipment,
133 including repair and replacement parts to the equipment, but
134 does not include "durable medical equipment", which:

135 (A) Is primarily and customarily used to provide or increase
136 the ability to move from one place to another and which is
137 appropriate for use either in a home or a motor vehicle;

138 (B) Is not generally used by persons with normal mobility;
139 and

140 (C) Does not include any motor vehicle or equipment on a
141 motor vehicle normally provided by a motor vehicle manufac-
142 turer.

143 (21) "Model I seller" means a seller that has selected a
144 certified service provider as its agent to perform all the seller's
145 sales and use tax functions, other than the seller's obligation to
146 remit tax on its own purchases.

147 (22) "Model II seller" means a seller that has selected a
148 certified automated system to perform part of its sales and use
149 tax functions, but retains responsibility for remitting the tax.

150 (23) "Model III seller" means a seller that has sales in at
151 least five member states, has total annual sales revenue of at
152 least five hundred million dollars, has a proprietary system that
153 calculates the amount of tax due each jurisdiction, and has
154 entered into a performance agreement with the member states
155 that establishes a tax performance standard for the seller. As
156 used in this definition, a seller includes an affiliated group of
157 sellers using the same proprietary system.

158 (24) "Person" means an individual, trust, estate, fiduciary,
159 partnership, limited liability company, limited liability partner-
160 ship, corporation or any other legal entity.

161 (25) “Personal service” includes those:

162 (A) Compensated by the payment of wages in the ordinary
163 course of employment; and

164 (B) Rendered to the person of an individual without, at the
165 same time, selling tangible personal property, such as nursing,
166 barbering, manicuring and similar services.

167 (26) “Prescription” means an order, formula or recipe
168 issued in any form of oral, written, electronic, or other means
169 of transmission by a duly licensed practitioner authorized by the
170 laws of this state to issue prescriptions.

171 (27) “Prewritten computer software” means “computer
172 software”, including prewritten upgrades, which is not designed
173 and developed by the author or other creator to the specifica-
174 tions of a specific purchaser.

175 (A) The combining of two or more prewritten computer
176 software programs or prewritten portions thereof does not cause
177 the combination to be other than prewritten computer software.

178 (B) “Prewritten computer software” includes software
179 designed and developed by the author or other creator to the
180 specifications of a specific purchaser when it is sold to a person
181 other than the purchaser. Where a person modifies or enhances
182 computer software of which the person is not the author or
183 creator, the person is considered to be the author or creator only
184 of the person’s modifications or enhancements.

185 (C) “Prewritten computer software” or a prewritten portion
186 thereof that is modified or enhanced to any degree, where the
187 modification or enhancement is designed and developed to the
188 specifications of a specific purchaser, remains prewritten
189 computer software: Provided, That where there is a reasonable,
190 separately stated charge or an invoice or other statement of the

191 price given to the purchaser for the modification or enhance-
192 ment, the modification or enhancement does not constitute
193 prewritten computer software.

194 (28) "Product-based exemption" means an exemption based
195 on the description of the product or service and not based on
196 who purchases the product or service or how the purchaser
197 intends to use the product or service.

198 (29) "Prosthetic device" means a replacement, corrective,
199 or supportive device, including repair and replacement parts for
200 the device worn on or in the body, to:

201 (A) Artificially replace a missing portion of the body;

202 (B) Prevent or correct physical deformity or malfunction of
203 the body; or

204 (C) Support a weak or deformed portion of the body.

205 (30) "Protective equipment" means items for human wear
206 and designed as protection of the wearer against injury or
207 disease or as protections against damage or injury of other
208 persons or property but not suitable for general use.

209 (31) "Purchase price" means the measure subject to the tax
210 imposed by article fifteen or article fifteen-a of this chapter and
211 has the same meaning as sales price.

212 (32) "Purchaser" means a person to whom a sale of
213 personal property is made or to whom a service is furnished.

214 (33) "Registered under this agreement" means registration
215 by a seller with the member states under the central registration
216 system provided in article four of the agreement.

217 (34) "Retail sale" or "sale at retail" means:

218 (A) Any sale or lease for any purpose other than for resale
219 as tangible personal property, sublease or subrent; and

220 (B) Any sale of a service other than a service purchased for
221 resale.

222 (35)(A) "Sales price" means the measure subject to the tax
223 levied by this article and includes the total amount of consider-
224 ation, including cash, credit, property and services, for which
225 personal property or services are sold, leased or rented, valued
226 in money, whether received in money or otherwise, without any
227 deduction for the following:

228 (i) The seller's cost of the property sold;

229 (ii) The cost of materials used, labor or service cost,
230 interest, losses, all costs of transportation to the seller, all taxes
231 imposed on the seller, and any other expense of the seller;

232 (iii) Charges by the seller for any services necessary to
233 complete the sale, other than delivery and installation charges;

234 (iv) Delivery charges;

235 (v) Installation charges;

236 (vi) The value of exempt personal property given to the
237 purchaser where taxable and exempt personal property have
238 been bundled together and sold by the seller as a single product
239 or piece of merchandise; and

240 (vii) Credit for the fair market value of any trade-in.

241 (B) "Sales price" does not include:

242 (i) Discounts, including cash, term, or coupons that are not
243 reimbursed by a third party that are allowed by a seller and
244 taken by a purchaser on a sale;

245 (ii) Interest, financing, and carrying charges from credit
246 extended on the sale of personal property, goods or services, if
247 the amount is separately stated on the invoice, bill of sale or
248 similar document given to the purchaser; and

249 (iii) Any taxes legally imposed directly on the consumer
250 that are separately stated on the invoice, bill of sale or similar
251 document given to the purchaser.

252 (36) "Sales tax" means the tax levied under article fifteen
253 of this chapter.

254 (37) "Seller" means any person making sales, leases or
255 rentals of personal property or services.

256 (38) "Service" or "selected service" includes all nonprofes-
257 sional activities engaged in for other persons for a consider-
258 ation, which involve the rendering of a service as distinguished
259 from the sale of tangible personal property, but does not include
260 contracting, personal services, services rendered by an em-
261 ployee to his or her employer, any service rendered for resale,
262 or any service furnished by a business that is subject to the
263 control of the Public Service Commission when the service or
264 the manner in which it is delivered is subject to regulation by
265 the Public Service Commission of this state. The term "service"
266 or "selected service" does not include payments received by a
267 vendor of tangible personal property as an incentive to sell a
268 greater volume of such tangible personal property under a
269 manufacturer's, distributor's or other third-party's marketing
270 support program, sales incentive program, cooperative advertis-
271 ing agreement or similar type of program or agreement, and
272 these payments are not considered to be payments for a
273 "service" or "selected service" rendered, even though the
274 vendor may engage in attendant or ancillary activities associ-
275 ated with the sales of tangible personal property as required
276 under the programs or agreements.

277 (39) "State" means any state of the United States and the
278 District of Columbia.

279 (40) "Tangible personal property" means personal property
280 that can be seen, weighed, measured, felt, or touched, or that is
281 in any manner perceptible to the senses. "Tangible personal
282 property" includes, but is not limited to, electricity, steam,
283 water, gas, and prewritten computer software.

284 (41) "Tax" includes all taxes levied under articles fifteen
285 and fifteen-a of this chapter, and additions to tax, interest and
286 penalties levied under article ten of this chapter.

287 (42) "Tax Commissioner" means the State Tax Commis-
288 sioner or his or her delegate. The term "delegate" in the phrase
289 "or his or her delegate", when used in reference to the Tax
290 Commissioner, means any officer or employee of the State Tax
291 Division duly authorized by the Tax Commissioner directly, or
292 indirectly by one or more redelegations of authority, to perform
293 the functions mentioned or described in this article or rules
294 promulgated for this article.

295 (43) "Taxpayer" means any person liable for the taxes
296 levied by articles fifteen and fifteen-a of this chapter or any
297 additions to tax, penalties imposed by article ten of this chapter.

298 (44) "Tobacco" means cigarettes, cigars, chewing or pipe
299 tobacco, or any other item that contains tobacco.

300 (45) "Use tax" means the tax levied under article fifteen-a
301 of this chapter.

302 (46) "Use-based exemption" means an exemption based on
303 the purchaser's use of the product or service.

304 (47) "Vendor" means any person furnishing services taxed
305 by article fifteen or fifteen-a of this chapter, or making sales of

306 tangible personal property or custom software. “Vendor” and
307 “seller” are used interchangeably in this article and in article
308 fifteen and fifteen-a of this chapter.

309 (c) *Additional definitions.* — Other terms used in this
310 article are defined in articles fifteen and fifteen-a of this
311 chapter, which definitions are incorporated by reference into
312 this article. Additionally, other sections of this article may
313 define terms primarily used in the section in which the term is
314 defined.

§11-15B-2a. Streamlined sales and use tax agreement defined.

1 As used in this article and articles fifteen and fifteen-a of
2 this chapter, the term “streamlined sales and use tax agreement”
3 or “agreement” means the agreement adopted the twelfth day of
4 November, two thousand two, by states that enacted authority
5 to engage in multistate discussions similar to that provided in
6 section four of this article, except when the context in which the
7 term is used clearly indicates that a different meaning is
8 intended by the Legislature. “Agreement” includes amendments
9 to the agreement adopted by the implementing states in
10 calendar years two thousand three and two thousand four but
11 does not include any substantive changes in the agreement
12 adopted after the first day of January, two thousand five.

§11-15B-4a. Representatives to governing board of streamlined sales and use tax agreement.

1 Upon implementation of the streamlined sales and use tax
2 agreement and this state becoming a party to the agreement,
3 West Virginia shall have four representatives to the governing
4 board of the agreement. Two representatives shall be the
5 Secretary of Revenue and the Tax Commissioner, or their
6 respective designees; and two representatives shall be appointed
7 by the President of the Senate and the Speaker of the House of
8 Delegates.

CHAPTER 236

(S. B. 623 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 4, 2005; in effect ninety days from passage.]
[Approved by the Governor on April 19, 2005.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-21-12g, all relating to updating meaning of federal adjusted gross income and certain other terms used in West Virginia Personal Income Tax Act; providing new increasing modification to federal adjusted gross income for amount deducted under Section 199 of Internal Revenue Code; requiring filing of certain schedules to support deduction and increasing modification; providing Tax Commissioner with additional remedies for noncompliance and for errors in computing federal adjusted gross income; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-21-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §11-21-12g, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

§11-21-12g. Additional modification increasing federal adjusted gross income; disallowance of deduction taken under Internal Revenue Code Section 199.

§11-21-9. Meaning of terms.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to income taxes, unless a different meaning is
4 clearly required. Any reference in this article to the laws of the
5 United States means the provisions of the Internal Revenue
6 Code of 1986, as amended, and any other provisions of the laws
7 of the United States that relate to the determination of income
8 for federal income tax purposes. All amendments made to the
9 laws of the United States after the thirty-first day of December,
10 two thousand four, but prior to the first day of January, two
11 thousand five, shall be given effect in determining the taxes
12 imposed by this article to the same extent those changes are
13 allowed for federal income tax purposes, whether the changes
14 are retroactive or prospective, but no amendment to the laws of
15 the United States made on or after the first day of January, two
16 thousand five, shall be given any effect.

17 (b) *Medical savings accounts.* — The term “taxable trust”
18 does not include a medical savings account established pursuant
19 to section twenty, article fifteen, chapter thirty-three of this
20 code or section fifteen, article sixteen of said chapter. Em-
21 ployer contributions to a medical savings account established
22 pursuant to said sections are not “wages” for purposes of
23 withholding under section seventy-one of this article.

24 (c) *Surtax.* — The term “surtax” means the twenty percent
25 additional tax imposed on taxable withdrawals from a medical
26 savings account under section twenty, article fifteen, chapter
27 thirty-three of this code and the twenty percent additional tax
28 imposed on taxable withdrawals from a medical savings
29 account under section fifteen, article sixteen of said chapter
30 which are collected by the Tax Commissioner as tax collected
31 under this article.

32 (d) *Effective date.* — The amendments to this section
33 enacted in the year two thousand five are retroactive to the
34 extent allowable under federal income tax law. With respect to

35 taxable years that began prior to the first day of January, two
36 thousand five, the law in effect for each of those years shall be
37 fully preserved as to that year, except as provided in this section.

38 (e) For purposes of the refundable credit allowed to a low
39 income senior citizen for property tax paid on his or her
40 homestead in this state, the term "laws of the United States" as
41 used in subsection (a) of this section means and includes the
42 term "low income" as defined in subsection (b), section twenty-
43 one of this article and as reflected in the poverty guidelines
44 updated periodically in the federal register by the U. S.
45 Department of Health and Human Services under the authority
46 of 42 U. S. C. §9902(2).

**§11-21-12g. Additional modification increasing federal adjusted
gross income; disallowance of deduction taken
under Internal Revenue Code Section 199.**

1 (a) In addition to amounts added to federal taxable income
2 pursuant to subsection (b), section twelve of this article, unless
3 already included therein, there shall be added to federal taxable
4 income the amount deducted under Section 199 of the Internal
5 Revenue Code of 1986, as amended, when determining federal
6 adjusted gross income for the taxable year for federal income
7 tax purposes.

8 (b) When taxpayer's federal adjusted gross income includes
9 distributive share of income, gain or loss of a partnership,
10 limited liability company, electing small business corporation,
11 or other entity treated as a partnership for federal income tax
12 purposes, and when taxpayer's distributive share for the taxable
13 year includes a deduction, or portion of a deduction computed
14 under Section 199 of the Internal Revenue Code, as amended,
15 for the taxable year, then in addition to amounts added to
16 federal taxable income pursuant to subsection (b), section
17 twelve of this article, unless already included therein, taxpayer
18 shall add the amount computed under Section 199 of the
19 Internal Revenue Code of 1986, as amended, that flows through

20 to the taxpayer for federal income tax purposes for the taxable
21 year. Taxpayer shall file with its annual return under this
22 article a copy of all schedules K-1 it received showing alloca-
23 tion of a Section 199 deduction and such other information as
24 the Tax Commissioner may require.

25 (c) *Failure to attach required schedules.* — When taxpayer
26 fails to include with the annual return due under this article the
27 schedule or schedules required by this section, the return shall
28 be treated as an incomplete return until the day the required
29 schedule or schedules are filed with the Tax Commissioner. An
30 incomplete return showing an overpayment of tax may not be
31 treated as a claim for refund until the day the defect is cured.
32 The filing of an incomplete return shall not start the running of
33 the period of time during which the Tax Commissioner may
34 issue an assessment or take other action to enforce compliance
35 of this article for the taxable year.

36 (d) *Audit adjustment to federal taxable income.* — When
37 auditing for compliance with this article, the Tax Commissioner
38 may change a taxpayer's computation of federal taxable income
39 or pro forma taxable income to comply with the laws of the
40 United States as in effect for the taxable year and incorporated
41 by reference into this article.

CHAPTER 237

(S. B. 643 — By Senators Helmick, Plymale and Minard)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §11-21-18 and §11-21-30 of the Code of West Virginia, 1931, as amended, all relating generally to

personal income tax; providing that in determining West Virginia taxable income of electing small business trusts, income attributable to S corporation stock held by trust shall be included; authorizing equitable relief when statutory computation of tax for nonresident individuals, estates and trusts and part-year resident individuals produces result that is out of all proportion to amount of taxpayer's West Virginia source income; correcting erroneous cross-reference to code section concerning part-year residents; and providing for effective date.

Be it enacted by the Legislature of West Virginia:

That §11-21-18 and §11-21-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-18. West Virginia taxable income of resident estate or trust.

§11-21-30. Computation of tax on income of nonresidents and part-year residents.

§11-21-18. West Virginia taxable income of resident estate or trust.

1 The West Virginia taxable income of a resident estate or
2 trust means its federal taxable income for the taxable year as
3 defined in the laws of the United States and section nine of this
4 article for the taxable year, with the following modifications:

5 (1) There shall be subtracted six hundred dollars as the
6 West Virginia personal exemption of the estate or trust, and
7 there shall be added the amount of its federal deduction for a
8 personal exemption.

9 (2) There shall be added or subtracted, as the case may be,
10 the share of the estate or trust in the West Virginia fiduciary
11 adjustment determined under section nineteen of this article.

12 (3) There shall be added to federal adjusted gross income,
13 unless already included therein, the amount of a lump sum

14 distribution for which the taxpayer has elected under Section
15 402(e) of the Internal Revenue Code of 1986, as amended, to be
16 separately taxed for federal income tax purposes: *Provided,*
17 That the provisions of this subdivision shall first be effective
18 for taxable years beginning after the thirty-first day of Decem-
19 ber, one thousand nine hundred ninety.

20 (4) There shall be added by an electing small business trust
21 as defined in Section 1361(e) of the Internal Revenue Code of
22 1986, as amended, which is a shareholder in one or more
23 electing small business corporations, the portion of the trust's
24 income attributable to electing small business corporation stock
25 held by the trust that is not included in the trust's federal
26 taxable income pursuant to Section 641 of the Internal Revenue
27 Code of 1986, as amended.

28 (b) The amendments to this section enacted in the regular
29 session of the Legislature in two thousand five are effective for
30 tax years beginning on or after the first day of January, two
31 thousand five.

PART III. NONRESIDENT AND PART-YEAR RESIDENTS.

§11-21-30. Computation of tax on income of nonresidents and part-year residents.

1 (a) *Computation of tax.* -- For taxable years beginning after
2 the thirty-first day of December, one thousand nine hundred
3 ninety-one, the tax due under this article on taxable income
4 derived from sources in this state by a nonresident individual,
5 estate, or trust or by a part-year resident individual shall be
6 calculated as provided in this section.

7 (1) Taxpayer shall first calculate tax liability under this
8 article as if taxpayer, whether an individual, estate or trust, were
9 a resident of this state for the entire taxable year. When
10 determining tentative tax liability under this subdivision, a

11 nonresident shall be allowed the same deductions, exemptions
12 and credits that would be allowable if taxpayer were a resident
13 individual, estate or trust, as the case may be, for the entire
14 taxable year, except that no credit shall be allowed under
15 section twenty of this article.

16 (2) The amount of tentative tax determined under subdivi-
17 sion (1) of this subsection shall then be multiplied by a fraction
18 the numerator of which is the taxpayer's West Virginia source
19 income, determined in accordance with Part III of this article
20 for the taxable year, and the denominator of which is such
21 taxpayer's "federal adjusted gross income" for the taxable year
22 as defined in section nine of this article: *Provided*, That if this
23 computation produces a result that is out of all appropriate
24 proportion to the amount of taxpayer's West Virginia source
25 income, the tax commissioner may provide such equitable relief
26 as the tax commissioner, in his or her discretion, considers to be
27 appropriate under the circumstances.

28 (b) *Special rules for estates and trusts.* — For purposes of
29 subdivision (1), subsection (a) of this section:

30 (1) The "federal adjusted gross income" of an estate or trust
31 shall be determined as if such estate or trust were an individual;
32 and

33 (2) In the case of a trust, "federal adjusted gross income"
34 shall be its "federal adjusted gross income" for the taxable year
35 increased by the amount of any includable gain, reduced by any
36 deductions properly allocable thereto, upon which the tax is
37 imposed for the taxable year pursuant to Section 644 of the
38 Internal Revenue Code.

39 (3) When an electing small business trust as defined in
40 Section 1361(e)(1) of the Internal Revenue Code of 1986, as
41 amended, is a shareholder in one or more electing small
42 business corporations, the portion of the trust's income attribut-

43 able to electing small business corporation stock held by the
44 trust that is not included in the trust's federal taxable income
45 pursuant to Section 641(c) of that code shall be included in
46 West Virginia taxable income of the trust.

47 (c) *Special rules for part-year residents.* --

48 (1) For purposes of subdivision (1), subsection (a) of this
49 section, the "federal adjusted gross income" of a part-year
50 resident individual shall be taxpayer's federal adjusted gross
51 income for the taxable year, as defined in section nine of this
52 article, increased or decreased, as the case may be, by the items
53 accrued under subdivision (1), subsection (b), section forty-four
54 of this article, to the extent such items are not otherwise
55 included in federal adjusted gross income for the taxable year,
56 and decreased or increased, as the case may be by the items
57 accrued under subdivision (2) of said subsection, to the extent
58 such items are included in federal adjusted gross income for the
59 taxable year; and

60 (2) In computing the tax due as if taxpayer were a resident
61 of this state for the entire tax year, West Virginia adjusted gross
62 income shall include the accruals specified in subdivision (1) of
63 this subsection, with the applicable modifications described in
64 section forty-four of this article.

65 (d) *Definitions.* —

66 (1) "Nonresident estate" means an estate of a decedent who
67 was not a resident of this state at the time of his or her death.

68 (2) "Nonresident trust" means a trust which is not a resident
69 trust, as defined in section seven of this article.

70 (3) "Part-year resident individual" means an individual who
71 is not a resident or nonresident of this state for the entire
72 taxable year.

73 (e) *Effective date.* — (1) The provisions of this section shall
74 apply to taxable years beginning after the thirty-first day of
75 December, one thousand nine hundred ninety-one. As to taxable
76 years beginning prior to that date, the provisions of this article
77 as then in effect shall apply and be controlling, and for that
78 purpose, prior law is fully and completely preserved.

79 (2) The amendments to this section enacted in the regular
80 session of the Legislature in two thousand five are effective for
81 tax years beginning on or after the first day of January, two
82 thousand five.

CHAPTER 238

(Com. Sub. for S. B. 666 — By Senators Sharpe and Helmick)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §11-23-7 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-24-5 of said code, all relating to exemptions for certain insurance companies from business franchise tax and corporation net income tax; and limiting the exemptions to that portion of the tax base which is based on income subject to a tax upon premiums.

Be it enacted by the Legislature of West Virginia:

That §11-23-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §11-24-5 of said code be amended and reenacted, all to read as follows:

Article**23. Business Franchise Tax.****24. Corporation Net Income Tax.****ARTICLE 23. BUSINESS FRANCHISE TAX.****§11-23-7. Persons and other organizations exempt from tax.**

1 The following organizations and persons are exempt from
2 the tax imposed by this article to the extent provided in this
3 section:

4 (a) Natural persons doing business in this state that are not
5 doing business in the form of a partnership (as defined in
6 section three of this article) or in the form of a corporation (as
7 defined in section three of this article). Natural persons include
8 persons doing business as sole proprietors, sole practitioners
9 and other self-employed persons;

10 (b) Corporations and organizations which by reason of their
11 purposes or activities are exempt from federal income tax:
12 *Provided*, That this exemption does not apply to that portion of
13 their capital (as defined in section three of this article) which is
14 used, directly or indirectly, in the generation of unrelated
15 business income (as defined in the Internal Revenue Code) of
16 any corporation or organization if the unrelated business
17 income is subject to federal income tax;

18 (c) Insurance companies which pay this state a tax upon
19 premiums and insurance companies that pay the surcharge
20 imposed by subdivision (1) or (3), subsection (f), section three,
21 article two-c, chapter twenty-three of this code;

22 (d) Production credit associations organized under the
23 provisions of the federal Farm Credit Act of 1933: *Provided*,
24 That this exemption does not apply to corporations or associa-
25 tions organized under the provisions of article four, chapter
26 nineteen of this code;

27 (e) Any trust established pursuant to section one hundred
28 eighty-six, chapter seven, title twenty-nine of the code of the
29 laws of the United States (enacted as section three hundred two
30 (c) of the Labor Management Relations Act, one thousand nine
31 hundred forty-seven), as amended, prior to the first day of
32 January, one thousand nine hundred eighty-five;

33 (f) Any credit union organized under the provisions of
34 chapter thirty-one or any other chapter of this code: *Provided*,
35 That this exemption does not apply to corporations or coopera-
36 tive associations organized under the provisions of article four,
37 chapter nineteen of this code;

38 (g) Any corporation organized under this code which is a
39 political subdivision of the State of West Virginia, or is an
40 instrumentality of a political subdivision of this state, and was
41 created pursuant to this code;

42 (h) Any corporation or partnership engaged in the activity
43 of agriculture and farming, as defined in subdivision (8),
44 subsection (b), section three of this article: *Provided*, That if a
45 corporation or partnership is not exclusively engaged in that
46 activity, its tax base under this article is apportioned, in
47 accordance with regulations promulgated by the Tax Commis-
48 sioner, among its several activities and only that portion
49 attributable to the activity of agriculture and farming is exempt
50 from tax under this article;

51 (i) Any corporation or partnership licensed under article
52 twenty-three, chapter nineteen of this code to conduct horse or
53 dog racing meetings or a pari-mutuel system of wagering:
54 *Provided*, That if the corporation or partnership is not exclu-
55 sively engaged in this activity, its tax base under this article is
56 apportioned, in accordance with regulations promulgated by the
57 Tax Commissioner, among its several activities and only that
58 portion attributable to the activity of conducting a horse or dog

59 racing meeting or a pari-mutuel system of wagering is exempt
60 from tax under this article;

61 (j) For those tax years beginning after the thirtieth day of
62 June, one thousand nine hundred ninety-eight, any corporation
63 or partnership operating as a hunting club: *Provided*, That the
64 corporation or partnership distributes no income or dividends
65 to its owners or stockholders. For the purposes of this subsec-
66 tion, a hunting club is a group of persons owning land which is
67 used principally for hunting purposes by the members of the
68 club and guests, and where any charges made for hunting are
69 principally for the purpose of defraying the costs of operating
70 and maintaining the club and club properties or establishing a
71 reasonable reserve to meet the operating and maintenance costs
72 of the club. The Tax Commissioner shall, by legislative rule
73 promulgated in accordance with article three, chapter twenty-
74 nine of this code, further prescribe the definition of a hunting
75 club and the manner and method in which this credit may be
76 claimed; and

77 (k) For tax years beginning after the thirty-first day of
78 December, two thousand two, any person or other organization
79 engaged in the activity of providing venture capital to West
80 Virginia businesses: *Provided*, That if the person or organiza-
81 tion is not exclusively engaged in that activity, only that portion
82 of its tax base under this article that is attributable to the
83 providing of venture capital to West Virginia businesses is
84 exempt from tax under this article and its tax liability under this
85 article is determined by multiplying its precredit tax liability by
86 a fraction equal to one minus a fraction, the numerator of which
87 is its gross receipts attributable to its venture capital activities
88 in this state and the denominator of which is its total gross
89 receipts from all of its business activities in this state. For
90 purposes of this exemption, a “person or organization engaged
91 in the activity of providing venture capital to West Virginia
92 business” means a certified West Virginia capital company as
93 defined in section four, article one, chapter five-e of this code.

ARTICLE 24. CORPORATION NET INCOME TAX.**§11-24-5. Corporations exempt from tax.**

1 The following corporations shall be exempt from the tax
2 imposed by this article to the extent provided in this section:

3 (a) Corporations which by reason of their purposes or
4 activities are exempt from federal income tax: *Provided*, That
5 this exemption shall not apply to the unrelated business income,
6 as defined in the Internal Revenue Code, of any such corpora-
7 tion if such income is subject to federal income tax.

8 (b) Insurance companies which pay this state a tax upon
9 premiums and insurance companies that pay the surcharge
10 imposed by subdivision (1) or (3), subsection (f), section three,
11 article two-c, chapter twenty-three of this code.

12 (c) Production credit associations organized under the
13 provisions of the federal Farm Credit Act of 1933: *Provided*,
14 That the exemption shall not apply to corporations or associa-
15 tions organized under the provisions of article four, chapter
16 nineteen of this code.

17 (d) Corporations electing to be taxed under subchapter S of
18 the Internal Revenue Code of one thousand nine hundred
19 eighty-six, as amended: *Provided*, That said corporations shall
20 file the information return required by section thirteen-b of this
21 article.

22 (e) Trusts established pursuant to section one hundred
23 eighty-six, chapter seven, title twenty-nine of the code of the
24 laws of the United States (enacted as section three hundred two
25 (c) of the Labor Management Relations Act, one thousand nine
26 hundred forty-seven), as amended, prior to the first day of
27 January, one thousand nine hundred sixty-seven.

CHAPTER 239

(S. B. 614 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed April 4, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 19, 2005.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-24-6a, all relating to updating meaning of federal taxable income and certain other terms used in West Virginia Corporation Net Income Tax Act; providing new increasing modification to federal taxable income for amount deducted under Section 199 of Internal Revenue Code; requiring filing of certain schedules to support deduction and increasing modification; providing Tax Commissioner with additional remedies for noncompliance and for errors in computing federal taxable income; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-24-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §11-24-6a, all to read as follows:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

§11-24-6a. Additional modification increasing federal taxable income; disallowance of deduction taken under IRC §199.

§11-24-3. Meaning of terms; general rule.

1 (a) Any term used in this article has the same meaning as
2 when used in a comparable context in the laws of the United
3 States relating to federal income taxes, unless a different
4 meaning is clearly required by the context or by definition in
5 this article. Any reference in this article to the laws of the
6 United States means the provisions of the Internal Revenue
7 Code of 1986, as amended, and any other provisions of the laws
8 of the United States that relate to the determination of income
9 for federal income tax purposes. All amendments made to the
10 laws of the United States after the thirty-first day of December,
11 two thousand three, but prior to the first day of January, two
12 thousand five, shall be given effect in determining the taxes
13 imposed by this article to the same extent those changes are
14 allowed for federal income tax purposes, whether the changes
15 are retroactive or prospective, but no amendment to the laws of
16 the United States made on or after the first day of January, two
17 thousand five, shall be given any effect.

18 (b) The term “Internal Revenue Code of 1986” means the
19 Internal Revenue Code of the United States enacted by the
20 federal Tax Reform Act of 1986 and includes the provisions of
21 law formerly known as the Internal Revenue Code of 1954, as
22 amended, and in effect when the federal Tax Reform Act of
23 1986 was enacted that were not amended or repealed by the
24 federal Tax Reform Act of 1986. Except when inappropriate,
25 any reference in any law, executive order or other document:

26 (1) To the Internal Revenue Code of 1954 includes a
27 reference to the Internal Revenue Code of 1986; and

28 (2) To the Internal Revenue Code of 1986 includes a
29 reference to the provisions of law formerly known as the
30 Internal Revenue Code of 1954.

31 (c) *Effective date.* — The amendments to this section
32 enacted in the year two thousand five are retroactive to the

33 extent allowable under federal income tax law. With respect to
34 taxable years that began prior to the first day of January, two
35 thousand five, the law in effect for each of those years shall be
36 fully preserved as to that year, except as provided in this
37 section.

**§11-24-6a. Additional modification increasing federal taxable
income; disallowance of deduction taken under
IRC §199.**

1 (a) *General rule.* — In addition to amounts added to federal
2 taxable income pursuant to subsection (b), section six of this
3 article, unless already included therein, there shall be added to
4 federal taxable income the amount computed under Section 199
5 of the Internal Revenue Code of 1986, as amended, and taken
6 as a deduction when determining federal taxable income for the
7 taxable year for federal income tax purposes, unless subsection
8 (b), (d) or (e) of this section applies.

9 (b) *Member of affiliated group filing on separate entity*
10 *basis in this state.* — When the taxpayer is a member of an
11 affiliated group for federal income tax purposes for the taxable
12 year and computation of the deduction allowed under Section
13 199 of the Internal Revenue Code for the taxable year is
14 determined at the affiliated group level but the taxpayer files on
15 a separate entity basis under this article, then in addition to
16 amounts added to federal taxable income pursuant to subsection
17 (b), section six of this article, unless already included therein,
18 there shall be added to the taxpayer's pro forma federal taxable
19 income the amount computed under Section 199 of the Internal
20 Revenue Code of 1986, as amended, and taken, in whole or in
21 part, as a deduction when determining the taxpayer's pro forma
22 federal taxable income for the taxable year. The taxpayer shall
23 file with its annual return under this article a schedule that
24 shows: (1) The amount of the Section 199 deduction computed
25 for the affiliated group for federal income tax purposes for the

26 taxable year; and (2) how that deduction is allocated among the
27 various members of the affiliated group for purposes of
28 determining each member's pro forma federal taxable income
29 for the taxable year.

30 (c) *Consolidated federal return consolidated state return.*
31 — When the taxpayer elects to file a consolidated return under
32 this article for the taxable year, the general rule stated in
33 subsection (a) of this section shall apply.

34 (d) *Combined state return.* — When a combined return is
35 filed under this article for the taxable year, the members of the
36 group filing the combined return shall in addition to amounts
37 added to federal taxable income pursuant to subsection (b),
38 section six of this article, unless already included therein, add
39 to the combined group's pro forma federal taxable income for
40 the year, the amount computed under Section 199 of the
41 Internal Revenue Code of 1986, as amended, by the appropriate
42 person or persons and taken, in whole or in part, as a deduction
43 when determining pro forma federal taxable income of the
44 combined group for the taxable year. The combined group shall
45 file with its annual return under this article a schedule that
46 shows: (1) The amount of the Section 199 deduction computed
47 by the entity, or each entity that made the computation for
48 federal income tax purposes, and to what entity and to what
49 state it was allocated; (2) how that deduction is allocated for
50 state income tax purposes; (3) how the amount of the Section
51 199 deduction taken as a deduction when determining the pro
52 forma federal taxable income of the combined group was
53 determined; and (4) such other information as the Tax Commis-
54 sioner may require.

55 (e) *Taxpayer with flow-through income.* — When the
56 taxpayer's federal taxable income includes a distributive share
57 of income, gain or loss of a partnership, limited liability
58 company, electing small business corporation, or other entity

59 treated as a partnership for federal income tax purposes, and
60 when the taxpayer's distributive share for the taxable year
61 includes a deduction, or portion of a deduction computed under
62 Section 199 of the Internal Revenue Code, as amended, for the
63 taxable year, then in addition to amounts added to federal
64 taxable income pursuant to subsection (b), section six of this
65 article, unless already included therein, the taxpayer shall add
66 the amount computed under Section 199 of the Internal Reve-
67 nue Code of 1986, as amended, that flows through to the
68 taxpayer for federal income tax purposes for the taxable year.
69 The taxpayer shall file with its annual return filed under this
70 article a copy of all schedules K-1 it received showing alloca-
71 tion of a Section 199 deduction and such other information as
72 the Tax Commissioner may require.

73 (f) *Failure to attach required schedules.* — When the
74 taxpayer fails to include with the annual return due under this
75 article the schedule or schedules required by this section, the
76 return shall be treated as an incomplete return until the day the
77 required schedule or schedules are filed with the Tax Commis-
78 sioner. An incomplete return showing an overpayment of tax
79 may not be treated as a claim for refund until the day the defect
80 is cured. The filing of an incomplete return shall not start the
81 running of the limitations period that would limit the time
82 during which the Tax Commissioner may issue an assessment
83 or take other action to enforce compliance with this article for
84 the taxable year for which the incomplete return is filed.

85 (g) *Audit adjustment to federal taxable income.* — When
86 auditing for compliance with this article, the Tax Commissioner
87 may change a taxpayer's computation of federal taxable income
88 or pro forma taxable income to comply with the laws of the
89 United States as in effect for the taxable year and incorporated
90 by reference into this article.

CHAPTER 240

(H. B. 3104 — By Delegates Michael, H. White, Kominar, Stalnaker, Boggs, Ron Thompson, Proudfoot, Palumbo, G. White, Anderson, Border and Wakim)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 2, 2005.]

AN ACT to amend and reenact §5A-7-4a of the Code of West Virginia, 1931, as amended, relating to the payment of telecommunications charges; authorizing the Director to review and reject telecommunications charges under certain circumstances and authorizing emergency rules in certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §5A-7-4a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS DIVISION.

§5A-7-4a. Payment of legitimate uncontested invoices for telecommunications services; procedures and powers of the Information and Communications Division and Secretary of Administration.

- 1 (a) The Legislature finds that it is in the best interest of the
- 2 state, its spending units and those vendors supplying telecom-
- 3 munications services to the state and its spending units that any
- 4 properly registered and qualified vendor supplying telecommu-
- 5 nications services to two or more spending units under a shared
- 6 account is entitled to prompt payment upon presentation of a

7 legitimate uncontested invoice for telecommunications services
8 to the Division, as provided in the following subsections.

9 (b) To facilitate the administration and payment of telecom-
10 munications services, there is continued in the State Treasury
11 a special revenue account to be known as the "Telecommunica-
12 tions Services Payment and Reserve Fund." All moneys
13 transferred from state spending units pursuant to the require-
14 ments of this section shall be deposited in the account. Expendi-
15 tures from the fund shall be made by the Director for the
16 exclusive purposes set forth in this section: *Provided*, That no
17 more than one hundred and fifty thousand dollars or the actual
18 amount collected pursuant to subsection (j) of this section in
19 any fiscal year, whichever is less, may be expended from the
20 fund in any fiscal year to defray the costs of administration of
21 this section.

22 (c) Upon receipt of any telecommunications charges from
23 a properly registered and qualified vendor, the Division shall
24 conduct a preliminary review of the charges. If the Division
25 determines during this preliminary review that: (1) Any of the
26 charges are not authorized by law or by the contract under
27 which the telecommunications services are provided; (2) no
28 specific spending unit is designated for any charge; or (3) any
29 charge or service is not in accordance with contract pricing, the
30 Division shall reject those charges. Within fourteen days of
31 receipt of any telecommunications charge, the Director shall
32 notify a vendor of any rejected charges and shall include in the
33 notice a description of the rejected charges, the reasons a charge
34 was rejected and a proposed resolution of the rejected charge.
35 The Director and the vendor shall attempt to resolve the matter
36 in good faith. Within ninety days of the receipt of the vendor's
37 invoice or a time period mutually agreed to by the vendor and
38 Secretary, the Secretary shall make the final decision as to the
39 legitimacy of the rejected amount and determine if payment is
40 warranted. If the final decision of the Secretary is to require

41 payment of the rejected amount, the Secretary shall cause the
42 Division to bill that amount to the appropriate spending unit
43 which shall remit payment of the amount as required in
44 subsection (d) of this section. If the final decision of the
45 Secretary is to refuse to pay any amount, the vendor may
46 proceed in accordance with the provisions of article two,
47 chapter fourteen of this code.

48 (d) Following the preliminary review of the charges, the
49 Director shall fully apportion all telecommunications charges
50 not rejected during the preliminary review required by subsec-
51 tion (c) of this section among spending units based on the
52 spending unit's service and usage, as determined by the
53 Director. The Director shall send each spending unit a statement
54 of the spending unit's proportionate share of any telecommuni-
55 cations charges within thirty days of receipt by the Division of
56 the invoice detailing the telecommunications charges. The
57 statement is to provide a date of no more than thirty calendar
58 days from the date the Division sends the statement by which
59 the spending unit shall submit payment or transfer to the
60 telecommunications services payment and reserve fund all
61 funds necessary to pay for the spending unit's charges in full:
62 *Provided*, That the statement sent in last month of the fiscal
63 year shall provide that the transfer shall be made by the thirty-
64 first day of July. If feasible for the spending unit, the preferable
65 method of payment is by intergovernmental transfer.

66 (e) All spending units shall budget for telecommunications
67 service expenses. Prior to the date provided in each statement
68 sent to a spending unit pursuant to subsection (d) of this section,
69 each spending unit shall pay or transfer the statement amount
70 to the telecommunications services payment and reserve fund.

71 (f) If a spending unit fails to pay or transfer funds by the
72 date specified in the statement sent pursuant to subsection (d)
73 of this section, the Secretary of the Department of Administra-
74 tion shall transfer to the telecommunications services payment

75 and reserve fund the statement amount plus an additional
76 penalty in the amount of three percent of the statement amount
77 from any funds supporting the administration of that spending
78 unit: *Provided*, That the Secretary shall complete all such
79 transfers by the thirty-first day of July of each fiscal year. Upon
80 exercising a transfer under the authority of this subsection, the
81 Director shall provide a notification to the spending unit,
82 including, but not limited to, the date, time, total amount of the
83 transfer, statement amount and penalty amount. If a participat-
84 ing spending unit does not maintain funds in the State Treasury,
85 the Secretary may transfer funds by wire from any depository
86 outside the State Treasury. A participating spending unit
87 maintaining funds in depositories outside the State Treasury
88 shall furnish the Secretary access to those funds for the exclu-
89 sive purposes of this section.

90 (g) If a spending unit contests any portion of its statement,
91 it shall nonetheless remit payment for the entire statement
92 amount and notify the Division in writing within thirty days of
93 statement receipt by the spending unit. The Secretary shall
94 consider any contested apportionments of charges and provide
95 a final determination on the apportionment of legitimate
96 charges. Corrections or adjustments to apportionments may be
97 effected on future transfer payments: *Provided*, That legitimate
98 vendor charges are to be fully apportioned. If the basis of the
99 contest is vendor error, overcharge, service failure, failure to
100 terminate services as required by the Division, or other failure
101 of or error in vendor performance, the Director shall withhold
102 the contested amount from current or future vendor payments,
103 pending resolution by the Secretary, and the Director shall bring
104 the contested matter to the attention of the vendor. The Director
105 and the vendor shall attempt to resolve the matter in good faith.
106 Within ninety days of the receipt of the vendor's invoice or a
107 time period mutually agreed to by the vendor and Secretary, the
108 Secretary shall make the final decision as to the legitimacy of
109 the contested amount and determine if payment is warranted. If

110 the final decision of the Secretary is to refuse to pay any
111 amount, the vendor may proceed in accordance with the
112 provisions of article two, chapter fourteen of this code.

113 (h) The Director shall provide for full payment of legiti-
114 mate, uncontested telecommunications charges within ninety
115 days of receipt of an invoice detailing the telecommunications
116 charges by the Division. Payment for the charges shall be made
117 by the Director from the telecommunications services payment
118 and reserve fund.

119 (i) The Director may direct the discontinuance of telecom-
120 munications services to any spending unit that fails to comply
121 with the provisions of this section and the vendor supplying
122 telecommunication services shall comply with the written
123 direction of the Director on discontinuance of services.

124 (j) To help defray the additional cost of administering this
125 section, the Director may assess a proportional fee of up to one
126 hundred fifty thousand dollars in aggregate per fiscal year to the
127 participating spending units based on each spending unit's
128 portion of service and usage. This fee is to be included in the
129 statement sent to spending units pursuant to subsection (d) of
130 this section and transferred to the telecommunications service
131 payment and reserve fund by the date specified in the statement
132 for the transfer of payment.

133 (k) Notwithstanding any other provision of this code to the
134 contrary, for purposes of this section, an invoice is considered
135 received by the Division on the date on which the invoice is
136 marked as received by the Division, or three business days after
137 the date of the postmark made by the United States postal
138 service as evidenced on the envelope in which the invoice is
139 mailed, whichever is earlier: *Provided*, That if an invoice is
140 received by the Division prior to the date on which the telecom-
141 munications services covered by the invoice are delivered or
142 fully performed, for purposes of determining the ninety-day

143 time period for payment in subsection (h) of this section, the
144 invoice is considered received on the date on which the
145 telecommunications services covered by the invoice were
146 delivered or fully performed.

147 (l) For purposes of this section, “telecommunications
148 service” means and includes not only telephone service
149 regulated under chapter twenty-four of this code or under
150 federal law, but also may include, at the discretion of the
151 Secretary of Administration, wireless service, voice over
152 internet protocol service, internet service and any other service
153 or equipment used for the electronic transmission of voice or
154 data: *Provided*, That such service is provided under a statewide
155 contract.

156 (m) The Director may propose rules for legislative approval
157 in accordance with the provisions of article three, chapter
158 twenty-nine-a of this code to effectuate the purposes of this
159 section. The initial rule filed by the Division pursuant to the
160 amendments to this subsection enacted during the regular
161 session of the Legislature in two thousand five shall be filed as
162 an emergency rule.

CHAPTER 241

**(S. B. 146 — By Senators Kessler, McKenzie, Edgell,
Bailey, Unger, Love, Hunter, Tomblin, Mr. President, Chafin,
Barnes, Boley, Jenkins, Minard, Helmick, Sprouse, Dempsey,
Oliverio, Harrison, Prezioso, Weeks, Sharpe, Minear, Guills,
Bowman, Caruth, Plymale and Facemyer)**

[Passed March 16, 2005; in effect July 1, 2005.]

[Approved by the Governor on March 28, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-2-30, relating to creating the Unborn Victims of Violence Act; defining certain terms; identifying offenses of violence against a person that are committed against a pregnant woman or her embryo or fetus in the womb; establishing that an embryo or fetus in the womb may be a separate and distinct unborn victim in the case of certain violent crimes against a pregnant woman or her embryo or fetus in the womb; providing exceptions against the application of said section to certain persons or entities; specifying penalties; and providing that a conviction under said section, or of said article, is not a bar to prosecution of, or punishment for, any other crime allegedly committed by the defendant arising from the same incident.

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 §61-2-30, to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-30. Recognizing an embryo or fetus as a distinct unborn victim of certain crimes of violence against the person.

1 (a) This section may be known and cited as the Unborn
2 Victims of Violence Act.

3 (b) For the purposes of this article, the following definitions
4 shall apply: *Provided*, That these definitions only apply for
5 purposes of prosecution of unlawful acts under this section and
6 may not otherwise be used: (i) To create or to imply that a civil
7 cause of action exists; or (ii) for purposes of argument in a civil
8 cause of action, unless there has been a criminal conviction
9 under this section.

10 (1) “Embryo” means the developing human in its early
11 stages. The embryonic period commences at fertilization and
12 continues to the end of the embryonic period and the beginning
13 of the fetal period, which occurs eight weeks after fertilization
14 or ten weeks after the onset of the last menstrual period.

15 (2) “Fetus” means a developing human that has ended the
16 embryonic period and thereafter continues to develop and
17 mature until termination of the pregnancy or birth.

18 (c) For purposes of enforcing the provisions of sections one,
19 four and seven of this article, subsections (a) and (c), section
20 nine of said article, sections ten and ten-b of said article and
21 subsection (a), section twenty-eight of said article, a pregnant
22 woman and the embryo or fetus she is carrying in the womb
23 constitute separate and distinct victims.

24 (d) *Exceptions.* — The provisions of this section do not
25 apply to:

26 (1) Acts committed during a legal abortion to which the
27 pregnant woman, or a person authorized by law to act on her
28 behalf, consented or for which the consent is implied by law;

29 (2) Acts or omissions by medical or health care personnel
30 during or as a result of medical or health-related treatment or
31 services, including, but not limited to, medical care, abortion,
32 diagnostic testing or fertility treatment;

33 (3) Acts or omissions by medical or health care personnel
34 or scientific research personnel in performing lawful procedures
35 involving embryos that are not in a stage of gestation in utero;

36 (4) Acts involving the use of force in lawful defense of self
37 or another, but not an embryo or fetus; and

38 (5) Acts or omissions of a pregnant woman with respect to
39 the embryo or fetus she is carrying.

40 (e) For purposes of the enforcement of the provisions of
41 this section, a violation of the provisions of article two-i,
42 chapter sixteen of this code shall not serve as a waiver of the
43 protection afforded by the provisions of subdivision (1),
44 subsection (d) of this section.

45 (f) *Other convictions not barred.* — A prosecution for or
46 conviction under this section is not a bar to conviction of or
47 punishment for any other crime committed by the defendant
48 arising from the same incident.

CHAPTER 242

(Com. Sub. for H. B. 2163 — By Delegate Campbell)

[Passed April 9, 2005; in effect ninety days from passage]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §21A-6-3 of the Code of West Virginia, 1931, as amended, relating to unemployment compensation generally; and eliminating reductions in unemployment compensation for persons receiving benefits under Title II of the Social Security Act or similar payments under any act of Congress.

Be it enacted by the Legislature of West Virginia:

That §21A-6-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. UNEMPLOYMENT COMPENSATION.

§21A-6-3. Disqualification for benefits.

1 Upon the determination of the facts by the commissioner,
2 an individual shall be disqualified for benefits:

3 (1) For the week in which he or she left his or her most
4 recent work voluntarily without good cause involving fault on
5 the part of the employer and until the individual returns to
6 covered employment and has been employed in covered
7 employment at least thirty working days.

8 For the purpose of this subdivision (1), an individual shall
9 not be deemed to have left his or her most recent work volun-
10 tarily without good cause involving fault on the part of the
11 employer, if such individual leaves his or her most recent work
12 with an employer and if he or she in fact, within a fourteen-day
13 calendar period, does return to employment with the last
14 preceding employer with whom he or she was previously
15 employed within the past year prior to his or her return to
16 workday, and which last preceding employer, after having
17 previously employed such individual for thirty working days or
18 more, laid off such individual because of lack of work, which
19 layoff occasioned the payment of benefits under this chapter or
20 could have occasioned the payment of benefits under this
21 chapter had such individual applied for such benefits. It is the
22 intent of this paragraph to cause no disqualification for benefits
23 for such an individual who complies with the foregoing set of
24 requirements and conditions. Further, for the purpose of this
25 subdivision, an individual shall not be deemed to have left his
26 or her most recent work voluntarily without good cause
27 involving fault on the part of the employer, if such individual
28 was compelled to leave his or her work for his or her own
29 health-related reasons and presents certification from a licensed
30 physician that his or her work aggravated, worsened, or will
31 worsen the individual's health problem.

32 (2) For the week in which he or she was discharged from
33 his or her most recent work for misconduct and the six weeks

34 immediately following such week; or for the week in which he
35 or she was discharged from his or her last thirty-day employing
36 unit for misconduct and the six weeks immediately following
37 such week. Such disqualification shall carry a reduction in the
38 maximum benefit amount equal to six times the individual's
39 weekly benefit. However, if the claimant returns to work in
40 covered employment for thirty days during his or her benefit
41 year, whether or not such days are consecutive, the maximum
42 benefit amount shall be increased by the amount of the decrease
43 imposed under the disqualification; except that:

44 If he or she were discharged from his or her most recent
45 work for one of the following reasons, or if he or she were
46 discharged from his or her last thirty days employing unit for
47 one of the following reasons: Misconduct consisting of willful
48 destruction of his or her employer's property; assault upon the
49 person of his or her employer or any employee of his or her
50 employer; if such assault is committed at such individual's
51 place of employment or in the course of employment; reporting
52 to work in an intoxicated condition, or being intoxicated while
53 at work; reporting to work under the influence of any controlled
54 substance, or being under the influence of any controlled
55 substance while at work; arson, theft, larceny, fraud or embez-
56 zlement in connection with his or her work; or any other gross
57 misconduct; he or she shall be and remain disqualified for
58 benefits until he or she has thereafter worked for at least thirty
59 days in covered employment: *Provided*, That for the purpose of
60 this subdivision the words "any other gross misconduct" shall
61 include, but not be limited to, any act or acts of misconduct
62 where the individual has received prior written warning that
63 termination of employment may result from such act or acts.

64 (3) For the week in which he or she failed without good
65 cause to apply for available, suitable work, accept suitable work
66 when offered, or return to his or her customary
67 self-employment when directed to do so by the commissioner,

68 and for the four weeks which immediately follow for such
69 additional period as any offer of suitable work shall continue
70 open for his or her acceptance. Such disqualification shall carry
71 a reduction in the maximum benefit amount equal to four times
72 the individual's weekly benefit amount.

73 (4) For a week in which his or her total or partial unem-
74 ployment is due to a stoppage of work which exists because of
75 a labor dispute at the factory, establishment or other premises
76 at which he or she was last employed, unless the commissioner
77 is satisfied that he or she: (1) Was not participating, financing,
78 or directly interested in such dispute, and (2) did not belong to
79 a grade or class of workers who were participating, financing or
80 directly interested in the labor dispute which resulted in the
81 stoppage of work. No disqualification under this subdivision
82 shall be imposed if the employees are required to accept wages,
83 hours or conditions of employment substantially less favorable
84 than those prevailing for similar work in the locality, or if
85 employees are denied the right of collective bargaining under
86 generally prevailing conditions, or if an employer shuts down
87 his or her plant or operation or dismisses his or her employees
88 in order to force wage reduction, changes in hours or working
89 conditions.

90 For the purpose of this subdivision, if any stoppage of work
91 continues longer than four weeks after the termination of the
92 labor dispute which caused stoppage of work, there shall be a
93 rebuttable presumption that part of the stoppage of work which
94 exists after said period of four weeks after the termination of
95 said labor dispute did not exist because of said labor dispute;
96 and in such event the burden shall be upon the employer or
97 other interested party to show otherwise.

98 (5) For a week with respect to which he or she is receiving
99 or has received:

100 (a) Wages in lieu of notice;

101 (b) Compensation for temporary total disability under the
102 workers' compensation law of any state or under a similar law
103 of the United States; or

104 (c) Unemployment compensation benefits under the laws of
105 the United States or any other state.

106 (6) For the week in which an individual has voluntarily quit
107 employment to marry or to perform any marital, parental or
108 family duty, or to attend to his or her personal business or
109 affairs and until the individual returns to covered employment
110 and has been employed in covered employment at least thirty
111 working days.

112 (7) Benefits shall not be paid to any individual on the basis
113 of any services, substantially all of which consist of participat-
114 ing in sports or athletic events or training or preparing to so
115 participate, for any week which commences during the period
116 between two successive sport seasons (or similar periods) if
117 such individual performed such services in the first of such
118 seasons (or similar periods) and there is a reasonable assurance
119 that such individual will perform such services in the later of
120 such seasons (or similar periods).

121 (8) (a) Benefits shall not be paid on the basis of services
122 performed by an alien unless such alien is an individual who
123 was lawfully admitted for permanent residence at the time such
124 services were performed, was lawfully present for purposes of
125 performing such services, or was permanently residing in the
126 United States under color of law at the time such services were
127 performed (including an alien who is lawfully present in the
128 United States as a result of the application of the provisions of
129 Section 203(a)(7) or Section 212(d)(5) of the Immigration and
130 Nationality Act): *Provided*, That any modifications to the
131 provisions of Section 3304(a)(14) of the Federal Unemploy-

132 ment Tax Act as provided by Public Law 94-566 which specify
133 other conditions or other effective date than stated herein for
134 the denial of benefits based on services performed by aliens and
135 which modifications are required to be implemented under state
136 law as a condition for full tax credit against the tax imposed by
137 the Federal Unemployment Tax Act shall be deemed applicable
138 under the provisions of this section;

139 (b) Any data or information required of individuals
140 applying for benefits to determine whether benefits are not
141 payable to them because of their alien status shall be uniformly
142 required from all applicants for benefits;

143 (c) In the case of an individual whose application for
144 benefits would otherwise be approved, no determination that
145 benefits to such individual are not payable because of his or her
146 alien status shall be made except upon a preponderance of the
147 evidence.

148 (9) For each week in which an individual is unemployed
149 because, having voluntarily left employment to attend a school,
150 college, university or other educational institution, he or she is
151 attending such school, college, university or other educational
152 institution, or is awaiting entrance thereto or is awaiting the
153 starting of a new term or session thereof, and until the individ-
154 ual returns to covered employment.

155 (10) For each week in which he or she is unemployed
156 because of his or her request, or that of his or her duly autho-
157 rized agent, for a vacation period at a specified time that would
158 leave the employer no other alternative but to suspend opera-
159 tions.

160 (11) For each week with respect to which he or she is
161 receiving or has received benefits under Title II of the Social
162 Security Act or similar payments under any act of Congress,
163 and/or remuneration in the form of an annuity, pension or other

164 retirement pay from a base period and/or chargeable employer
165 or from any trust or fund contributed to by a base period and/or
166 chargeable employer, the weekly benefit amount payable to
167 such individual for such week shall be reduced (but not below
168 zero) by the prorated weekly amount of said benefits, payments
169 and/or remuneration: *Provided*, That if such amount of benefits
170 is not a multiple of one dollar, it shall be computed to the next
171 lowest multiple of one dollar: *Provided, however*, That there
172 shall be no disqualification if in the individual's base period
173 there are no wages which were paid by the base period and/or
174 chargeable employer paying such remuneration, or by a fund
175 into which the employer has paid during said base period:
176 *Provided further*, That notwithstanding any other provision of
177 this subdivision to the contrary, the weekly benefit amount
178 payable to such individual for such week shall not be reduced
179 by any retirement benefits he or she is receiving or has received
180 under Title II of the Social Security Act or similar payments
181 under any act of Congress. Claimant may be required to certify
182 as to whether or not he or she is receiving or has been receiving
183 remuneration in the form of an annuity, pension or other
184 retirement pay from a base period and/or chargeable employer
185 or from a trust fund contributed to by a base period and/or
186 chargeable employer.

187 (12) For each week in which and for fifty-two weeks
188 thereafter, beginning with the date of the decision, if the
189 commissioner finds such individual who within twenty-four
190 calendar months immediately preceding such decision, has
191 made a false statement or representation knowing it to be false
192 or knowingly fails to disclose a material fact, to obtain or
193 increase any benefit or payment under this article: *Provided*,
194 That disqualification under this subdivision shall not preclude
195 prosecution under section seven, article ten of this chapter.

CHAPTER 243

(S. B. 703 — By Senators Fanning, Weeks and Minard)

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §31B-2-203 of the Code of West Virginia, 1931, as amended; to amend and reenact §31B-10-1002 of said code; to amend and reenact §31D-1-120 and §31D-1-150 of said code; to amend and reenact §31D-2-202 of said code; to amend and reenact §31D-5-503 of said code; to amend and reenact §31D-15-1509; to amend said code by adding thereto a new section, designated §31D-15-1521; to amend and reenact §31E-1-120 and §31E-1-150 of said code; to amend and reenact §31E-2-202 of said code; to amend and reenact §31E-5-503 of said code; to amend and reenact §31E-14-1409 of said code; to amend said code by adding thereto a new section, designated §31E-14-1421; to amend and reenact §47-9-1, §47-9-8, §47-9-49 and §47-9-53 of said code; to amend and reenact §47B-3-3 of said code; and to amend and reenact §47B-10-1 and §47B-10-4 of said code, all relating to updating language in the Uniform Liability Act; West Virginia Business Corporation Act; West Virginia Nonprofit Corporation Act; Uniform Limited Partnership Act; limited liability partnerships; and authority to revoke withdrawal under the West Virginia Business Corporation Act and the West Virginia Nonprofit Corporation Act.

Be it enacted by the Legislature of West Virginia:

That §31B-2-203 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §31B-10-1002 of said code

be amended and reenacted; that §31D-1-120 and §31D-1-150 of said code be amended and reenacted; that §31D-2-202 of said code be amended and reenacted; that §31D-5-503 of said code be amended and reenacted; that §31D-15-1509 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §31D-15-1521; that §31E-1-120 and §31E-1-150 of said code be amended and reenacted; that §31E-2-202 of said code be amended and reenacted; that §31E-5-503 of said code be amended and reenacted; that §31E-14-1409 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §31E-14-1421; that §47-9-1, §47-9-8, §47-9-49 and §47-9-53 of said code be amended and reenacted; that §47B-3-3 of said code be amended and reenacted; and that §47B-10-1 and §47B-10-4 of said code be amended and reenacted, all to read as follows:

Chapter

- 31B. Uniform Limited Liability Company Act.**
- 31D. West Virginia Business Corporation Act.**
- 31E. West Virginia Nonprofit Corporation Act.**
- 47. Regulation of Trade.**
- 47B. Uniform Partnership Act.**

**CHAPTER 31B. UNIFORM LIMITED
LIABILITY COMPANY ACT.**

Article

- 2. Organization.**
- 10. Foreign Limited Liability.**

ARTICLE 2. ORGANIZATION.

§31B-2-203. Articles of organization.

- 1 (a) Articles of organization of a limited liability company
- 2 must set forth:
 - 3 (1) The name of the company;
 - 4 (2) The address of the initial designated office in West
 - 5 Virginia, if any, and the mailing address of the principal office;

6 (3) The name and address of the initial agent for service of
7 process, if any;

8 (4) The name and address of each organizer and of each
9 member having authority to execute instruments on behalf of
10 the limited liability company;

11 (5) Whether the company is to be a term company and, if
12 so, the term specified;

13 (6) Whether the company is to be manager-managed and,
14 if so, the name and address of each initial manager;

15 (7) Whether one or more of the members of the company
16 are to be liable for its debts and obligations under section 3-
17 303(c); and

18 (8) The purpose or purposes for which the limited liability
19 company is organized.

20 (b) Articles of organization of a limited liability company
21 may set forth:

22 (1) Provisions permitted to be set forth in an operating
23 agreement; or

24 (2) Other matters not inconsistent with law.

25 (c) Articles of organization of a limited liability company
26 may not vary the nonwaivable provisions of section 1-103(b).
27 As to all other matters, if any provision of an operating agree-
28 ment is inconsistent with the articles of organization:

29 (1) The operating agreement controls as to managers,
30 members and members' transferees; and

31 (2) The articles of organization control as to persons other
32 than managers, members and their transferees who reasonably
33 rely on the articles to their detriment.

ARTICLE 10. FOREIGN LIMITED LIABILITY.**§31B-10-1002. Application for certificate of authority.**

1 (a) A foreign limited liability company may apply for a
2 certificate of authority to transact business in this state by
3 delivering an application to the Secretary of State for filing,
4 together with the fee prescribed by section two, article one,
5 chapter fifty-nine of this code.

6 The application shall set forth:

7 (1) The name of the foreign company or, if its name is
8 unavailable for use in this state, a name that satisfies the
9 requirements of section 10-1005 of this article;

10 (2) The name of the state or country under whose law it is
11 organized;

12 (3) The mailing address of its principal office;

13 (4) The name and address of each member having authority
14 to execute instruments on behalf of the limited liability com-
15 pany;

16 (5) The address of its initial designated office in this state,
17 if any;

18 (6) The name and address of its initial agent for service of
19 process in this state, if any;

20 (7) Whether the duration of the company is for a specified
21 term and, if so, the period specified;

22 (8) Whether the company is manager-managed and, if so,
23 the name and address of each initial manager;

24 (9) Whether the members of the company are to be liable
25 for its debts and obligations under a provision similar to section
26 3-303(c); and

27 (10) The purpose or purposes for which the limited liability
28 company is organized.

29 (b) A foreign limited liability company shall deliver with
30 the completed application a certificate of existence or a record
31 of similar import authenticated by the Secretary of State or
32 other official having custody of company records in the state or
33 country under whose law it is organized.

CHAPTER 31D. WEST VIRGINIA BUSINESS CORPORATION ACT.

Article

1. General Provisions.
2. Incorporations.
5. Office and Agent.
15. Foreign Corporations.

ARTICLE 1. GENERAL PROVISIONS.

§31D-1-120. Filing requirements.

§31D-1-150. Definitions.

§31D-1-120. Filing requirements.

1 (a) A document must satisfy the requirements of this
2 section and any other provision of this code that adds to or
3 varies these requirements to be entitled to filing by the Secre-
4 tary of State.

5 (b) The document to be filed must be typewritten or printed
6 or, if electronically transmitted, it must be in a format that can
7 be retrieved or reproduced in typewritten or printed form.

8 (c) The document to be filed must be in the English
9 language: *Provided*, That a corporate name is not required to be

10 in the English language if it is written in English letters or
11 Arabic or Roman numerals: *Provided, however,* That the
12 certificate of existence required of foreign corporations is not
13 required to be in the English language if it is accompanied by
14 a reasonably authenticated English translation.

15 (d) The document to be filed must be executed:

16 (1) By the chairman of the board of directors of a domestic
17 or foreign corporation, by its president or by another of its
18 officers;

19 (2) If directors have not been selected or the corporation
20 has not been formed, by an incorporator; or

21 (3) If the corporation is in the hands of a receiver, trustee or
22 other court-appointed fiduciary, by that fiduciary.

23 (e) The person executing the document to be filed shall sign
24 it and state beneath or opposite his or her signature, his or her
25 name and the capacity in which he or she signs. The document
26 may contain a corporate seal, attestation, acknowledgment or
27 verification.

28 (f) The document to be filed must be delivered to the office
29 of the Secretary of State for filing. Delivery may be made by
30 electronic transmission as permitted by the Secretary of State.
31 The Secretary of State may require one exact or conformed
32 copy to be delivered with the document to be filed if the
33 document is filed in typewritten or printed form and not
34 transmitted electronically.

35 (g) When a document is delivered to the office of the
36 Secretary of State for filing, the correct filing fee and any
37 franchise tax, license fee or penalty required by this chapter or
38 any other provision of this code must be paid or provision for
39 payment made in a manner permitted by the Secretary of State.

40 (h) In the case of service of notice and process as permitted
41 by subsection (c), section five hundred four, article five of this
42 chapter and subsections (d) and (e), section one thousand five
43 hundred ten, article fifteen of this chapter, the notice and
44 process must be filed with the Secretary of State as one original,
45 plus two copies for each person to be served or noticed.

§31D-1-150. Definitions.

1 As used in this chapter, unless the context otherwise
2 requires a different meaning, the term:

3 (1) “Articles of incorporation” includes, but is not limited
4 to, amended and restated articles of incorporation and articles
5 of merger.

6 (2) “Authorized shares” means the shares of all classes a
7 domestic or foreign corporation is authorized to issue.

8 (3) “Conspicuous” means written so that a reasonable
9 person against whom the writing is to operate should have
10 noticed, including, but not limited to, printing in italics or
11 boldface or contrasting color, or typing in capitals or under-
12 lined.

13 (4) “Corporation” or “domestic corporation” means a
14 corporation for profit, which is not a foreign corporation,
15 incorporated under or subject to the provisions of this chapter.

16 (5) “Deliver” or “delivery” means any method of delivery
17 used in conventional commercial practice, including, but not
18 limited to, delivery by hand, mail, commercial delivery and
19 electronic transmission.

20 (6) “Distribution” means a direct or indirect transfer of
21 money or other property or incurrence of indebtedness by a
22 corporation to or for the benefit of its shareholders in respect of
23 any of its shares: *Provided*, That “distribution” does not include

24 a direct or indirect transfer of a corporation's own shares. A
25 distribution may be in the form of a declaration or payment of
26 a dividend; a purchase, redemption or other acquisition of
27 shares; or a distribution of indebtedness.

28 (7) "Effective date of notice" means the date as determined
29 pursuant to section one hundred fifty-one of this article.

30 (8) "Electronic transmission" or "electronically transmit-
31 ted" means any process of communication not directly involv-
32 ing the physical transfer of paper that is suitable for the
33 retention, retrieval and reproduction of information by the
34 recipient.

35 (9) "Employee" includes an officer and may include a
36 director: *Provided*, That the director has accepted duties that
37 make him or her also an employee.

38 (10) "Entity" includes corporations and foreign corpora-
39 tions; nonprofit corporations; profit and nonprofit unincorpo-
40 rated associations; limited liability companies and foreign
41 limited liability companies; business trusts, estates, partner-
42 ships, trusts and two or more persons having a joint or common
43 economic interest; and state, United States and foreign govern-
44 ment.

45 (11) "Foreign corporation" means a corporation for profit
46 incorporated under a law other than the laws of this state.

47 (12) "Governmental subdivision" includes, but is not
48 limited to, authorities, counties, districts and municipalities.

49 (13) "Individual" includes, but is not limited to, the estate
50 of an incompetent or deceased individual.

51 (14) "Person" includes, but is not limited to, an individual
52 and an entity.

53 (15) "Principal office" means the office so designated in the
54 return required pursuant to section three, article twelve-c,
55 chapter eleven of this code where the principal executive
56 offices of a domestic or foreign corporation are located.

57 (16) "Proceeding" includes, but is not limited to, civil suits
58 and criminal, administrative and investigatory actions.

59 (17) "Record date" means the date established under article
60 six or seven of this chapter on which a corporation determines
61 the identity of its shareholders and their shareholdings. The
62 determinations are to be made as of the close of business on the
63 record date unless another time for doing so is specified when
64 the record date is fixed.

65 (18) "Registered agent" means the agent identified by the
66 corporation pursuant to section five hundred one, article five of
67 this chapter.

68 (19) "Registered office" means the address of the registered
69 agent for the corporation, as provided in section five hundred
70 one, article five of this chapter.

71 (20) "Secretary" means the corporate officer to whom the
72 board of directors has delegated responsibility under subsection
73 (c), section eight hundred forty, article eight of this chapter for
74 custody of the minutes of the meetings of the board of directors
75 and the meetings of the shareholders and for authenticating
76 records of the corporation.

77 (21) "Shareholder" means the person in whose name shares
78 are registered in the records of a corporation or the beneficial
79 owner of shares to the extent of the rights granted by a nominee
80 certificate on file with a corporation.

81 (22) "Shares" means the units into which the proprietary
82 interests in a corporation are divided.

83 (23) “Sign” or “signature” includes, but is not limited to,
84 any manual, facsimile, conformed or electronic signature with
85 means to identify a record by signature, mark or other symbol,
86 with intent to authenticate it.

87 (24) “State”, when referring to a part of the United States,
88 includes a state and commonwealth and a territory and insular
89 possession of the United States and their agencies and govern-
90 mental subdivisions.

91 (25) “Subscriber” means a person who subscribes for shares
92 in a corporation, whether before or after incorporation.

93 (26) “United States” includes, but is not limited to, districts,
94 authorities, bureaus, commissions, departments and any other
95 agency of the United States.

96 (27) “Voting group” means all shares of one or more
97 classes or series that, pursuant to the articles of incorporation or
98 this chapter, are entitled to vote and be counted together
99 collectively on a matter at a meeting of shareholders. All
100 shares entitled by the articles of incorporation or this chapter to
101 vote generally on the matter are for that purpose a single voting
102 group.

103 (28) “Voting power” means the current power to vote in the
104 election of directors.

ARTICLE 2. INCORPORATIONS.

§31D-2-202. Articles of incorporation.

1 (a) The articles of incorporation must set forth:

2 (1) A corporate name for the corporation that satisfies the
3 requirements of section four hundred one, article four of this
4 chapter;

5 (2) The number of shares the corporation is authorized to
6 issue, the par value of each of the shares or a statement that all
7 shares are without par value;

8 (3) The street address of the corporation's initial registered
9 office, if any, and the name of its initial registered agent at that
10 office, if any;

11 (4) The name and address of each incorporator;

12 (5) The purpose or purposes for which the corporation is
13 organized; and

14 (6) The mailing address of the corporation's principal
15 office.

16 (b) The articles of incorporation may set forth:

17 (1) The names and addresses of the individuals who are to
18 serve as the initial directors;

19 (2) Provisions not inconsistent with law regarding:

20 (A) Managing the business and regulating the affairs of the
21 corporation;

22 (B) Defining, limiting and regulating the powers of the
23 corporation, its board of directors and shareholders; or

24 (C) The imposition of personal liability on shareholders for
25 the debts of the corporation to a specified extent and upon
26 specified conditions;

27 (3) Any provision that, under this chapter, is required or
28 permitted to be set forth in the bylaws;

29 (4) A provision eliminating or limiting the personal liability
30 of a director to the corporation or its stockholders for monetary

31 damages for breach of fiduciary duty as a director: *Provided*,
32 That a provision may not eliminate or limit the liability of a
33 director: (A) For any breach of the director's duty of loyalty to
34 the corporation or its stockholders; (B) for acts or omissions not
35 in good faith or which involve intentional misconduct or a
36 knowing violation of law; (C) under section eight hundred
37 thirty-three, article eight of this chapter for unlawful distribu-
38 tions; or (D) for any transaction from which the director derived
39 an improper personal benefit. No provision may eliminate or
40 limit the liability of a director for any act or omission occurring
41 prior to the date when that provision becomes effective; and

42 (5) A provision permitting or making obligatory indemnifi-
43 cation of a director for liability as that term is defined in section
44 eight hundred fifty, article eight of this chapter to any person
45 for any action taken, or any failure to take any action, as a
46 director except liability for: (A) Receipt of a financial benefit
47 to which he or she is not entitled; (B) an intentional infliction
48 of harm on the corporation or its shareholders; (C) a violation
49 of section eight hundred thirty-three, article eight of this chapter
50 for unlawful distributions; or (D) an intentional violation of
51 criminal law.

52 (c) The articles of incorporation need not set forth any of
53 the corporate powers enumerated in this chapter.

ARTICLE 5. OFFICE AND AGENT.

§31D-5-503. Resignation of registered agent.

1 (a) A registered agent may resign his or her agency appoint-
2 ment by signing and delivering to the Secretary of State for
3 filing a statement of resignation. The statement may include a
4 statement that the registered office is also discontinued.

5 (b) After filing the statement, the Secretary of State shall
6 mail a copy of the filed statement of resignation to the corpora-
7 tion at its principal office.

8 (c) The agency appointment is terminated, and the regis-
9 tered office is discontinued if provision for its discontinuation
10 is made, on the thirty-first day after the date on which the
11 statement was filed.

ARTICLE 15. FOREIGN CORPORATIONS.

§31D-15-1509. Resignation of registered agent of foreign corporation.

§31D-15-1521. Revocation of withdrawal.

§31D-15-1509. Resignation of registered agent of foreign corporation.

1 (a) The registered agent of a foreign corporation may resign
2 his or her agency appointment by signing and delivering to the
3 Secretary of State for filing a statement of resignation. The
4 statement of resignation may include a statement that the
5 registered office is also discontinued.

6 (b) After filing the statement, the Secretary of State shall
7 mail a copy of the filed statement of resignation and receipt to
8 the corporation at its principal office.

9 (c) The agency appointment is terminated, and the regis-
10 tered office discontinued if provided in the statement of
11 registration, on the thirty-first day after the date on which the
12 statement was filed.

§31D-15-1521. Revocation of withdrawal.

1 (a) A corporation may revoke its withdrawal within one
2 hundred twenty days of its effective date.

3 (b) Revocation of withdrawal must be authorized in the
4 same manner as the withdrawal was authorized unless that
5 authorization permitted revocation by action of the board of
6 directors alone, in which event the board of directors may
7 revoke the withdrawal without shareholder action.

8 (c) After the revocation of withdrawal is authorized, the
9 corporation may revoke the withdrawal by delivering to the
10 Secretary of State for filing articles of revocation of with-
11 drawal, together with a copy of its application of withdrawal,
12 that sets forth:

13 (1) The name of the corporation;

14 (2) The effective date of the withdrawal that was revoked;

15 (3) The date that the revocation of withdrawal was autho-
16 rized;

17 (4) If the corporation's board of directors or incorporators
18 revoked the withdrawal, a statement to that effect; and

19 (5) If the corporation's board of directors revoked the
20 withdrawal authorized by the shareholders, a statement that
21 revocation was permitted by action by the board of directors
22 alone pursuant to that authorization.

23 (d) Revocation of withdrawal is effective upon the effective
24 date of the articles of revocation of withdrawal.

25 (e) When the revocation of withdrawal is effective, it
26 relates back to and takes effect as of the effective date of the
27 withdrawal and the corporation resumes carrying on its business
28 as if withdrawal had never occurred.

CHAPTER 31E. WEST VIRGINIA NONPROFIT CORPORATION ACT.

Article

- 1. General Provisions.**
- 2. Incorporation.**
- 5. Office and Agent.**
- 14. Foreign Corporations.**

ARTICLE 1. GENERAL PROVISIONS.

§31E-1-120. Filing requirements.

§31E-1-150. Chapter definitions.

§31E-1-120. Filing requirements.

1 (a) A document must satisfy the requirements of this
2 section and any other provision of this code that adds to or
3 varies these requirements to be entitled to filing by the Secre-
4 tary of State.

5 (b) The document to be filed must be typewritten or printed
6 or, if electronically transmitted, it must be in a format that can
7 be retrieved or reproduced in typewritten or printed form.

8 (c) The document to be filed must be in the English
9 language: *Provided*, That a corporate name is not required to be
10 in the English language if it is written in English letters or
11 Arabic or Roman numerals: *Provided, however*, That the
12 certificate of existence required of foreign corporations is not
13 required to be in the English language if it is accompanied by
14 a reasonably authenticated English translation.

15 (d) The document to be filed must be executed:

16 (1) By the chairman of the board of directors of a domestic
17 or foreign corporation, by its president or by another of its
18 officers;

19 (2) If directors have not been selected or the corporation
20 has not been formed, by an incorporator; or

21 (3) If the corporation is in the hands of a receiver, trustee or
22 other court-appointed fiduciary, by that fiduciary.

23 (e) The person executing the document to be filed shall sign
24 it and state beneath or opposite his or her signature, his or her
25 name and the capacity in which he or she signs. The document
26 may contain a corporate seal, attestation, acknowledgment or
27 verification.

28 (f) The document to be filed must be delivered to the office
29 of the Secretary of State for filing. Delivery may be made by
30 electronic transmission as permitted by the Secretary of State.
31 The Secretary of State may require one exact or conformed
32 copy to be delivered with the document to be filed if the
33 document is filed in typewritten or printed form and not
34 transmitted electronically.

35 (g) When a document is delivered to the office of the
36 Secretary of State for filing, the correct filing fee and any
37 franchise tax, license fee or penalty required by this chapter or
38 any other provision of this code must be paid or provision for
39 payment made in a manner permitted by the Secretary of State.

40 (h) In the case of service of notice and process as permitted
41 by subsection (c), section five hundred four, article five of this
42 chapter and subsections (d) and (e), section one thousand four
43 hundred ten, article fourteen of this chapter, the notice and
44 process must be filed with the Secretary of State as one original,
45 plus two copies for each person to be served or noticed.

§31E-1-150. Chapter definitions.

1 As used in this chapter, unless the context otherwise
2 requires a different meaning, the term:

3 (1) “Articles of incorporation” includes, but is not limited
4 to, amended and restated articles of incorporation and articles
5 of merger.

6 (2) “Authorized shares” means the shares of all classes a
7 domestic or foreign corporation is authorized to issue.

8 (3) “Board” or “board of directors” means the group of
9 persons vested with management of the affairs of the corpora-
10 tion irrespective of the name by which the group is designated.

11 (4) "Business corporation" means a corporation with capital
12 stock or shares incorporated for profit.

13 (5) "Conspicuous" means written so that a reasonable
14 person against whom the writing is to operate should have
15 noticed, including, but not limited to, printing in italics or
16 boldface or contrasting color, or typing in capitals or under-
17 lined.

18 (6) "Corporation" or "domestic corporation" means a
19 corporation without capital stock or shares, which is not a
20 foreign corporation, incorporated under the laws of this state:
21 *Provided*, That "corporation" or "domestic corporation" does
22 not include towns, cities, boroughs or any municipal corpora-
23 tion or any department or any town, city, borough or municipal
24 corporation.

25 (7) "Deliver" or "delivery" means any method of delivery
26 used in conventional commercial practice, including, but not
27 limited to, delivery by hand, mail, commercial delivery and
28 electronic transmission.

29 (8) "Distribution" means a direct or indirect transfer of
30 money or other property or incurrence of indebtedness by a
31 corporation to or for the benefit of its members in respect of
32 any of its membership interests or to or for the benefit of its
33 officers or directors: *Provided*, That the payment of reasonable
34 compensation for services rendered, the reimbursement of
35 reasonable expenses, the granting of benefits to members in
36 conformity with the corporation's nonprofit purposes and the
37 making of distributions upon dissolution or final liquidation as
38 provided by article thirteen of this chapter may not be deemed
39 a distribution.

40 (9) "Effective date of notice" means the date as determined
41 pursuant to section one hundred fifty-one of this article.

42 (10) “Electronic transmission” or “electronically transmit-
43 ted” means any process of communication not directly involv-
44 ing the physical transfer of paper that is suitable for the
45 retention, retrieval and reproduction of information by the
46 recipient.

47 (11) “Employee” includes an officer and may include a
48 director: *Provided*, That the director has accepted duties that
49 make him or her also an employee.

50 (12) “Entity” includes corporation and foreign corporations;
51 business corporations and foreign business corporations; profit
52 and nonprofit unincorporated associations; limited liability
53 companies and foreign limited liability companies; business
54 trusts, estates, partnerships, trusts and two or more persons
55 having a joint or common economic interest; and state, United
56 States and foreign government.

57 (13) “Foreign corporation” means any nonprofit corporation
58 which is incorporated under a law other than the laws of this
59 state.

60 (14) “Governmental subdivision” includes, but is not
61 limited to, authorities, counties, districts and municipalities.

62 (15) “Individual” includes, but is not limited to, the estate
63 of an incompetent or deceased individual.

64 (16) “Member” means a person having membership rights
65 in a corporation in accordance with the provisions of its
66 certificate of incorporation or bylaws.

67 (17) “Nonprofit corporation” means a corporation which
68 may not make distributions to its members, directors or officers.

69 (18) “Person” includes, but is not limited to, an individual
70 and an entity.

71 (19) "Principal office" means the office so designated in the
72 return required pursuant to section three, article twelve-c,
73 chapter eleven of this code, where the principal executive
74 offices of a domestic or foreign corporation are located.

75 (20) "Proceeding" includes, but is not limited to, civil suits
76 and criminal, administrative and investigatory actions.

77 (21) "Record date" means the date established under article
78 six or seven of this chapter on which a corporation determines
79 the identity of its members and their interests. The determina-
80 tions are to be made as of the close of business on the record
81 date unless another time for doing so is specified when the
82 record date is fixed.

83 (22) "Registered agent" means the agent identified by the
84 corporation pursuant to section five hundred one, article five of
85 this chapter.

86 (23) "Registered office" means the address of the registered
87 agent for the corporation, as provided in section five hundred
88 one, article five of this chapter.

89 (24) "Secretary" means the corporate officer to whom the
90 board of directors has delegated responsibility under subsection
91 (c), section eight hundred forty, article eight of this chapter for
92 custody of the minutes of the meetings of the board of directors
93 and the meetings of the members and for authenticating records
94 of the corporation.

95 (25) "Sign" or "signature" includes, but is not limited to,
96 any manual, facsimile, conformed or electronic signature with
97 means to identify a record by a signature, mark or other symbol,
98 with intent to authenticate it.

99 (26) "State", when referring to a part of the United States,
100 includes a state, commonwealth and a territory and insular

101 possession of the United States and their agencies and govern-
102 mental subdivisions.

103 (27) "United States" includes, but is not limited to, districts,
104 authorities, bureaus, commissions, departments and any other
105 agency of the United States.

ARTICLE 2. INCORPORATION.

§31E-2-202. Articles of incorporation.

1 (a) The articles of incorporation must set forth:

2 (1) A corporate name for the corporation that satisfies the
3 requirements of section four hundred one, article four of this
4 chapter;

5 (2) A statement that the corporation is nonprofit and that
6 the corporation may not have or issue shares of stock or make
7 distributions;

8 (3) Whether the corporation is to have members and, if it is
9 to have members, the provisions required by section six
10 hundred one, article six of this chapter to be set forth in the
11 certificate of incorporation;

12 (4) The mailing address of the corporation's initial regis-
13 tered office, if any, and the name of its initial registered agent
14 at that office, if any;

15 (5) The name and address of each incorporator; and

16 (6) The mailing address of the corporation's principal
17 office.

18 (b) The articles of incorporation may set forth:

19 (1) The names and addresses of the individuals who are to
20 serve as the initial directors;

21 (2) Provisions not inconsistent with law regarding:

22 (A) Managing and regulating the affairs of the corporation;

23 or

24 (B) Defining, limiting and regulating the powers of the
25 corporation, its board of directors and members or any class of
26 members;

27 (3) Any provision that under this chapter is required or
28 permitted to be set forth in the bylaws;

29 (4) A provision eliminating or limiting the personal liability
30 of a director to the corporation or its members for monetary
31 damages for any action taken, or any failure to take any action,
32 as a director or member, except liability for: (A) The amount of
33 a financial benefit received by a director or member to which he
34 or she is not entitled; (B) an intentional infliction of harm on
35 the corporation or the members; (C) a violation of section eight
36 hundred thirty-three, article eight of this chapter regarding
37 unlawful distributions; or (D) an intentional violation of
38 criminal law; and

39 (5) A provision permitting or making obligatory indemnifi-
40 cation of a director for liability as that term is defined in section
41 eight hundred fifty, article eight of this chapter to any person
42 for any action taken, or any failure to take any action, as a
43 director, except liability for: (A) Receipt of a financial benefit
44 to which he or she is not entitled; (B) an intentional infliction
45 of harm on the corporation or its members; (C) a violation of
46 section eight hundred thirty-three, article eight of this chapter
47 for unlawful distributions; or (D) an intentional violation of
48 criminal law.

49 (C) The articles of incorporation need not set forth any of
50 the corporate powers enumerated in this chapter.

ARTICLE 5. OFFICE AND AGENT.**§31E-5-503. Resignation of registered agent.**

1 (a) A registered agent may resign his or her agency appoint-
2 ment by signing and delivering to the Secretary of State for
3 filing the statement of resignation. The statement may include
4 a statement that the registered office is also discontinued.

5 (b) After filing the statement the Secretary of State shall
6 mail a copy of the filed statement of resignation to the regis-
7 tered office if the registered office is not discontinued and the
8 other copy to the corporation at its principal office.

9 (c) The agency appointment is terminated, and the regis-
10 tered office is discontinued if provision for its discontinuation
11 is made, on the thirty-first day after the date on which the
12 statement was filed.

ARTICLE 14. FOREIGN CORPORATIONS.

§31E-14-1409. Resignation of registered agent of foreign corporation.

§31E-14-1421. Revocation of withdrawal.

**§31E-14-1409. Resignation of registered agent of foreign corpora-
tion.**

1 (a) The registered agent of a foreign corporation may resign
2 his or her agency appointment by signing and delivering to the
3 Secretary of State for filing a statement of resignation. The
4 statement of resignation may include a statement that the
5 registered office is also discontinued.

6 (b) After filing the statement, the Secretary of State shall
7 mail a copy of the filed statement of resignation and receipt to
8 the corporation at its principal office.

9 (c) The agency appointment is terminated, and the regis-
10 tered office discontinued if provided in the statement of

11 registration, on the thirty-first day after the date on which the
12 statement was filed.

§31E-14-1421. Revocation of withdrawal.

1 (a) A corporation may revoke its withdrawal within one
2 hundred twenty days of its effective date.

3 (b) Revocation of withdrawal must be authorized in the
4 same manner as the withdrawal was authorized unless that
5 authorization permitted revocation by action of the board of
6 directors alone, in which event the board of directors may
7 revoke the withdrawal without shareholder action.

8 (c) After the revocation of withdrawal is authorized, the
9 corporation may revoke the withdrawal by delivering to the
10 Secretary of State for filing articles of revocation of with-
11 drawal, together with a copy of its application of withdrawal,
12 that sets forth:

13 (1) The name of the corporation;

14 (2) The effective date of the withdrawal that was revoked;

15 (3) The date that the revocation of withdrawal was autho-
16 rized;

17 (4) If the corporation's board of directors or incorporators
18 revoked the withdrawal, a statement to that effect; and

19 (5) If the corporation's board of directors revoked the
20 withdrawal authorized by the shareholders, a statement that
21 revocation was permitted by action by the board of directors
22 alone pursuant to that authorization.

23 (d) Revocation of withdrawal is effective upon the effective
24 date of the articles of revocation of withdrawal.

25 (e) When the revocation of withdrawal is effective, it
26 relates back to and takes effect as of the effective date of the
27 withdrawal and the corporation resumes carrying on its business
28 as if withdrawal had never occurred.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 9. UNIFORM LIMITED PARTNERSHIP ACT.

§47-9-1. Definitions.

§47-9-8. Certificate and formation of limited partnership.

§47-9-49. Registration of foreign limited partnership.

§47-9-53. Foreign limited partnership — Cancellation of registration.

§47-9-1. Definitions.

1 As used in this article, unless the context otherwise re-
2 quires:

3 (1) “Certificate of limited partnership” means the certificate
4 referred to in section eight of this article and the certificate as
5 amended;

6 (2) “Contribution” means any cash, property, services
7 rendered or a promissory note or other binding obligation to
8 contribute cash or property or to perform services, which a
9 partner contributes to a limited partnership in his or her
10 capacity as a partner;

11 (3) “Deliver” or “delivery” means any method of delivery
12 used in conventional commercial practice, including, but not
13 limited to, delivery by hand, mail, commercial delivery and
14 electronic transmission;

15 (4) “Electronic transmission” or “electronically transmit-
16 ted” means any process of communication not directly involv-
17 ing the physical transfer of paper that is suitable for the
18 retention, retrieval and reproduction of information by the
19 recipient;

20 (5) "Event of withdrawal of a general partner" means an
21 event that causes a person to cease to be a general partner as
22 provided in section twenty-three of this article;

23 (6) "Foreign limited partnership" means a partnership
24 formed under the laws of any state other than this state and
25 having as partners one or more general partners and one or
26 more limited partners;

27 (7) "General partner" means a person who has been
28 admitted to a limited partnership as a general partner in
29 accordance with the partnership agreement and named in the
30 certificate of limited partnership as a general partner;

31 (8) "Limited partner" means a person who has been
32 admitted to a limited partnership as a limited partner in accor-
33 dance with the partnership agreement;

34 (9) "Limited partnership" and "domestic limited partner-
35 ship" means a partnership formed by two or more persons under
36 the laws of this state and having one or more general partners
37 and one or more limited partners;

38 (10) "Partner" means a limited or general partner;

39 (11) "Partnership agreement" means any valid agreement,
40 written or oral, of the partners as to the affairs of a limited
41 partnership and the conduct of its business;

42 (12) "Partnership interest" means a partner's share of the
43 profits and losses of a limited partnership and the right to
44 receive distributions of partnership assets;

45 (13) "Person" means a natural person, partnership, limited
46 partnership (domestic or foreign), limited liability company,
47 professional limited liability company, trust, estate, association,
48 corporation, or any other legal or commercial entity;

49 (14) "Sign" or "signature" includes, but is not limited to,
50 any manual, facsimile, conformed or electronic signature with
51 means to identify a record by a signature, mark or other symbol,
52 with intent to authenticate it; and

53 (15) "State" means a state, territory or possession of the
54 United States, the District of Columbia or the Commonwealth
55 of Puerto Rico.

§47-9-8. Certificate and formation of limited partnership.

1 (a) In order to form a limited partnership, two or more
2 persons must execute a certificate of limited partnership. The
3 certificate shall be filed in the office of the Secretary of State
4 and set forth:

5 (1) The name of the limited partnership;

6 (2) The general character of its business;

7 (3) The mailing address of the principal office and the name
8 and address of the agent for service of process, if any;

9 (4) The name and the business address of each general
10 partner; and

11 (5) Any other matters the general partners determine to
12 include therein.

13 (b) A limited partnership is formed at the time of the filing
14 of the certificate of limited partnership in the office of the
15 Secretary of State or at any later time specified in the certificate
16 of limited partnership if, in either case, there has been substan-
17 tial compliance with the requirements of this section.

§47-9-49. Registration of foreign limited partnership.

1 (a) Before transacting business in this state, a foreign
2 limited partnership shall register with the Secretary of State. In

3 order to register, a foreign limited partnership shall submit to
4 the Secretary of State, an application for registration as a
5 foreign limited partnership, signed and sworn to by a general
6 partner and setting forth:

7 (1) The name of the foreign limited partnership or if its
8 name is unavailable for use in this state, a limited partnership
9 name that satisfies the requirements of section two of this
10 article, including a copy of the resolution of its partners
11 adopting the fictitious name;

12 (2) The state and date of its formation;

13 (3) The name and address of an agent for service of process,
14 if any;

15 (4) The address of the office required to be maintained in
16 the state of its organization by the laws of that state or, if not so
17 required, of the principal office of the foreign limited partner-
18 ship;

19 (5) The name and business address of each general partner;
20 and

21 (6) The address of the office at which is kept a list of the
22 names and addresses of the limited partners and their capital
23 contributions, together with an undertaking by the foreign
24 limited partnership to keep those records until the foreign
25 limited partnership's registration in this state is canceled or
26 withdrawn.

27 (b) The foreign limited partnership shall deliver with the
28 completed application a certificate of existence, or a document
29 of similar import, duly authenticated by the Secretary of State
30 or other official having custody of the partnership records in the
31 state or country under whose law it is organized.

§47-9-53. Foreign limited partnership — Cancellation of registration.

1 A foreign limited partnership may cancel its registration by
2 filing with the Secretary of State a certificate of cancellation
3 signed by a general partner. A cancellation does not terminate
4 the authority of the Secretary of State to accept service of
5 process on the foreign limited partnership with respect to claims
6 for relief or causes of action arising out of the transaction of
7 business in this state.

CHAPTER 47B. UNIFORM PARTNERSHIP ACT.

Article

3. Relations of Partners to Persons Dealing with Partnership.

10. Limited Liability Partnership.

ARTICLE 3. RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP.

§47B-3-3. Statement of partnership authority.

1 (a) A partnership may file a statement of partnership
2 authority, which:

3 (1) Must include:

4 (A) The name of the partnership;

5 (B) The mailing address of its principal office and of its
6 office in this state, if there is one;

7 (C) The names and mailing addresses of all of the partners
8 appointed and maintained by the partnership, if any, for the
9 purpose of subsection (b) of this section; and

10 (D) The names of the partners authorized to execute an
11 instrument transferring real property held in the name of the
12 partnership; and

13 (2) May state the authority, or limitations on the authority,
14 of some or all of the partners to enter into other transactions on
15 behalf of the partnership and any other matter.

16 (b) If a statement of partnership authority names an agent,
17 the agent shall maintain a list of the names and mailing ad-
18 dresses of all of the partners and make it available to any person
19 on request for good cause shown.

20 (c) If a filed statement of partnership authority is executed
21 pursuant to subsection (c), section five, article one of this
22 chapter and states the name of the partnership but does not
23 contain all of the other information required by subsection (a)
24 of this section, the statement nevertheless operates with respect
25 to a person not a partner as provided in subsections (d) and (e)
26 of this section.

27 (d) Except as otherwise provided in subsection (g) of this
28 section, a filed statement of partnership authority supplements
29 the authority of a partner to enter into transactions on behalf of
30 the partnership as follows:

31 (1) Except for transfers of real property, a grant of authority
32 contained in a filed statement of partnership authority is
33 conclusive in favor of a person who gives value without
34 knowledge to the contrary, so long as and to the extent that a
35 limitation on that authority is not then contained in another filed
36 statement. A filed cancellation of a limitation on authority
37 revives the previous grant of authority.

38 (2) A grant of authority to transfer real property held in the
39 name of the partnership contained in a certified copy of a filed
40 statement of partnership authority recorded in the office for
41 recording transfers of that real property is conclusive in favor
42 of a person who gives value without knowledge to the contrary,
43 so long as and to the extent that a certified copy of a filed
44 statement containing a limitation on that authority is not then of

45 record in the office for recording transfers of that real property.
46 The recording in the office for recording transfers of that real
47 property of a certified copy of a filed cancellation of a limita-
48 tion on authority revives the previous grant of authority.

49 (e) A person not a partner is deemed to know of a limitation
50 on the authority of a partner to transfer real property held in the
51 name of the partnership if a certified copy of the filed statement
52 containing the limitation on authority is of record in the office
53 for recording transfers of that real property.

54 (f) Except as otherwise provided in subsections (d) and (e)
55 of this section and section four, article seven of this chapter and
56 section five, article eight of this chapter, a person not a partner
57 is not deemed to know of a limitation on the authority of a
58 partner merely because the limitation is contained in a filed
59 statement.

60 (g) Unless earlier canceled, a filed statement of partnership
61 authority is canceled by operation of law five years after the
62 date on which the statement, or the most recent amendment,
63 was filed with the Secretary of State.

ARTICLE 10. LIMITED LIABILITY PARTNERSHIP.

§47B-10-1. Registered limited liability partnerships.

§47B-10-4. Applicability of article to foreign and interstate commerce.

§47B-10-1. Registered limited liability partnerships.

1 (a) To become a registered limited liability partnership, a
2 partnership shall deliver and file with the Secretary of State a
3 statement of registration stating the name of the partnership; the
4 address of its principal office; the address of a registered office
5 and the name and address of a registered agent for service of
6 process, if any; a brief statement of the business in which the
7 partnership engages; the name and address of each partner
8 authorized to execute instruments on behalf of the partnership;

9 any other matters that the partnership determines to include;
10 and that the partnership thereby registers as a registered limited
11 liability partnership.

12 (b) The registration shall be executed by one or more
13 partners authorized to execute a registration.

14 (c) The registration shall be accompanied by a fee of two
15 hundred fifty dollars.

16 (d) The Secretary of State shall register as a registered
17 limited liability partnership any partnership that submits a
18 completed registration with the required fee and deliver to the
19 partnership or its representative a receipt for the record and the
20 fees.

21 (e) A partnership registered under this section shall pay, in
22 each year following the year in which its registration is filed, on
23 a date specified by the Secretary of State, an annual fee of five
24 hundred dollars. The fee shall be accompanied by a notice, on
25 a form provided by the Secretary of State, of any material
26 changes in the information contained in the partnership's
27 registration.

28 (f) Registration is effective:

29 (1) Immediately after the date a registration is filed; or

30 (2) On a date specified in the statement of registration,
31 which date shall not be more than sixty days after the date of
32 filing.

33 (g) Registration remains effective until:

34 (1) It is voluntarily withdrawn by filing with the Secretary
35 of State a statement of withdrawal; or

36 (2) Thirty days after receipt by the partnership of a notice
37 from the Secretary of State, which shall be sent by certified
38 mail, return receipt requested, that the partnership has failed to
39 make timely payment of the annual fee specified in subsection
40 (e) of this section, unless the fee is paid within a thirty-day
41 period.

42 (h) The status of a partnership as a registered limited
43 liability partnership and the liability of the partners thereof shall
44 not be affected by:

45 (1) Errors in the information contained in a statement of
46 registration under subsection (a) of this section or notice under
47 subsection (e) of this section; or

48 (2) Changes after the filing of the statement of registration
49 or notice in the information stated in the registration or notice.

50 (i) The Secretary of State may provide forms for the
51 statement of registration under subsection (a) of this section or
52 a notice under subsection (e) of this section.

53 (j) All fees and moneys collected by the Secretary of State
54 pursuant to the provisions of this article shall be deposited by
55 the Secretary of State as follows: One-half shall be deposited in
56 the state general revenue fund and one-half shall be deposited
57 in the service fees and collections account established by
58 section two, article one, chapter fifty-nine of this code for the
59 operation of the office of the Secretary of State. The Secretary
60 of State shall dedicate sufficient resources from that fund or
61 other funds to provide the services required in this article.

**§47B-10-4. Applicability of article to foreign and interstate
commerce.**

1 (a) A registered limited liability partnership formed under
2 this article may conduct its business, carry on its operations and

3 have and exercise the powers granted by this chapter in any
4 state, territory, district or possession of the United States or in
5 any foreign country.

6 (b) It is the intent of the Legislature that the legal existence
7 of registered limited liability partnerships formed under this
8 article be recognized outside the boundaries of this state and
9 that the laws of this state governing such registered limited
10 liability partnerships doing business outside this state be
11 granted the protection of full faith and credit under the Consti-
12 tution of the United States.

13 (c) Notwithstanding section six, article one of this chapter,
14 the internal affairs of registered limited liability partnerships
15 formed under this article, including the liability of partners for
16 debts, obligations and liabilities of or chargeable to the partner-
17 ship, shall be subject to and governed by the laws of this state.

18 (d) Before transacting business in this state, a foreign
19 registered limited liability partnership shall:

20 (i) Comply with any statutory or administrative registration
21 or filing requirements governing the specific type of business
22 in which the partnership is engaged; and

23 (ii) File a notice with the Secretary of State, stating the
24 name of the partnership or if its name is unavailable for use in
25 this state, a limited partnership name that satisfies the require-
26 ments of section four-e of this article, including a copy of the
27 resolution of its partners adopting the fictitious name; the
28 address of its principal office; the address of a registered office
29 and the name and address of a registered agent for service of
30 process, if any; a brief statement of the business in which the
31 partnership engages; the name and address of each partner
32 authorized to execute instruments on behalf of the partnership
33 and any other matters that the partnership determines to
34 include; and a brief statement of the business in which the

35 partnership engages. Such notice shall be effective for two
36 years from the date of filing, after which time the partnership
37 shall file a new notice.

38 (e) The name of a foreign registered limited liability
39 partnership doing business in this state shall contain the words
40 “Registered Limited Liability Partnership” or the abbreviation
41 “L.L.P.” or “LLP” as the last words or letters of its name.

42 (f) Notwithstanding section six, article one of this chapter,
43 the internal affairs of foreign registered limited liability
44 partnerships, including the liability of partners for debts,
45 obligations and liabilities of or chargeable to the partnership,
46 shall be subject to and governed by the laws of the jurisdiction
47 in which the foreign registered limited liability partnership is
48 registered.

CHAPTER 244

**(Com. Sub. for H. B. 2285 — By Mr. Speaker, Mr. Kiss, and Delegates
Varner, Michael, Leach, Kominar, H. K. White and Williams)**

[Passed February 21, 2005; in effect from passage.]

[Approved by the Governor on February 25, 2005.]

AN ACT providing for the payment of the veterans bonus to veterans of the Kosovo, Afghanistan, and Iraq conflicts, and for the administration thereof; designating the Division of Veterans Affairs to administer provisions of act; providing powers and duties of the Director of the Division; authorizing adoption of rules and regulations; authorizing appointment of veterans advisory committee; setting forth qualifications to receive bonus; providing definitions; providing for payment of bonus to relatives

of deceased veterans; specifying amounts of bonus; setting forth periods to apply and receive bonus; providing for determination of validity of each claim for bonus by Director; providing for a certified list of eligible veterans and relatives of deceased veterans; providing for review of decision of Director by board of review; authorizing appointment of additional boards of review and compensation for members; providing for judicial review of decisions of board of review; creation of Veterans Bonus Fund; exempting bonus from taxation; excluding bonus from certain debt collection actions; prohibiting claim for bonus from assignment; limiting charges for services provided in connection with application for bonus; and prohibiting certain acts and providing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

PAYMENT OF VETERANS BONUS.

§1. Division of Veterans Affairs to administer act; veterans advisory committee.

1 The West Virginia Division of Veterans Affairs is hereby
2 designated as the state agency to administer the provisions of
3 this act. The Director of the Division of Veterans Affairs shall
4 do all things necessary for the proper administration thereof.
5 The director, with the advice and consent of the veterans
6 council, may adopt and promulgate such reasonable rules and
7 regulations, not inconsistent herewith, as may be necessary to
8 effect the purposes of this act, including regulations concerning
9 evidence or other data required to establish eligibility and
10 qualifications for the bonus as herein provided. The Director
11 shall prepare and furnish all necessary forms which shall be
12 distributed by him or her through such veterans and other
13 organizations as he or she may deem most practicable.

14 The Division of Veterans Affairs shall, insofar as possible,
15 utilize the personnel, supplies and equipment of the Division in

16 the administration of this act. The Division may employ such
17 additional personnel as may be necessary for the proper
18 administration of this act, subject, however, to the approval of
19 the Secretary of the Department of Military Affairs and Public
20 Safety who must also approve the salaries and other compensa-
21 tion for such personnel.

22 The Governor may appoint a veterans advisory committee,
23 consisting of representatives of veterans organizations chartered
24 under acts of Congress and operating in this state, to advise and
25 counsel the Director in the administration of this act. Such
26 committee shall meet on the call of the Director at such times
27 and places as he or she may specify.

§2. Veterans entitled to bonus.

1 In grateful recognition of their services in time of grave
2 national emergency, a cash bonus as herein provided shall be
3 paid to veterans of the Kosovo, Afghanistan, and Iraq conflicts.
4 The bonus shall be paid to: (1) Veterans of the armed forces of
5 the United States who served on active duty in areas of conflict
6 in Iraq, or were members of reserve components called to active
7 duty by the President of the United States under Title 10,
8 United States Code section 12301, 12302, 12303 or 12304
9 during the Iraqi War, between the nineteenth day of March, two
10 thousand three and the date determined by the President or
11 Congress of the United States as the end of the involvement of
12 the United States armed forces in Iraq, both dates inclusive; or
13 (2) veterans, active service members, or members of reserve
14 components of the armed forces of the United States, who
15 served on active duty in one of the military operations for
16 which he or she received a campaign badge or expeditionary
17 medal during the periods hereinafter described. For purposes of
18 this act, periods of active duty in a campaign or expedition are
19 designated as: The conflict in Kosovo between the twentieth

20 day of November, one thousand nine hundred ninety-five and
21 the thirty-first day of December, two thousand, both dates
22 inclusive; and the conflict in Afghanistan, between the seventh
23 day of October, two thousand one and the date determined by
24 the President or Congress of the United States as the end of the
25 involvement of the United States armed forces in Afghanistan,
26 both dates inclusive. For purposes of this act, not more than one
27 bonus may be paid to or on behalf of the service of a veteran. In
28 order to be eligible to receive a bonus, a veteran must have been
29 a bona fide resident of the State of West Virginia at the time of
30 his or her entry into active service and for a period of at least
31 six months immediately prior thereto, and has not been sepa-
32 rated from service under conditions other than honorable.

33 The bonus shall also be paid to any veteran otherwise
34 qualified pursuant to this amendment, who was discharged
35 within ninety days after entering the armed forces because of a
36 service-connected disability.

37 As used in this act, "armed forces" means the army, navy,
38 air force, marine corps and coast guard of the United States.

39 As used in this act, "active duty" means full-time active
40 service in the armed forces with full duty pay status, but shall
41 not include time absent from leave, absent over leave, while in
42 confinement or any other time classified by the respective
43 branches of the armed forces as "bad" or "lost" time.

44 For purposes of this act, "active service" shall mean the
45 person's active duty as a member of one of the armed forces
46 during the periods of conflict referred to herein.

47 As used in this act, "bona fide resident" shall mean any
48 person who, at the time of his or her entry into active service as
49 such is defined herein, was a legal resident of the State of West

50 Virginia. Evidence of legal residence shall be shown by the
51 presentation of evidence that the person filed a West Virginia
52 personal income tax for the tax year immediately preceding his
53 or her entry into active service or proof that he or she main-
54 tained a permanent place of abode in West Virginia at the time
55 of his or her entry into active service and for a period of at least
56 six months prior to entry into active service.

§3. Payment of bonus to relatives of deceased veterans.

1 The bonus to which any deceased veteran would have been
2 entitled, if living, shall be paid to the following surviving
3 relatives of the veteran, if the relatives are residents of the state
4 when the application is made and if the relatives are living at
5 the time payment is made: Any unremarried widow or widower,
6 or, if none, all children, stepchildren and adopted children under
7 the age of eighteen, or, if none, any parent, stepparent, adoptive
8 parent or person standing in loco parentis. The categories of
9 persons listed shall be treated as separate categories listed in
10 order of entitlement and where there is more than one member
11 of a class, the bonus shall be paid to each member according to
12 his or her proportional share. Where a deceased veteran's death
13 was connected with the service and resulted from the service
14 during the time period specified, however, the surviving
15 relatives shall be paid, in accordance with the same order of
16 entitlement, the sum of two thousand dollars in lieu of any
17 bonus to which the deceased might have been entitled if living.

18 As used in this act, "unremarried widow" or "unremarried
19 widower" means the spouse of a deceased veteran, legally
20 married to the veteran at the time of his or her death, who has
21 not remarried at the time of making application.

22 As used in this act, "child" means the natural child, adopted
23 child or stepchild of the deceased veteran upon whose service

24 eligibility is derived and who has not attained the age of
25 eighteen years at the time of making application.

26 As used in this act, "parent" means either of the natural,
27 step, or adoptive father or mother of, or person standing in loco
28 parentis to, the deceased veteran upon whose service eligibility
29 is derived.

§4. Amount of bonus.

1 The amount of the bonus shall be six hundred dollars per
2 eligible veteran who was in active service, inside the combat
3 zone in Kosovo, Afghanistan or Iraq as designated by the
4 President or Congress of the United States at anytime during the
5 dates specified hereinabove. In the case of the Iraqi War and the
6 conflict in Afghanistan, the amount of bonus shall be four
7 hundred dollars per eligible veteran who was in active service
8 outside the combat zone designated by the President or Con-
9 gress of the United States during the dates specified
10 hereinabove. For purposes of this act, not more than one bonus
11 shall be paid to or on behalf of the service of any one veteran.
12 In the event any veteran is eligible to receive more than one
13 bonus, the veteran shall receive the greater bonus.

§5. Limitation on time of filing application.

1 No bonus may be paid to any person, otherwise entitled
2 thereto, unless application therefor shall be filed with the
3 Division of Veterans Affairs. No bonus may be paid to any
4 person, otherwise entitled thereto, for service periods of active
5 duty in a campaign or expedition in the conflict in Kosovo
6 within the time periods contained hereinabove, unless applica-
7 tion therefor shall be filed with the Division of Veterans Affairs
8 on or before the thirtieth day of June, two thousand six. No
9 bonus may be paid to any person, otherwise entitled thereto, for

10 service periods of active duty in a campaign or expedition in the
11 conflict in Afghanistan within the time periods contained
12 hereinabove or for service on active duty in areas of conflict in
13 Iraq or for active duty service of reserve components called by
14 the President of the United States as described hereinabove,
15 unless application therefor shall be filed within one year of the
16 end of such veteran's service.

§6. Determination of Director of the validity of claims.

1 Upon receipt of an application for benefits hereunder, the
2 Director shall, as soon as may be practicable, determine the
3 validity of the claim. If the determination is made that an
4 applicant is eligible for a bonus, the Director shall mail to the
5 applicant a notification of such determination. If the determina-
6 tion is made that no benefits hereunder are payable, then the
7 director shall mail to the applicant a notification denying
8 benefits and citing the reason or reasons for such denial.

9 Any applicant who is aggrieved by any such determination
10 of the Director may demand that his or her claim be reviewed
11 as hereinafter provided. Such demand for review shall be filed
12 with the Director, in writing, within sixty days after the date on
13 which the notice of award or notice of denial was mailed to the
14 applicant. Upon receipt of such demand for review, the Director
15 shall certify the demand, together with all files and records
16 relating to the application, to a board of review. Unless such
17 demand for review is duly filed with the Director, all findings
18 and orders of the Director with reference to such claim shall be
19 final and conclusive upon the applicant.

20 If the Director determines that an applicant is eligible for a
21 bonus, he or she shall certify that finding to the Governor. The
22 Governor shall then create a list of veterans and relatives of
23 deceased veterans eligible to receive such bonus and certify
24 such list to the Legislature at any regular or special session.

§7. Review of board hearing.

1 For the purposes of this act, the veterans council of the
2 Division of Veterans Affairs is hereby designated as the
3 “Veterans Bonus Board of Review.” Under rules and regula-
4 tions adopted by the veterans council, any one or more mem-
5 bers of the board of review may conduct hearings on a demand
6 by an applicant for review of the determination of the Director,
7 and may report his or her or their findings thereon, together
8 with the entire record of the case, to the board of review for its
9 final determination and decision.

10 If the number of demands for review hereunder becomes
11 too numerous to be handled expeditiously by the veterans
12 council, the Governor, upon the recommendation of the council,
13 may appoint one or more additional boards of review. Addi-
14 tional boards shall consist of not more than five members, one
15 of whom shall be a lawyer, who shall have the same qualifica-
16 tions as the members of the veterans council, and who shall
17 serve at the will and pleasure of the Governor for such time as
18 may be necessary for the purposes of this act. Each such
19 additional board of review shall have the same authority and its
20 final decision shall have the same force and effect as that of the
21 veterans council under the provisions of this act.

22 Upon receipt from the Director of the files and records
23 relating to any claim, the board, or a member or members
24 thereof, as the case may be, shall fix a time and place for a
25 hearing thereon. The applicant shall be notified of the time and
26 place fixed and shall be informed of his or her right to demand
27 a public hearing if he or she so desires. At the hearing, the
28 claim shall be reexamined de novo and the submission of
29 additional evidence may be required or permitted. Upon the
30 conclusion of such hearing, the board of review, on the basis of
31 the record and the recommendations, if any, made by the
32 member or members who conducted the hearing, shall enter its

33 order reversing, affirming or modifying the determination made
34 by the Director.

35 Any order so entered by the board shall be final and
36 conclusive upon the applicant and the Director unless an
37 application is made for review to the West Virginia Supreme
38 Court of Appeals as hereinafter provided. The board shall mail
39 to the applicant and to the Director a copy of the order entered
40 by it in each case.

41 All notices and correspondence shall be directed to the
42 applicant at the address listed on his or her application and all
43 notices and correspondence to the Director shall be addressed
44 to him or her at his or her office in the City of Charleston.

45 The Director shall provide for each board of review such
46 clerical and stenographic assistants and such supplies as may be
47 necessary for the performance of its duties.

48 Each member of a board of review shall receive no salary,
49 but each member shall receive the same compensation and
50 expense reimbursement as is paid to members of the Legislature
51 for their interim duties as recommended by the citizens legisla-
52 tive compensation commission and authorized by law for each
53 day or portion thereof engaged in the discharge of official
54 duties.

§8. Court review of final orders of review board.

1 Within thirty days after notification of the entry of any final
2 order of a board of review, the Director or the applicant affected
3 may petition for review of such order by the West Virginia
4 Supreme Court of Appeals.

**§9. Legislative appropriations paid into veterans bonus fund;
expenditures; investment thereof; unexpended balance.**

1 All money as appropriated by the Legislature for the
2 payment of a cash bonus to veterans as provided in the Veterans
3 Bonus Amendment of 2004 shall be paid into the Veterans
4 Bonus Fund which is hereby created in the office of the State
5 Treasurer and such fund shall be expended solely for the
6 payment of such veterans bonus. Except for such sums neces-
7 sary for current operating balances, such fund shall be invested
8 and reinvested by the West Virginia State Board of Investments
9 in accordance with the provisions of article six, chapter twelve
10 of the Code of West Virginia, one thousand nine hundred
11 thirty-one, as amended: *Provided*, That no such investment or
12 reinvestment shall adversely affect the current operating
13 balances of such fund. Any unexpended balance remaining in
14 this fund after payment of all eligible veterans and relatives of
15 deceased veterans as is from time to time established by the
16 certified list created by the Governor shall be available for
17 appropriation by the Legislature.

§10. Penalty for making false statements.

1 Any person who shall knowingly make any false or
2 misleading statement or representation, oral or written, in
3 support of any claim for a bonus under the provisions of this
4 act, shall be guilty of a felony and, upon conviction thereof,
5 shall be punished by imprisonment in a state correctional
6 facility for not less than one nor more than five years.

§11. Penalty for filing more than one application.

1 Only one application shall be filed by any veteran or by any
2 person who claims to be entitled to a share of the bonus payable
3 in the case of any deceased veteran. Any person who, with
4 intent to defraud, violates the provisions of this section shall be
5 guilty of a felony and, upon conviction thereof, shall be
6 punished by a fine of not less than five hundred dollars nor
7 more than one thousand dollars, or by imprisonment in a state
8 correctional facility for not less than one nor more than two
9 years, or by both such fine and imprisonment.

§12. Bonus payment not subject to taxation or legal process; claim therefor not assignable.

1 The bonus provided by this act is hereby declared to be a
2 gift or gratuity made as a token of appreciation for the service
3 rendered by the veteran to the people of West Virginia in time
4 of grave national emergency and is in no sense compensation
5 for such services. The money received as such bonus shall be
6 exempt from taxation and such money, or any claim therefor,
7 shall not be subject to garnishment, attachment or levy of
8 execution. A claim for payment of a bonus under the provisions
9 of this act shall not be assignable for any purpose whatsoever.

§13. Collection of fees or charges; penalty.

1 No fee or charge shall be made by any person, attorney,
2 agent or representative for any service in connection with the
3 filing of an application for payment of a bonus hereunder,
4 except such fees as are provided by law for the performance of
5 official duties by a duly elected or appointed officer of this state
6 or a political subdivision thereof. No person shall, for a
7 consideration, discount or attempt to discount or advance
8 money upon any warrant issued for payment of any bonus
9 provided for in this act.

10 If an applicant shall employ an attorney to represent him or
11 her in connection with the prosecution of his or her claim
12 before a board of review, or before the Supreme Court of
13 Appeals, the attorney shall file with the Director an executed
14 copy of his or her contract of employment, and the total amount
15 of the fee therein provided shall not exceed twenty-five percent
16 of the amount under dispute.

17 Any person who violates any provision of this section shall
18 be guilty of a misdemeanor and, upon conviction thereof, shall
19 be punished by fine of not less than twenty-five dollars nor
20 more than five hundred dollars, or by imprisonment in the

21 county or regional jail for not less than ten days nor more than
22 twelve months, or by both such fine and imprisonment.

CHAPTER 245

(H. B. 2286 — By Delegates Williams, Beach, DeLong,
Perry, Martin and Cann)

[Passed February 21, 2005; in effect ninety days from passage.]

[Approved by the Governor on February 25, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-8e, relating to the sounding of Taps at veteran's honors funerals; encouraging community service by capable students; making legislative findings and stating purpose; requiring guidelines and distribution of certain information by state board; requiring county board policy and specifying minimum provisions; encouraging county board collaboration with organizations to assist programs; and limiting county board responsibility for certain costs, transportation and liability for supervision.

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 §18-2E-8e, to read as follows:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-8e. Veteran's honors funeral assistant community service program.

1 (a) *Findings.* - The Legislature makes the following
2 findings:

3 (1) Serving in the armed services in defense of the life,
4 liberty and pursuit of happiness enjoyed in our democratic
5 society involves a tremendous sacrifice on the behalf of those
6 who serve, often at the cost of their own lives;

7 (2) It is a fitting tribute to those who have served in the
8 armed forces and the families who have shared in their sacrifice
9 to honor that service and that sacrifice in the most respectful
10 manner;

11 (3) It is often difficult for the families of deceased veterans
12 who wish to lay their loved ones finally to rest in a military
13 honors funeral to find a bugler to sound their final Taps; and

14 (4) Organizations within the state and nationally, such as
15 the Veterans of Foreign Wars, the American Legion, Bugles
16 Across America and many others, have recognized the diffi-
17 culty of finding buglers to sound Taps at military honors
18 funerals and may be able to assist.

19 (b) *Purpose.* - The purpose of this section is to facilitate
20 collaboration that will encourage capable young people to assist
21 with the sounding of Taps at military funerals honoring our
22 veterans and, thereby, help them to develop a better understand-
23 ing of the sacrifices, a respect for the commitment and an
24 appreciation of the privileges that the men and women of the
25 armed services have protected through their service.

26 (c) *State board guidelines.* - The state board shall, in
27 collaboration with organizations and supporters of veterans,
28 establish general guidelines for the establishment of school
29 level programs that encourage capable students in grades six
30 through twelve, inclusive, to sound Taps on a standard or
31 valved bugle, trumpet, cornet or flugelhorn during military
32 honors funerals held in this state. The general guidelines shall
33 address the issues to be set forth in the county board policies
34 required under this section and shall include contact informa-

35 tion for technical assistance from the department of education
36 and organizations and supporters of veterans assisting in these
37 programs. The state board shall distribute the guidelines to
38 every county board. The state board shall also distribute an
39 appropriate program summary and contact information to the
40 colleges and universities in the state so that they may establish
41 similar programs for their students.

42 (d) *County board policies.* - Each county board shall
43 establish a policy for the implementation of a veteran's honors
44 funeral assistant community service program that addresses at
45 least the following:

46 (1) The distribution of information to music and band
47 teachers for their use in notifying capable students and obtain-
48 ing the consent of their parents or guardians for voluntary
49 registry as a candidate able to sound Taps during military
50 honors funerals held within a reasonable distance from their
51 residence;

52 (2) The credit toward community service or work based
53 learning requirements of the county or other recognition that
54 will be awarded to a student for the registry and sounding of
55 Taps during military honors funerals; and

56 (3) The limits on the amount of regular classroom instruc-
57 tion that a student may miss for the sounding of Taps during
58 military honors funerals to fulfill a community service or work
59 based learning requirement or, if none, on the excused absences
60 that the student may accrue for this activity.

61 County boards are not responsible for any costs associated
62 with the program, may not be required to provide or pay for
63 student transportation to funerals and are not liable for student
64 supervision while absent to participate in funerals. However,
65 county boards are encouraged to collaborate with organizations
66 of veterans and supporters of veterans to assist with the
67 veteran's honors funeral assistant community service program.

CHAPTER 246

(Com. Sub. for S. B. 287 — By Senators Love and Fanning)

[Passed April 4, 2005; in effect July 1, 2005.]

[Approved by the Governor on April 19, 2005.]

AN ACT to repeal §22B-3-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-11-7b of said code; to amend and reenact §22-12-4 of said code; and to amend and reenact §22B-3-2 of said code, all relating to water quality standards generally; transferring authority to propose rules relating to water quality standards from the Environmental Quality Board to the Department of Environmental Protection; providing that the current rule remains in force and effect until amended by the Department of Environmental Protection; establishing some requirements for water protection; providing that meetings to develop water quality standards be open with certain exceptions; authorizing the Department of Environmental Protection to consider remaining variances; authorizing the Secretary to promulgate standards of purity and quality for groundwater; establishing the maximum containment levels permitted for groundwater; providing that the current groundwater standard remains in effect until modified by the Secretary.

Be it enacted by the Legislature of West Virginia:

That §22B-3-4 of the Code of West Virginia, 1931, as amended, be repealed; that §22-11-7b of said code be amended and reenacted; that §22-12-4 of said code be amended and reenacted; and that §22B-3-2 of said code be amended and reenacted, all to read as follows:

Chapter**22. Environmental Resources.****22B. Environmental Boards.****CHAPTER 22. ENVIRONMENTAL RESOURCES.****Article****11. Water Pollution Control Act.****12. Ground Water Protection Act.****ARTICLE 11. WATER POLLUTION CONTROL ACT.****§22-11-7b. Water quality standards; implementation of antidegradation procedures.**

1 (a) All authority to promulgate rules and implement water
2 quality standards vested in the Environmental Quality Board is
3 hereby transferred from the Environmental Quality Board to the
4 Secretary of the Department of Environmental Protection as of
5 the effective date of the amendment and reenactment of this
6 section during the two thousand five regular session of the
7 Legislature: *Provided*, That the legislative rule containing the
8 state's water quality standards shall remain in force and effect
9 as if promulgated by the Department of Environmental Protec-
10 tion until the Secretary amends the rule in accordance with the
11 provisions of article three, chapter twenty-nine-a of this code.
12 Any proceedings, including notices of proposed rulemaking
13 pending before the Environmental Quality Board, and any other
14 functions, actions or authority transferred to the Secretary shall
15 continue in effect as actions of the Secretary.

16 (b) All meetings with the Secretary or any employee of the
17 Department and any interested party which are convened for the
18 purpose of making a decision or deliberating toward a decision
19 as to the form and substance of the rule governing water quality
20 standards or variances thereto shall be held in accordance with
21 the provisions of article nine-a, chapter six of this code. When
22 the Secretary is considering the form and substance of the rule

23 governing water quality standards, the following are not
24 meetings pursuant to article nine-a, chapter six of this code: (i)
25 Consultations between the Department's employees or its
26 consultants, contractors or agents; (ii) consultations with other
27 state or federal agencies and the Department's employees or its
28 consultants, contractors or agents; or (iii) consultations between
29 the Secretary, the Department's employees or its consultants,
30 contractors or agents with any interested party for the purpose
31 of collecting facts and explaining state and federal requirements
32 relating to a site specific change or variance.

33 (c) In order to carry out the purposes of this chapter, the
34 Secretary shall promulgate legislative rules in accordance with
35 the provisions of article three, chapter twenty-nine-a of this
36 code setting standards of water quality applicable to both the
37 surface waters and groundwaters of this state. Standards of
38 quality with respect to surface waters shall protect the public
39 health and welfare, wildlife, fish and aquatic life and the present
40 and prospective future uses of the water for domestic, agricul-
41 tural, industrial, recreational, scenic and other legitimate
42 beneficial uses thereof. The water quality standards of the
43 Secretary may not specify the design of equipment, type of
44 construction or particular method which a person shall use to
45 reduce the discharge of a pollutant.

46 (d) The Secretary shall establish the antidegradation
47 implementation procedures as required by 40 C. F. R.
48 131.12(a) which apply to regulated activities that have the
49 potential to affect water quality. The Secretary shall propose
50 for legislative approval, pursuant to article three, chapter
51 twenty-nine-a of the code, legislative rules to establish imple-
52 mentation procedures which include specifics of the review
53 depending upon the existing uses of the water body segment
54 that would be affected, the level of protection or "tier" assigned
55 to the applicable water body segment, the nature of the activity
56 and the extent to which existing water quality would be
57 degraded.

58 (e) All remaining variances shall be applied for and consid-
59 ered by the Secretary and any variance granted shall be consis-
60 tent with 33 U. S. C. Section 1311(p) of the Federal Water
61 Control Act. At a minimum, when considering an application
62 for a remaining variance the Secretary shall consider the data and
63 information submitted by the applicant for the variance; and
64 comments received at a public comment period and public
65 hearing. The Secretary may not grant a variance without
66 requiring the applicant to improve the instream water quality as
67 much as is reasonably possible by applying best available
68 technology economically achievable using best professional
69 judgment. Any such requirement will be included as a permit
70 condition. The Secretary may not grant a variance without a
71 demonstration by the applicant that the coal remaining operation
72 will result in the potential for improved instream water quality
73 as a result of the remaining operation. The Secretary may not
74 grant a variance where he or she determines that degradation of
75 the instream water quality will result from the remaining
76 operation.

ARTICLE 12. GROUNDWATER PROTECTION ACT.

§22-12-4. Authority of Secretary to promulgate standards of purity and quality.

1 (a) The Secretary has the sole and exclusive authority to
2 promulgate standards of purity and quality for groundwater of
3 the state.

4 (b) These standards shall establish the maximum contami-
5 nant levels permitted for groundwater, but in no event shall the
6 standards allow contaminant levels in groundwater to exceed
7 the maximum contaminant levels adopted by the United States
8 Environmental Protection Agency pursuant to the federal Safe
9 Drinking Water Act. The Secretary may set standards more
10 restrictive than the maximum contaminant levels where it finds
11 that such standards are necessary to protect drinking water use

12 where scientifically supportable evidence reflects factors
13 unique to West Virginia or some area thereof, or to protect
14 other beneficial uses of the groundwater. For contaminants not
15 regulated by the federal Safe Drinking Water Act, standards for
16 such contaminants shall be established by the Secretary to be no
17 less stringent than may be reasonable and prudent to protect
18 drinking water or any other beneficial use. Where the concen-
19 tration of a certain constituent exceeds such standards due to
20 natural conditions, the natural concentration is the standard for
21 that constituent. Where the concentration of a certain constitu-
22 ent exceeds such standard due to human-induced contamina-
23 tion, no further contamination by that constituent is allowed and
24 every reasonable effort shall be made to identify, remove or
25 mitigate the source of such contamination and to strive where
26 practical to reduce the level of contamination over time to
27 support drinking water use.

28 (c) The standards of purity and quality for groundwater
29 promulgated by the Secretary shall recognize the degree to
30 which groundwater is hydrologically connected with surface
31 water and other groundwater and such standards shall provide
32 protection for such surface water and other groundwater.

33 (d) In the promulgation of such standards the Secretary
34 shall consult with the Department of Agriculture and the
35 Bureau for Public Health, as appropriate.

36 (e) Any groundwater standard that is in effect on the
37 effective date of this article shall remain in effect until modified
38 by the Secretary. Notwithstanding any other provisions of this
39 code to the contrary, the authority of the Secretary to adopt
40 standards of purity and quality for groundwater granted by the
41 provisions of this article is exclusive, and to the extent that any
42 other provisions of this code grant such authority to any person,
43 body, agency or entity other than the Secretary, those other
44 provisions are void.

CHAPTER 22B. ENVIRONMENTAL BOARDS.**ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.****§22B-3-2. Authority of board; additional definitions.**

1 (a) In addition to all other powers and duties of the Envi-
2 ronmental Quality Board, as prescribed in this chapter or
3 elsewhere by law, the Board may receive any money as a result
4 of the resolution of any case on appeal which shall be deposited
5 in the State Treasury to the credit of the Water Quality Manage-
6 ment Fund created pursuant to section ten, article eleven,
7 chapter twenty-two of this code.

8 (b) All the terms defined in section three, article eleven,
9 chapter twenty-two of this code are applicable to this article and
10 have the meanings ascribed to them therein.

CHAPTER 247

**(Com. Sub. for H. B. 3208 — By Delegates Trump,
Michael, Mahan, Campbell and Ashley)**

[Passed April 9, 2005; in effect ninety days from passage.]

[Approved by the Governor on May 4, 2005.]

AN ACT to amend and reenact §24-6-6b of the Code of West Virginia, 1931, as amended, relating to the wireless enhanced 911 fee; raising the fee; earmarking ten cents to the fee for the State Police; earmarking one million dollars of the fee for the construction of wireless towers; creating the Enhanced 911 Wireless Tower Assistance Fund to be administered by the Public Service Commission; authorizing the Commission to provide loans and matching grants; use of towers for emergency services; authoriz-

ing the Commission to promulgate rules and emergency rules; adjusting the formula by which the Public Service Commission distributes wireless enhanced 911 fees to the counties; and allowing counties which consolidate government services to receive one percent of fee for each county consolidated.

Be it enacted by the Legislature of West Virginia:

That §24-6-6b of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-6b. Wireless enhanced 911 fee.

1 (a) Beginning on the first day of January, one thousand nine
2 hundred ninety-eight, all CMRS providers, as defined in section
3 two of this article, shall, on a monthly basis, collect from each
4 of their in-state two-way service subscribers a wireless en-
5 hanced 911 fee. No later than the first day of August, one
6 thousand nine hundred ninety-eight, the Public Service Com-
7 mission, shall, after the receipt of comments and the consider-
8 ation of evidence presented at a hearing, issue an order which
9 directs the CMRS providers regarding all relevant details of
10 wireless enhanced 911 fee collection, including the determina-
11 tion of who is considered an in-state two-way service subscriber
12 and which shall specify how the CMRS providers shall deal
13 with fee collection shortfalls caused by uncollectible accounts.
14 The Public Service Commission shall solicit the views of the
15 wireless telecommunications utilities prior to issuing the order.

16 (b) The wireless enhanced 911 fee is three dollars per
17 month for each valid retail commercial mobile radio service
18 subscription, as that term is defined by the Public Service
19 Commission in its order issued under subsection (a) of this
20 section: *Provided*, That beginning on the first day of July, two
21 thousand five, the wireless enhanced 911 fee shall include ten

22 cents to be distributed to the West Virginia State Police to be
23 used for equipment upgrades for improving and integrating
24 their communication efforts with those of the enhanced 911
25 systems: *Provided, however,* That for the fiscal year beginning
26 on the first day of July, two thousand five, and for every fiscal
27 year thereafter, one million dollars of the wireless enhanced 911
28 fee shall be distributed by the Public Service Commission to
29 subsidize the construction of towers. The moneys shall be
30 deposited in a fund administered by the West Virginia Public
31 Service Commission, entitled "Enhanced 911 wireless Tower
32 Access Assistance Fund", and shall be expended in accordance
33 with an enhanced 911 wireless tower access matching grant
34 order adopted by the Public Service Commission. The Commis-
35 sion order shall contain terms and conditions designed to
36 provide financial assistance loans or grants to state agencies,
37 political subdivisions of the state and wireless telephone
38 carriers for the acquisition, equipping and construction of new
39 wireless towers, which would provide enhanced 911 service
40 coverage, and which would not be available otherwise due to
41 marginal financial viability of the applicable tower coverage
42 area: *Provided further,* That the grants shall be allocated among
43 potential sites based on application from county commissions
44 demonstrating the need for enhanced 911 wireless coverage in
45 specific areas of this state. Any tower constructed with assis-
46 tance from the fund created by this subdivision shall be
47 available for use by emergency services, fire departments and
48 law-enforcement agencies communication equipment, so long
49 as that use does not interfere with the carrier's wireless signal:
50 *And provided further,* That the Public Service Commission
51 shall promulgate rules in accordance with article three, chapter
52 twenty-nine-a of this code to effectuate the provisions of this
53 subsection. The Public Service Commission is specifically
54 authorized to promulgate emergency rules.

55 (c) Beginning in the year one thousand nine hundred
56 ninety-seven, and every two years thereafter, the Public Service

57 Commission shall conduct an audit of the wireless enhanced
58 911 fee and shall recalculate the fee so that it is the weighted
59 average rounded to the nearest penny, as of the first day of
60 March of the respecification year, of all of the enhanced 911
61 fees imposed by the counties which have adopted an enhanced
62 911 ordinance: *Provided*, That the wireless enhanced 911 fee
63 may never be increased by more than twenty-five percent of its
64 value at the beginning of the respecification year: *Provided*,
65 *however*, That the fee may never be less than the amount set in
66 subsection (b) of this section: *Provided further*, That beginning
67 on the first day of July, two thousand five, the wireless en-
68 hanced 911 fee shall include ten cents to be distributed to the
69 West Virginia State Police to be used for equipment upgrades
70 for improving and integrating their communication efforts with
71 those of the enhanced 911 systems: *And provided further*, That
72 beginning on the first day of July, two thousand five, one
73 million dollars of the wireless enhanced 911 fee shall be
74 distributed by the Public Service Commission to subsidize the
75 construction of wireless towers as specified in subsection (b) of
76 this section.

77 (d) The CMRS providers shall, after retaining a three
78 percent billing fee, send the wireless enhanced 911 fee moneys
79 collected, on a monthly basis, to the Public Service Commis-
80 sion. The Public Service Commission shall, on a quarterly and
81 approximately evenly staggered basis, disburse the fee revenue
82 in the following manner:

83 (1) Each county that does not have a 911 ordinance in effect
84 as of the original effective date of this section in the year one
85 thousand nine hundred ninety-seven or has enacted a 911
86 ordinance within the five years prior to the original effective
87 date of this section in the year one thousand nine hundred
88 ninety-seven, shall receive eight and one half tenths of one
89 percent of the fee revenues received by the Public Service
90 Commission: *Provided*, That after the effective date of this

91 section, in the year two thousand five, when two or more
92 counties consolidate into one county to provide government
93 services, the consolidated county shall receive one percent of
94 the fee revenues received by the Public Service Commission for
95 itself and for each county merged into the consolidated county.
96 Each county shall receive eight and one half tenths of one
97 percent of the remainder of the fee revenues received by the
98 Public Service Commission: *Provided, however,* That after the
99 effective date of this section, in the year two thousand five,
100 when two or more counties consolidate into one county to
101 provide government services, the consolidated county shall
102 receive one percent of the fee revenues received by the Public
103 Service Commission for itself and for each county merged into
104 the consolidated county. Then, from any moneys remaining,
105 each county shall receive a pro rata portion of that remainder
106 based on that county's population as determined in the most
107 recent decennial census as a percentage of the state total
108 population. The Public Service Commission shall recalculate
109 the county disbursement percentages on a yearly basis, with the
110 changes effective on the first day of July, and using data as of
111 the preceding first day of March. The public utilities which
112 normally provide local exchange telecommunications service
113 by means of lines, wires, cables, optical fibers or by other
114 means extended to subscriber premises shall supply the data to
115 the Public Service Commission on a county specific basis no
116 later than the first day of June of each year;

117 (2) Counties which have an enhanced 911 ordinance in
118 effect shall receive their share of the wireless enhanced 911 fee
119 revenue for use in the same manner as the enhanced 911 fee
120 revenues received by those counties pursuant to their enhanced
121 911 ordinances;

122 (3) The Public Service Commission shall deposit the
123 wireless enhanced 911 fee revenue for each county which does
124 not have an enhanced 911 ordinance in effect into an escrow

125 account which it has established for that county. Any county
126 with an escrow account may, immediately upon adopting an
127 enhanced 911 ordinance, receive the moneys which have
128 accumulated in the escrow account for use as specified in
129 subdivision (2), subsection (d) of this section: *Provided*, That
130 a county that adopts a 911 ordinance after the original effective
131 date of this section in the year one thousand nine hundred
132 ninety-seven or has adopted a 911 ordinance within five years
133 of the original effective date of this section in the year one
134 thousand nine hundred ninety-seven, shall continue to receive
135 one percent of the total 911 fee revenue for a period of five
136 years following the adoption of the ordinance. Thereafter, each
137 county shall receive that county's eight and one half tenths of
138 one percent of the remaining fee revenue, plus that county's
139 additional pro rata portion of the fee revenues then remaining,
140 based on that county's population as determined in the most
141 recent decennial census as a percentage of the state total
142 population: *Provided, however*, That every five years from the
143 year one thousand nine hundred ninety-seven, all fee revenue
144 residing in escrow accounts shall be disbursed on the pro rata
145 basis specified in subdivision (1), subsection (d) of this section,
146 except that data for counties without enhanced 911 ordinances
147 in effect shall be omitted from the calculation and all escrow
148 accounts shall begin again with a zero balance.

149 (e) CMRS providers have the same rights and responsibili-
150 ties as other telephone service suppliers in dealing with the
151 failure by a subscriber of a CMRS provider to timely pay the
152 wireless enhanced 911 fee.

153 (f) Notwithstanding the provisions of section one-a of this
154 article, for the purposes of this section, the term "county" means
155 one of the counties provided in section one, article one, chapter
156 one of this code.

157 (g) From any funds distributed to a county pursuant to this
158 section, a total of three percent shall be set aside in a special

159 fund to be used exclusively for the purchase of equipment that
160 will provide information regarding the x and y coordinates of
161 persons who call an emergency telephone system through a
162 commercial mobile radio service: *Provided*, That upon purchase
163 of the necessary equipment, the special fund shall be dissolved
164 and any surplus shall be used for general operation of the
165 emergency telephone system as may otherwise be provided by
166 law.

CHAPTER 248

(S. B. 744 — By Senators Kessler, Dempsey, Fanning, Foster,
Hunter Jenkins, Minard, Oliverio, White, Barnes, Caruth,
Harrison, Lanham, McKenzie and Weeks)

[Passed April 7, 2005; in effect July 1, 2005.]

[Approved by the Governor on April 21, 2005.]

AN ACT to amend and reenact §23-4-2 of the Code of West Virginia, 1931, as amended, relating to clarifying the criteria for an employee to sustain a lawsuit for intentional injury.

Be it enacted by the Legislature of West Virginia:

That §23-4-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-2. Disbursement where injury is self-inflicted or intentionally caused by employer; legislative declarations and findings; “deliberate intention” defined.

1 (a) Notwithstanding anything contained in this chapter, no
2 employee or dependent of any employee is entitled to receive
3 any sum from the Workers' Compensation Fund, from a self-
4 insured employer or otherwise under the provisions of this
5 chapter on account of any personal injury to or death to any
6 employee caused by a self-inflicted injury or the intoxication of
7 the employee. Upon the occurrence of an injury which the
8 employee asserts, or which reasonably appears to have,
9 occurred in the course of and resulting from the employee's
10 employment, the employer may require the employee to
11 undergo a blood test for the purpose of determining the exis-
12 tence or nonexistence of evidence of intoxication pursuant to
13 rules for the administration of the test promulgated by the board
14 of managers: *Provided*, That the employer must have a reason-
15 able and good faith objective suspicion of the employee's
16 intoxication and may only test for the purpose of determining
17 whether the person is intoxicated.

18 (b) For the purpose of this chapter, the commission may
19 cooperate with the Office of Miners' Health, Safety and
20 Training and the state division of labor in promoting general
21 safety programs and in formulating rules to govern hazardous
22 employments.

23 (c) If injury or death result to any employee from the
24 deliberate intention of his or her employer to produce the injury
25 or death, the employee, the widow, widower, child or dependent
26 of the employee has the privilege to take under this chapter and
27 has a cause of action against the employer, as if this chapter had
28 not been enacted, for any excess of damages over the amount
29 received or receivable in a claim for benefits under this chapter,
30 whether filed or not.

31 (d) (1) It is declared that enactment of this chapter and the
32 establishment of the workers' compensation system in this
33 chapter was and is intended to remove from the common law

34 tort system all disputes between or among employers and
35 employees regarding the compensation to be received for injury
36 or death to an employee except as expressly provided in this
37 chapter and to establish a system which compensates even
38 though the injury or death of an employee may be caused by his
39 or her own fault or the fault of a coemployee; that the immunity
40 established in sections six and six-a, article two of this chapter
41 is an essential aspect of this workers' compensation system;
42 that the intent of the Legislature in providing immunity from
43 common lawsuit was and is to protect those immunized from
44 litigation outside the workers' compensation system except as
45 expressly provided in this chapter; that, in enacting the immu-
46 nity provisions of this chapter, the Legislature intended to
47 create a legislative standard for loss of that immunity of more
48 narrow application and containing more specific mandatory
49 elements than the common law tort system concept and
50 standard of willful, wanton and reckless misconduct; and that
51 it was and is the legislative intent to promote prompt judicial
52 resolution of the question of whether a suit prosecuted under the
53 asserted authority of this section is or is not prohibited by the
54 immunity granted under this chapter.

55 (2) The immunity from suit provided under this section and
56 under sections six and six-a, article two of this chapter may be
57 lost only if the employer or person against whom liability is
58 asserted acted with "deliberate intention". This requirement
59 may be satisfied only if:

60 (i) It is proved that the employer or person against whom
61 liability is asserted acted with a consciously, subjectively and
62 deliberately formed intention to produce the specific result of
63 injury or death to an employee. This standard requires a
64 showing of an actual, specific intent and may not be satisfied by
65 allegation or proof of: (A) Conduct which produces a result that
66 was not specifically intended; (B) conduct which constitutes
67 negligence, no matter how gross or aggravated; or (C) willful,
68 wanton or reckless misconduct; or

69 (ii) The trier of fact determines, either through specific
70 findings of fact made by the court in a trial without a jury, or
71 through special interrogatories to the jury in a jury trial, that all
72 of the following facts are proven:

73 (A) That a specific unsafe working condition existed in the
74 workplace which presented a high degree of risk and a strong
75 probability of serious injury or death;

76 (B) That the employer, prior to the injury, had actual
77 knowledge of the existence of the specific unsafe working
78 condition and of the high degree of risk and the strong probabili-
79 ty of serious injury or death presented by the specific unsafe
80 working condition;

81 (C) That the specific unsafe working condition was a
82 violation of a state or federal safety statute, rule or regulation,
83 whether cited or not, or of a commonly accepted and well-
84 known safety standard within the industry or business of the
85 employer, as demonstrated by competent evidence of written
86 standards or guidelines which reflect a consensus safety
87 standard in the industry or business, which statute, rule,
88 regulation or standard was specifically applicable to the
89 particular work and working condition involved, as contrasted
90 with a statute, rule, regulation or standard generally requiring
91 safe workplaces, equipment or working conditions;

92 (D) That notwithstanding the existence of the facts set forth
93 in subparagraphs (A) through (C), inclusive, of this paragraph,
94 the employer nevertheless intentionally thereafter exposed an
95 employee to the specific unsafe working condition; and

96 (E) That the employee exposed suffered serious compensa-
97 ble injury or compensable death as defined in section one,
98 article four, chapter twenty-three whether a claim for benefits
99 under this chapter is filed or not as a direct and proximate result
100 of the specific unsafe working condition.

101 (iii) In cases alleging liability under the provisions of
102 paragraph (ii) of this subdivision:

103 (A) No punitive or exemplary damages shall be awarded to
104 the employee or other plaintiff;

105 (B) Notwithstanding any other provision of law or rule to
106 the contrary, and consistent with the legislative findings of
107 intent to promote prompt judicial resolution of issues of
108 immunity from litigation under this chapter, the court shall
109 dismiss the action upon motion for summary judgment if it
110 finds, pursuant to rule 56 of the rules of civil procedure that one
111 or more of the facts required to be proved by the provisions of
112 subparagraphs (A) through (E), inclusive, paragraph (ii) of this
113 subdivision do not exist, and the court shall dismiss the action
114 upon a timely motion for a directed verdict against the plaintiff
115 if after considering all the evidence and every inference
116 legitimately and reasonably raised thereby most favorably to
117 the plaintiff, the court determines that there is not sufficient
118 evidence to find each and every one of the facts required to be
119 proven by the provisions of subparagraphs (A) through (E),
120 inclusive, paragraph (ii) of this subdivision; and

121 (C) The provisions of this paragraph and of each subpara-
122 graph thereof are severable from the provisions of each other
123 subparagraph, subsection, section, article or chapter of this code
124 so that if any provision of a subparagraph of this paragraph is
125 held void, the remaining provisions of this act and this code
126 remain valid.

127 (e) The reenactment of this section in the regular session of
128 the Legislature during the year one thousand nine hundred
129 eighty-three does not in any way affect the right of any person
130 to bring an action with respect to or upon any cause of action
131 which arose or accrued prior to the effective date of the
132 reenactment.

133 (f) The amendments to this section enacted during the two
134 thousand five session of the Legislature shall apply to all
135 injuries occurring and all actions filed on or after the first day
136 of July, two thousand five.

CHAPTER 249

(H. B. 2510 — By Delegates Frederick, Stalnaker,
Walters, Rowan and Cann)

[Passed March 23, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 1, 2005.]

AN ACT to amend and reenact §18B-3D-4 of the Code of West Virginia, 1931, as amended, relating to the Workforce Development Initiative generally; and providing that public sector employers may participate in the initiative under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §18B-3D-4 of the Code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-4. Grant application procedures.

- 1 (a) In order to participate in the Workforce Development
- 2 Initiative Grant Program, a community and technical college
- 3 must meet the following conditions:

4 (1) Participate in a community and technical college
5 consortia as required by article three-c of this chapter. Consor-
6 tia representatives shall participate in the development of and
7 approve applications for funding grants under the provisions of
8 this article and shall approve the Workforce Development
9 Initiative budget;

10 (2) Develop a plan to achieve measurable improvements in
11 the quality of the workforce within its service area over a
12 five-year period. The plan must be developed in partnership
13 with employers, local vocational schools and other workforce
14 education providers; and

15 (3) Establish a special revolving fund under the jurisdiction
16 of the community and technical college consortia dedicated
17 solely to workforce development initiatives for the purposes
18 provided in this article. Any fees or revenues generated from
19 Workforce Development Initiatives funded by a competitive
20 grant shall be deposited into this fund.

21 (b) To be eligible to receive a Workforce Development
22 Initiative Grant, a community and technical college must
23 provide at least the following information in its application:

24 (1) Identification of the specific business or business sector
25 training needs that will be met if a Workforce Development
26 Initiative Grant is received;

27 (2) A commitment from the private or public sector partner
28 or partners to provide a match of one dollar, cash and in-kind,
29 for each dollar of state grant money received except in cases
30 where the community and technical college can demonstrate in
31 the grant application that it would be a hardship for the private
32 sector partner or partners being served to provide the match. In
33 those cases only, the commitment to provide a match may be
34 reduced to one dollar provided by the private sector partner or
35 partners, cash and in-kind, for every three dollars of state grant

36 money provided. In the case of awards for the modernization
37 of procurement of equipment, the development office may
38 establish a separate match requirement of up to one dollar, cash
39 and in-kind, for each dollar of state grant money received.
40 Beginning in fiscal year 2006, the commitment required by this
41 subdivision may be provided by a public sector partner using
42 state or federal dollars to provide the required match: *Provided,*
43 That no public sector partner using state or federal dollars to
44 provide the required match is eligible for a grant under the
45 provisions of this section unless the amount of funding pro-
46 vided by the Legislature for the workforce development
47 initiative in that fiscal year exceeds six hundred fifty thousand
48 dollars: *Provided, however,* That if the amount of funding
49 provided by the Legislature for the workforce investment
50 initiative in a fiscal year exceeds six hundred fifty thousand
51 dollars, only one half of that amount exceeding six hundred
52 fifty thousand dollars may be granted to a qualified applicant
53 whose commitment of the required match is from a public
54 sector partner using state or federal dollars to provide the
55 match;

56 (3) An agreement to share with other community and
57 technical colleges any curricula developed using funds from a
58 workforce development initiative grant;

59 (4) A specific plan showing how the community and
60 technical college will collaborate with local post-secondary
61 vocational institutions to maximize the use of existing facilities,
62 personnel and equipment; and

63 (5) An acknowledgment that acceptance of a grant under
64 the provisions of this article commits the community and
65 technical college and its consortia committee to such terms,
66 conditions and deliverables as is specified by the development
67 office in the request for applications, including, but not limited
68 to, the measures by which the performance of the workforce
69 development initiative will be evaluated.

70 (c) Applications submitted by community and technical
71 colleges may be awarded funds for programs which meet the
72 requirements of this article that are operated on a collaborative
73 basis at facilities under the jurisdiction of the public schools
74 and utilized by both secondary and post-secondary students.

CHAPTER 250

(S. B. 222 — By Senators Unger, Kessler, McCabe,
Sprouse, Minard, Sharpe and Foster)

[Passed March 29, 2005; in effect ninety days from passage.]

[Approved by the Governor on April 19, 2005.]

AN ACT to amend and reenact §5B-2B-3 of the Code of West Virginia, 1931, as amended, relating to the membership of the West Virginia Workforce Investment council.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2B. WEST VIRGINIA WORKFORCE INVESTMENT ACT.

§5B-2B-3. West Virginia Workforce Investment Council; membership of Board; meetings; quorum requirements.

1 (a) The West Virginia Workforce Investment Council is
2 hereby created and shall serve as the state's Workforce Invest-
3 ment Board, as required by the federal Workforce Investment
4 Act, 29 U. S. C. §2801, *et seq.* The Council shall make

5 general recommendations regarding workforce investment in
6 the state to the Governor and the Legislature.

7 (b) The Council may consist of no more than thirty-nine
8 members, including ex officio members.

9 (c) The Governor shall appoint, with the advice and consent
10 of the Senate, members to the Council according to the follow-
11 ing criteria:

12 (1) Representatives of business in the state, including at
13 least one representing the tourism industry, who are:

14 (A) Owners of businesses, chief executive officers, chief
15 operating officers of business and other business executives or
16 employers with optimum policy-making or hiring authority,
17 including members of regional workforce investment boards;

18 (B) Representatives of businesses having employment
19 opportunities that reflect the employment opportunities of the
20 state; and

21 (C) Individuals nominated by state business organizations
22 and business trade associations;

23 (2) No more than two members who are members of the
24 Council for Community and Technical College Education;

25 (3) Two members who are members of the West Virginia
26 Council for Community and Economic Development;

27 (4) Two members who are chief elected officials represent-
28 ing cities and counties;

29 (5) Two members who represent individuals and organiza-
30 tions having experience and expertise in the delivery of
31 workforce investment programs, including one chief executive
32 officer of a community and technical college and one chief

33 executive officer of a community-based organization operating
34 in the state;

35 (6) Two members who represent individuals and organiza-
36 tions having experience in youth activities, including at least
37 one youth from a post-secondary education institution; and

38 (7) Two members who represent labor organizations in the
39 state who have been nominated by state labor federations.

40 (d) The following shall serve on the Council as ex officio
41 members:

42 (1) The Governor, or his or her designee;

43 (2) The Superintendent of the Department of Education, or
44 his or her designee;

45 (3) The Director of the Division of Rehabilitation Services,
46 or his or her designee: *Provided*, That the designee has policy-
47 making authority over a workforce investment program within
48 the Division of Rehabilitation Services;

49 (4) The Commissioner of the Bureau of Senior Services, or
50 his or her designee: *Provided*, That the designee has policy-
51 making authority over a workforce investment program within
52 the Bureau of Senior Services;

53 (5) The Commissioner of the Bureau of Employment
54 Programs, or his or her designee: *Provided*, That the designee
55 has policy-making authority over a workforce investment
56 program within the Bureau of Employment Programs;

57 (6) The Director of the Division of Veterans' Affairs, or his
58 or her designee: *Provided*, That the designee has policy-making
59 authority over a workforce investment program within the
60 Division of Veterans' Affairs;

61 (7) The Executive Director of the West Virginia Develop-
62 ment Office;

63 (8) The Secretary of the Department of Health and Human
64 Resources, or his or her designee: *Provided*, That the designee
65 has policy-making authority over a workforce investment
66 program within the Department of Health and Human Re-
67 sources;

68 (9) The Chancellor of the West Virginia Council for
69 Community and Technical College Education; and

70 (10) The Chancellor for Higher Education.

71 (e) The Speaker of the House of Delegates shall appoint
72 two members of the House of Delegates to serve on the
73 Council, as nonvoting members.

74 (f) The President of the Senate shall appoint two members
75 of the Senate to serve on the Council, as nonvoting members.

76 (g) The Governor shall appoint a Chair and Vice Chair for
77 the Council from among the members appointed pursuant to
78 subdivision (1), subsection (c) of this section.

79 (h) Initial terms for appointed members of the Council are
80 for up to three years as determined by the Governor. All
81 subsequent terms are for three years.

82 (i) The Council shall meet at least quarterly and appointed
83 members of the Council may be reimbursed for reasonable
84 expenses incurred within the scope of their service on the
85 Council.

86 (j) A majority of the members of the Council constitute a
87 quorum: *Provided*, That a majority of the members making the
88 quorum are members appointed pursuant to subdivision (1),
89 subsection (c) of this section.

90 (k) The Council may create subcommittees to carry out any
91 of its duties. Quorum requirements required by subsection (j)
92 of this section also apply to subcommittees.

93 (l) No member of the Council may:

94 (1) Vote on a matter under consideration by the Council:

95 (A) Regarding the provision of services by the member or
96 by an entity that the member represents; or

97 (B) That would provide direct financial benefit to the
98 member or the immediate family of the member; or

99 (2) Engage in any other activity determined by the Gover-
100 nor to constitute a conflict of interest as specified in the
101 strategic five-year state Workforce Investment Plan.

CHAPTER 251

(Com. Sub. for S. B. 522 — By Senators Lanham and Facemyer)

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on April 22, 2005.]

AN ACT to extend the time for the city council of Hurricane to meet as a levying body for the purpose of presenting to the voters of the city of Hurricane an election to continue an additional city levy to maintain the level of funding for the street department and the police department from between the seventh and twenty-eighth days of March and the third Tuesday in April until the thirty-first day of May, two thousand five.

Be it enacted by the Legislature of West Virginia:

**THE CITY COUNCIL OF HURRICANE MEETING AS A LEVYING BODY
EXTENDED.**

**§1. Extending time for the city of Hurricane to meet as a levying
body for election of additional levies to maintain the level
of funding for the street department and the police
department.**

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the Code of West Virginia, one thousand nine
3 hundred thirty-one, as amended, to the contrary, the city council
4 of Hurricane is hereby authorized to extend the time for its
5 meeting as a levying body and certifying its actions to the State
6 Tax Commissioner and the State Auditor from between the
7 seventh and twenty-eighth days of March and the third Tuesday
8 in April until the thirty-first day of May, two thousand five, for
9 the purpose of submitting to the voters of the city of Hurricane
10 the continuation of an additional city levy to maintain the level
11 of funding for the street department and the police department
12 where necessary.

CHAPTER 252

(S. B. 166 — By Senator Tomblin, Mr. President)

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on April 28, 2005.]

AN ACT authorizing the Department of Administration to sell 2.25
acres of land, together with the improvements thereon, situate at
Crites, on Buffalo Creek, in Triadelphia tax district, Logan
County.

Be it enacted by the Legislature of West Virginia:

**SALE OF 2.25 ACRES OF LAND SITUATE ON BUFFALO CREEK,
TRIADELPHIA DISTRICT, LOGAN COUNTY, WEST VIRGINIA.**

§1. Land sale; description.

1 (a) The Secretary of Administration may solicit interest in,
2 enter into a contract for sale by auction and sell and convey, for
3 good and valuable consideration as negotiated by the Secretary
4 of Administration, all of that certain tract or parcel of land,
5 together with the improvements thereon and the appurtenances
6 thereunto belonging, including the right of access, ingress and
7 egress, to and from Logan County Route 16, containing 2.25
8 acres, more or less, situate at Crites, on Buffalo Creek, in
9 Triadelphia tax district, Logan County, West Virginia. The
10 property is more accurately bounded and described in a deed
11 dated the tenth day of June, one thousand nine hundred seventy-
12 six, from the West Virginia Division of Highways to the State
13 of West Virginia for the use and benefit of the Department of
14 Finance and Administration of said state and recorded in the
15 office of the clerk of the county commission of Logan County,
16 West Virginia, in deed book 384, at page 84. Any sale and
17 conveyance of this property is subject to all restrictions,
18 reservations, exceptions, rights-of-way, easements, utilities,
19 covenants, leases, exclusions and other matters duly of record
20 affecting the subject property.

21 (b) The money from the sale of the property shall be
22 deposited in a special fund of the Department of Administration
23 to be used for State Capitol Complex improvements and
24 renovations.

25 (c) The Secretary of Administration may use an auction
26 service to sell the property by oral, silent or internet auction,
27 with the usual and customary cost of the auction, as defined by
28 the conventions of the auction service, to be paid from the
29 proceeds of the sale or by the buyer depending on the conven-
30 tions of the auction service at the time of the closing sale.

31 (d) The property shall have a total reserve price or mini-
32 mum bid, set by the Secretary of Administration, for sale and
33 conveyance of the property, regardless of the appraised value.

34 (e) The sale by auction shall take place at least once a year
35 until the property is successfully sold.

36 (f) In the event of sale by auction, no commissions will be
37 paid to a real estate broker who was engaged by the Secretary
38 of Administration to sell the property.

39 (g) Notwithstanding anything in the Code of West Virginia,
40 1931, as amended, to the contrary, the provisions of this section
41 prevail.

CHAPTER 253

(H. B. 3347 — By Delegates Proudfoot and Hartman)

[Passed March 28, 2005; in effect from passage.]

[Approved by the Governor on April 18, 2005.]

AN ACT to extend the time for the County Commission of Pocahontas County to meet as a levying body for the purpose of transacting business generally and particularly the business of laying the regular county levy to maintain and provide for a county budget.

Be it enacted by the Legislature of West Virginia:

THE COUNTY COMMISSION OF POCAHONTAS COUNTY.

§1. Extension of time for County Commission of Pocahontas County to meet as levying body.

1 Notwithstanding the provisions of article eight, chapter
2 eleven of the Code of West Virginia, one thousand nine
3 hundred thirty-one, as amended, to the contrary, the County
4 Commission of Pocahontas County is hereby authorized to
5 extend the time to meet as a levying body for the purpose of
6 transacting business generally and particularly the business of
7 laying the regular county levy to maintain and provide for a
8 county budget from between the seventh and twenty-eighth
9 days of March until the second day of May, two thousand five.

CHAPTER 254

(Com. Sub. for H. B. 2812 — By Delegates Williams and Stevens)

[Passed April 9, 2005; in effect from passage.]

[Approved by the Governor on May 3, 2005.]

AN ACT to extend the time for the Board of Education of Preston County to meet as a levying body for the purpose of presenting to the voters of Preston County an election on the question of enacting a special levy for school funding from between the seventh and twenty-eighth days of March and the third Tuesday in April until the ninth day of May, two thousand five.

Be it enacted by the Legislature of West Virginia:

**PRESTON COUNTY SCHOOL BOARD MEETING AS LEVYING BODY
EXTENDED.**

**§1. Extending time for the Preston County School Board to meet
as levying body for an election enacting a special levy for
school funding.**

1 Notwithstanding the provision of article eight, chapter
2 eleven of the Code of West Virginia, 1931, as amended, the
3 Board of Education of Preston County, West Virginia, is hereby
4 authorized to extend the time for its meeting as a levying body,
5 setting the levy rate and certifying its actions to the State Tax
6 Commissioner from between the seventh and twenty-eighth
7 days of March and the third Tuesday in April until the ninth day
8 of May, two thousand five, for the purpose of submitting to the
9 voters of Preston County the question of enacting a special levy
10 for school funding.

CHAPTER 255

(S. B. 411 — By Senators Kessler and Edgell)

[Passed March 18, 2005; in effect from passage.]

[Approved by the Governor on March 31, 2005.]

AN ACT to extend the time for the county commission of Tyler County, West Virginia, to meet as a levying body for the purpose of presenting to the voters of the county an election on the question of authorizing the excess levy for vital public services in Tyler County from between the seventh and twenty-eighth days of March until the second Monday of April, two thousand five.

Be it enacted by the Legislature of West Virginia:

TYLER COUNTY COMMISSION MEETING AS LEVYING BODY EXTENDED.

§1. Extending time for the Tyler County Commission to meet as a levying body for an election authorizing an excess levy for vital public service.

1 Notwithstanding the provision of article eight, chapter
2 eleven of the Code of West Virginia, 1931, as amended, the
3 county commission of Tyler County, West Virginia, is hereby
4 authorized to extend the time for its meeting as a levying body,
5 setting the levy rate and certifying its actions to the state Tax
6 Commissioner from between the seventh and twenty-eighth day
7 of March until the second Monday in April, two thousand five,
8 for the purpose of submitting to the voters of Tyler County the
9 question of authorizing an excess levy for vital public service.

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2005

CHAPTER 1

**(Com. Sub. for S. B. 1003 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed January 29, 2005; in effect July 1, 2005.]
[Approved by the Governor on February 10, 2005.]

AN ACT to amend and reenact §6B-1-3 of the Code of West Virginia, 1931, as amended; to amend said Code by adding thereto a new section, designated §6B-1-6; to amend and reenact §6B-2-1, §6B-2-2, §6B-2-4, §6B-2-5, §6B-2-7, §6B-2-9 and §6B-2-10 of said Code; to amend said Code by adding thereto three new sections, designated §6B-2-2a, §6B-2-3a and §6B-2-5b; to amend and reenact §6B-3-1, §6B-3-2, §6B-3-3a, §6B-3-4 and §6B-3-7 of

said code; and to amend said code by adding thereto three new sections, designated §6B-3-3b, §6B-3-3c and §6B-3-11, all relating generally to the ethical standards of public officers, employees and lobbyists; providing a definition of certain terms; creating a special revenue account; clarifying membership qualifications for the West Virginia Ethics Commission; modifying compensation and procedure for meetings of the West Virginia Ethics Commission; revising the powers, duties and authority of the Commission; providing for procedures with respect to the filing of complaints against persons subject to said chapter, the determination of probable cause that a violation of this chapter has occurred and the conduct of hearings with respect thereto; establishing the Probable Cause Review Board; providing for appointment, powers and duties; providing for confidentiality requirements as to Commission members and staff, complainants and informants; establishing prohibition against certain Commission members and staff for commenting on Commission proceedings; altering sanctions that Commission may impose; providing immunity for good faith complainants and sanctions for bad faith filings; referral of criminal conduct to prosecutor; limitations on filing complaints; altering statute of limitations; clarifying use of public office for private gain; permitting solicitation of certain donations by members of the Board of Public Works; providing ethical standards for elected and appointed officials as well as certain public employees; prohibiting public officials and employees from receiving double compensation in certain circumstances; modifying penalties; providing for ethics training for certain public officials and employees; revising the contents of financial disclosure statements required of certain public officials and public employees; providing for the appointment of special prosecutors in certain cases; providing for penalties for violations of said chapter; providing definitions of certain terms related to lobbyists; providing for registration and reporting requirements for lobbyists; modifying registration fees for lobbyists; clarifying conflict of interests related to lobbying activities; providing for a

lobbyist training course; providing for reporting requirements for lobbyists; altering duties of lobbyists and defining certain acts which are violations; and providing for random compliance audits of lobbyists and their employers.

Be it enacted by the Legislature of West Virginia:

That §6B-1-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §6B-1-6; that §6B-2-1, §6B-2-2, §6B-2-4, §6B-2-5, §6B-2-7, §6B-2-9 and §6B-2-10 of said code be amended and reenacted; that said code be amended by adding thereto three new sections, designated §6B-2-2a, §6B-2-3a and §6B-2-5b; that §6B-3-1, §6B-3-2, §6B-3-3a, §6B-3-4 and §6B-3-7 of said code be amended and reenacted; and that said code be amended by adding thereto three new sections, designated §6B-3-3b, §6B-3-3c and §6B-3-11, all to read as follows:

Article

1. **Short Title; Legislative Findings, Purpose and Intent; construction and Application of Chapter; Severability.**
2. **West Virginia Ethics Commission; Powers and Duties; Disclosure of Financial Interest by Public Officials and Employees; Appearances Before Public Agencies; Code of Conduct for Administration Law Judges.**
3. **Lobbyist.**

ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT; CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.

§6B-1-3. Definitions.

§6B-1-6. Special revenue account.

§6B-1-3. Definitions.

- 1 As used in this chapter, unless the context in which used
- 2 clearly requires otherwise:
- 3 (a) “Review Board” means the Probable Cause Review

4 Board created by section two-a, article two of this chapter.

5 (b) "Compensation" means money, thing of value or
6 financial benefit. The term "compensation" does not include
7 reimbursement for actual reasonable and necessary expenses
8 incurred in the performance of one's official duties.

9 (c) "Employee" means any person in the service of another
10 under any contract of hire, whether express or implied, oral or
11 written, where the employer or an agent of the employer or a
12 public official has the right or power to control and direct such
13 person in the material details of how work is to be performed
14 and who is not responsible for the making of policy nor for
15 recommending official action.

16 (d) "Ethics Commission" or "Commission" means the West
17 Virginia Ethics Commission.

18 (e) "Immediate family", with respect to an individual,
19 means a spouse with whom the individual is living as husband
20 and wife and any dependent child or children, dependent
21 grandchild or grandchildren and dependent parent or parents.

22 (f) "Ministerial functions" means actions or functions
23 performed by an individual under a given state of facts in a
24 prescribed manner in accordance with a mandate of legal
25 authority, without regard to, or without the exercise of, the
26 individual's own judgment as to the propriety of the action
27 being taken.

28 (g) "Person" means an individual, corporation, business
29 entity, labor union, association, firm, partnership, limited
30 partnership, committee, club or other organization or group of
31 persons, irrespective of the denomination given such
32 organization or group.

33 (h) "Political contribution" means and has the same

34 definition as is given that term under the provisions of article
35 eight, chapter three of this code.

36 (i) "Public employee" means any full-time or part-time
37 employee of any state, county or municipal governmental body
38 or any political subdivision thereof, including county school
39 boards.

40 (j) "Public official" means any person who is elected or
41 appointed to any state, county or municipal office or position
42 and who is responsible for the making of policy or takes official
43 action which is either ministerial or nonministerial, or both,
44 with respect to: (1) Contracting for, or procurement of, goods
45 or services; (2) administering or monitoring grants or subsidies;
46 (3) planning or zoning; (4) inspecting, licensing, regulating or
47 auditing any person; or (5) any other activity where the official
48 action has an economic impact of greater than a de minimis
49 nature on the interest or interests of any person.

50 (k) "Respondent" means a person who is the subject of an
51 investigation by the Commission or against whom a complaint
52 has been filed with the Commission.

53 (l) "Thing of value", "other thing of value" or "anything of
54 value" means and includes: (1) Money, bank bills or notes,
55 United States treasury notes and other bills, bonds or notes
56 issued by lawful authority and intended to pass and circulate as
57 money; (2) goods and chattels; (3) promissory notes, bills of
58 exchange, orders, drafts, warrants, checks, bonds given for the
59 payment of money or the forbearance of money due or owing;
60 (4) receipts given for the payment of money or other property;
61 (5) any right or chose in action; (6) chattels real or personal or
62 things which savor of realty and are, at the time taken, a part of
63 a freehold, whether they are of the substance or produce thereof
64 or affixed thereto, although there may be no interval between
65 the severing and the taking away thereof; (7) any interest in
66 realty, including, but not limited to, fee simple estates, life

67 estates, estates for a term or period of time, joint tenancies,
68 cotenancies, tenancies in common, partial interests, present or
69 future interests, contingent or vested interests, beneficial
70 interests, leasehold interests or any other interest or interests in
71 realty of whatsoever nature; (8) any promise of employment,
72 present or future; (9) donation or gift; (10) rendering of services
73 or the payment thereof; (11) any advance or pledge; (12) a
74 promise of present or future interest in any business or contract
75 or other agreement; or (13) every other thing or item, whether
76 tangible or intangible, having economic worth. "Thing of
77 value", "other thing of value" or "anything of value" shall not
78 include anything which is de minimis in nature nor a lawful
79 political contribution reported as required by law.

§6B-1-6. Special revenue account.

1 All moneys collected pursuant to this chapter, except fines
2 imposed pursuant to paragraph (D), subdivision (1), subsection
3 (r), section four, article two of this chapter, shall be deposited
4 in a special account in the state treasury to be known as the
5 West Virginia Governmental Ethics Commission Fund.
6 Expenditures from the fund shall be for the purposes set forth
7 in this chapter and are not authorized from collections but are
8 to be made only in accordance with appropriation by the
9 Legislature and in accordance with the provisions of article
10 three, chapter twelve of this code and upon the fulfillment of
11 the provisions set forth in article two, chapter five-a of this
12 code: *Provided*, That for the fiscal year ending the thirtieth day
13 of June, two thousand five, expenditures are authorized from
14 collections rather than pursuant to an appropriation by the
15 Legislature.

**ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND
DUTIES; DISCLOSURE OF FINANCIAL INTEREST BY
PUBLIC OFFICIALS AND EMPLOYEES;
APPEARANCES BEFORE PUBLIC AGENCIES; CODE
OF CONDUCT FOR ADMINISTRATIVE LAW JUDGES.**

- §6B-2-1. West Virginia Ethics Commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.
- §6B-2-2. Same – General powers and duties.
- §6B-2-2a. Probable Cause Review Board.
- §6B-2-3a. Complaints.
- §6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial review.
- §6B-2-5. Ethical standards for elected and appointed officials and public employees.
- §6B-2-5b. Ethics training requirements.
- §6B-2-7. Financial disclosure statement; contents.
- §6B-2-9. Special prosecutor authorized
- §6B-2-10. Violations and penalties.

§6B-2-1. West Virginia Ethics Commission created; members; appointment, term of office and oath; compensation and reimbursement for expenses; meetings and quorum.

1 (a) There is hereby created the West Virginia Ethics
2 Commission, consisting of twelve members, no more than
3 seven of whom shall be members of the same political party.
4 The members of the Commission shall be appointed by the
5 Governor with the advice and consent of the Senate. Within
6 thirty days of the effective date of this section, the Governor
7 shall make the initial appointments to the Commission. No
8 person may be appointed to the Commission or continue to
9 serve as a member of the Commission who holds elected or
10 appointed office under the government of the United States, the
11 state of West Virginia or any of its political subdivisions, or
12 who is a candidate for any of those offices, who is employed as
13 a registered lobbyist, or who is otherwise subject to the
14 provisions of this chapter other than by reason of his or her
15 appointment to or service on the Commission. A member may
16 contribute to a political campaign, but no member shall hold
17 any political party office or participate in a campaign relating
18 to a referendum or other ballot issue.

19 (b) At least two members of the Commission shall have
20 served as a member of the West Virginia Legislature; at least

21 two members of the Commission shall have been employed in
22 a full-time elected or appointed office in state government; at
23 least one member shall have served as an elected official in a
24 county or municipal government or on a county school board;
25 at least one member shall have been employed full time as a
26 county or municipal officer or employee; and at least two
27 members shall have served part time as a member or director of
28 a state, county or municipal board, commission or public
29 service district and at least four members shall be selected from
30 the public at large. No more than four members of the
31 Commission shall reside in the same congressional district.

32 (c) Of the initial appointments made to the Commission,
33 two shall be for a term ending one year after the effective date
34 of this section, two for a term ending two years after the
35 effective date of this section, two for a term ending three years
36 after the effective date of this section, three for a term ending
37 four years after the effective date of this section and three shall
38 be for terms ending five years after the effective date of this
39 section. Thereafter, terms of office shall be for five years, each
40 term ending on the same day of the same month of the year as
41 did the term which it succeeds. Each member shall hold office
42 from the date of his or her appointment until the end of the term
43 for which he or she was appointed or until his or her successor
44 qualifies for office. When a vacancy occurs as a result of death,
45 resignation or removal in the membership of this Commission,
46 it shall be filled by appointment within thirty days of the
47 vacancy for the unexpired portion of the term in the same
48 manner as original appointments. No member shall serve more
49 than two consecutive full or partial terms and no person may be
50 reappointed to the Commission until at least two years have
51 elapsed after the completion of a second successive term.

52 (d) Each member of the Commission shall take and
53 subscribe to the oath or affirmation required pursuant to section
54 five, article IV of the Constitution of West Virginia. A member

55 may be removed by the Governor for substantial neglect of
56 duty, gross misconduct in office or violation of this chapter,
57 after written notice and opportunity for reply.

58 (e) The Commission shall meet within thirty days of the
59 initial appointments to the Commission at a time and place to
60 be determined by the Governor, who shall designate a member
61 to preside at that meeting until a chairman is elected. At its first
62 meeting, the Commission shall elect a chairman and other
63 officers as are necessary. The Commission shall within ninety
64 days after its first meeting adopt rules for its procedures.

65 (f) Seven members of the Commission shall constitute a
66 quorum, except that when the Commission is sitting as a
67 hearing board pursuant to section four of this article, then five
68 members shall constitute a quorum. Except as may be
69 otherwise provided in this article, a majority of the total
70 membership shall be necessary to act at all times.

71 (g) Members of the Commission shall receive the same
72 compensation and expense reimbursement as is paid to
73 members of the Legislature for their interim duties as
74 recommended by the Citizens Legislative Compensation
75 Commission and authorized by law for each day or portion
76 thereof engaged in the discharge of official duties: *Provided,*
77 That to be eligible for compensation and expense
78 reimbursement, the member must be in personal attendance at
79 the meeting in which the duties are performed.

80 (h) The Commission shall appoint an executive director to
81 assist the Commission in carrying out its functions in
82 accordance with Commission rules and with applicable law.
83 The executive director shall be paid a salary fixed by the
84 Commission or as otherwise provided by law. The Commission
85 shall appoint and discharge counsel and employees and shall fix
86 the compensation of employees and prescribe their duties.

87 Counsel to the Commission shall advise the Commission on all
88 legal matters and on the instruction of the Commission may
89 commence appropriate civil actions: *Provided*, That no counsel
90 shall both advise the Commission and act in a representative
91 capacity in any proceeding.

92 (i) The Commission may delegate authority to the chairman
93 or executive director to act in the name of the Commission
94 between meetings of the Commission, except that the
95 Commission shall not delegate the power to hold hearings and
96 determine violations to the chairman or executive director.

97 (j) The principal office of the Commission shall be in the
98 seat of government but it or its designated subcommittees may
99 meet and exercise its power at any other place in the state.
100 Meetings of the Commission shall be public unless: (1) They
101 are required to be private by the provisions of this chapter
102 relating to confidentiality; or (2) they involve discussions of
103 Commission personnel, planned or ongoing litigation and
104 planned or ongoing investigations.

105 (k) Meetings of the Commission shall be upon the call of
106 the chair and may be conducted by telephonic or other
107 electronic conferencing: *Provided*, That telephone or other
108 electronic conferencing and voting are not permitted when the
109 Commission is acting as a hearing board under section four of
110 this article or when an investigative panel meets to receive an
111 oral response as authorized under subsection (d), section four
112 of this article. Members shall be given notice of meetings held
113 by telephone or other electronic conferencing in the same
114 manner as meetings at which the members are required to
115 attend in person. Telephone or other electronic conferences
116 shall be electronically recorded and the recordings shall be
117 retained by the Commission in accordance with its record
118 retention policy.

§6B-2-2. Same – General powers and duties.

1 (a) The Commission shall propose rules for promulgation
2 in accordance with the provisions of chapter twenty-nine-a of
3 this Code, to carry out the purposes of this article.

4 (b) The Commission may initiate or receive complaints and
5 make investigations, as provided in section four of this article,
6 and upon complaint by an individual of an alleged violation of
7 this article by a public official or public employee, refer the
8 complaint to the Review Board as provided in section two-a of
9 this article. Any person charged with a violation of this chapter
10 is entitled to the administrative hearing process contained in
11 section four of this article.

12 (c) The Commission may subpoena witnesses, compel their
13 attendance and testimony, administer oaths and affirmations,
14 take evidence and require by subpoena the production of books,
15 papers, records or other evidence needed for the performance of
16 the Commission's duties or exercise of its powers, including its
17 duties and powers of investigation.

18 (d) The Commission shall, in addition to its other duties:

19 (1) Prescribe forms for reports, statements, notices and
20 other documents required by law;

21 (2) Prepare and publish manuals and guides explaining the
22 duties of individuals covered by this law; and giving
23 instructions and public information materials to facilitate
24 compliance with, and enforcement of, this act; and

25 (3) Provide assistance to agencies, officials and employees
26 in administering the provisions of this act.

27 (e) The Commission may:

- 28 (1) Prepare reports and studies to advance the purpose of
29 the law;
- 30 (2) Contract for any services which cannot satisfactorily be
31 performed by its employees;
- 32 (3) Require the Attorney General to provide legal advice
33 without charge to the Commission;
- 34 (4) Employ additional legal counsel;
- 35 (5) Request appropriate agencies of state to provide any
36 professional assistance the Commission may require in the
37 discharge of its duties: *Provided*, That the Commission shall
38 reimburse any agency other than the Attorney General the cost
39 of providing assistance; and
- 40 (6) Share otherwise confidential documents, materials or
41 information with appropriate agencies of state government,
42 provided that the recipient agrees to maintain the confidentiality
43 and privileged status of the document, material or information.

§6B-2-2a. Probable Cause Review Board.

- 1 (a) There is hereby established a Probable Cause Review
2 Board that shall conduct hearings to determine whether there is
3 probable cause to believe that a violation of the West Virginia
4 Governmental Ethics Act has occurred and, if so, to refer that
5 investigation to the Ethics Commission. The Review Board is
6 an autonomous board, not under the direction or control of the
7 Ethics Commission. The Review Board will review complaints
8 received or initiated by the Ethics Commission to make a
9 threshold determination of whether probable cause exists to
10 believe that a violation of the West Virginia Governmental
11 Ethics Act has occurred.
- 12 (b) The Governor, by and with the advice and consent of
13 the Senate, shall appoint three persons as members of the

14 Review Board, each of whom shall be a resident and citizen of
15 the state. Each member of the Review Board shall hold office
16 until his successor has been appointed and qualified. At least
17 one member of the Board must be an attorney licensed by the
18 state of West Virginia and no more than two members can
19 belong to the same political party. The members of the Review
20 Board shall be appointed for overlapping terms of two years,
21 except that the original appointments shall be for terms of one,
22 two and three years, respectively. Any member whose term
23 expires may be reappointed by the Governor. In the event a
24 Review Board member is unable to complete his or her term, a
25 Governor shall appoint a person with similar qualification to
26 complete that term. Each Review Board member shall receive
27 the same compensation and expense reimbursement as provided
28 to Ethics Commission members pursuant to section one of this
29 article. These and all other costs incurred by the Review Board
30 shall be paid from the budget of the Ethics Commission.

31 (c) No person may be appointed to the Review Board or
32 continue to serve as a member of the Review Board who holds
33 elected or appointed office under the government of the United
34 States, the state of West Virginia or any of its political
35 subdivisions, or who is a candidate for any of such offices, or
36 who is a registered lobbyist, or who is otherwise subject to the
37 provisions of this chapter other than by reason of his or her
38 appointment to or service on the Review Board. A Review
39 Board member may contribute to a political campaign, but no
40 member shall hold any political party office or participate in a
41 campaign relating to a referendum or other ballot issue.

42 (d) The Ethics Commission shall propose, for approval by
43 the Review Board, any procedural and interpretative rules
44 governing the operation of the Review Board. The Commission
45 shall propose these rules pursuant to article three, chapter
46 twenty-nine-a of the code.

47 (e) The Ethics Commission shall provide staffing and a
48 location for the Review Board to conduct hearings. The Ethics
49 Commission is authorized to employ and assign the necessary
50 professional and clerical staff to assist the Review Board in the
51 performance of its duties and Commission staff shall, as the
52 Commission deems appropriate, also serve as staff to the
53 Review Board. All investigations and proceedings of the
54 Review Board are deemed confidential as provided in section
55 four of this article and members of the Review Board are bound
56 to the same confidentiality requirements applicable to the
57 Ethics Commission pursuant to this article.

58 (f) The Review Board may subpoena witnesses, compel
59 their attendance and testimony, administer oaths and
60 affirmations, take evidence and require by subpoena the
61 production of books, papers, records or other evidence needed
62 for the performance of the Review Board's duties.

63 (g) Upon decision by the Review Board that probable cause
64 exists to believe that a violation of this chapter has occurred,
65 Commission staff shall send notice to the Commission
66 members of the Review Board's finding. After an ethics
67 complaint has been submitted to the Review Board in
68 accordance with section four of this article, the Commission
69 may take no further action until it receives the Review Board's
70 probable cause finding.

§6B-2-3a. Complaints.

1 (a) The Commission may commence an investigation,
2 pursuant to section four of this article, on the filing of a
3 complaint duly verified by oath or affirmation, by any person.

4 (b) The Commission may order the executive director to
5 prepare a complaint, upon a majority affirmative vote of its
6 members, if it receives or discovers credible information which,

7 if true, would merit an inquiry into whether a violation of this
8 article has occurred.

9 (c) (1) No complaint may be accepted or initiated by the
10 Commission against a public official or public employee during
11 the sixty days before a primary or general election at which the
12 public official or public employees is a candidate for elective
13 office.

14 (2) The Commission shall stay any proceedings with regard
15 to an ethics complaint filed against a public official or public
16 employee candidate more than sixty days prior to the election:
17 *Provided*, Where there has not yet been a probable cause
18 determination with regard to the allegations in the complaint,
19 the public official or public employee candidate may waive the
20 postponement in writing, in which case the Commission and the
21 Review Board shall process the complaint and provide the
22 candidate with a probable cause determination at least thirty
23 days prior to the election.

24 (3) For purposes of this subsection, any provisions of this
25 chapter setting time periods for initiating a complaint or for
26 performing any other action are considered tolled until after the
27 election at which the public official or public employee
28 candidate stands for elective office.

**§6B-2-4. Processing complaints; dismissals; hearings; disposition;
judicial review.**

1 (a) Upon the filing of a complaint, the executive director of
2 the Commission or his or her designee shall, within three
3 working days, acknowledge the receipt of the complaint by
4 first-class mail unless the complaint was initiated by the
5 Commission or the complainant or his or her representative
6 personally filed the complaint with the Commission and was
7 given a receipt or other acknowledgment evidencing the filing
8 of the complaint. No political party or officer, employee or

9 agent of a political party acting in his or her official capacity
10 may file a complaint for a violation of this chapter with the
11 Commission. Nothing in this section prohibits a private citizen,
12 acting in that capacity, from filing a verified complaint with the
13 Commission under this section. Within fourteen days after the
14 receipt of a complaint, the executive director shall refer the
15 complaint to the Review Board created pursuant to section two-
16 a of this article.

17 (b) Upon the referral of a complaint by the executive
18 director pursuant to subsection (a) of this section, the Review
19 Board shall determine whether the allegations of the complaint,
20 if taken as true, would constitute a violation of law upon which
21 the Commission could properly act under the provisions of this
22 chapter. If the complaint is determined by a majority vote of
23 the Review Board to be insufficient in this regard, the Review
24 Board shall dismiss the complaint.

25 (c) Upon a finding by the Review Board that the complaint
26 is sufficient, the executive director shall give notice of a
27 pending investigation to the complainant, if any, and to the
28 respondent. The notice of investigation shall be mailed to the
29 parties, and, in the case of the respondent, shall be mailed as
30 certified mail, return receipt requested, marked "Addressee
31 only, personal and confidential". The notice shall describe the
32 conduct of the respondent which is alleged to violate the law
33 and a copy of the complaint shall be appended to the notice
34 mailed to the respondent. Each notice of investigation shall
35 inform the respondent that the purpose of the investigation is to
36 determine whether probable cause exists to believe that a
37 violation of law has occurred which may subject the respondent
38 to administrative sanctions by the Commission, criminal
39 prosecution by the state, or civil liability. The notice shall
40 further inform the respondent that he or she has a right to
41 appear before the Review Board and that he or she may respond
42 in writing to the Commission within thirty days after the receipt

43 of the notice, but that no fact or allegation shall be taken as
44 admitted by a failure or refusal to timely respond.

45 (d) Within the 45-day period following the mailing of a
46 notice of investigation, the Review Board shall proceed to
47 consider: (1) The allegations raised in the complaint; (2) any
48 timely received written response of the respondent; and (3) any
49 other competent evidence gathered by or submitted to the
50 Commission which has a proper bearing on the issue of
51 probable cause. A respondent may appear before the Review
52 Board and make an oral response to the complaint. The
53 Commission shall promulgate rules prescribing the manner in
54 which a respondent may present his or her oral response. The
55 Commission may ask a respondent to disclose specific amounts
56 received from a source and request other detailed information
57 not otherwise required to be set forth in a statement or report
58 filed under the provisions of this chapter, if the information
59 sought is considered to be probative as to the issues raised by
60 a complaint or an investigation initiated by the Commission.
61 Any information thus received shall be confidential except as
62 provided by subsection (e) of this section. If a person asked to
63 provide information fails or refuses to furnish the information
64 to the Commission, the Commission may exercise its subpoena
65 power as provided in this chapter, and any subpoena issued by
66 the Commission shall have the same force and effect as a
67 subpoena issued by a circuit court of this state. Enforcement of
68 any subpoena may be had upon application to a circuit court of
69 the county in which the Review Board is conducting an
70 investigation, through the issuance of a rule or an attachment
71 against the respondent as in cases of contempt.

72 (e)(1) No person who has filed a complaint, provided
73 information to the Commission or has knowledge that the
74 Commission is undertaking an investigation and no Commis-
75 sion member or employee or former member or employee shall
76 disclose:

77 (A) His or her knowledge that a complaint has been filed or
78 an investigation has been undertaken;

79 (B) Any information he or she obtained as a result of
80 having interacted with the Commission in connection with a
81 particular investigation;

82 (C) The fact that he or she has filed a complaint, provided
83 information to or testified before the Commission or otherwise
84 participated in the Commission investigation; or

85 (D) The contents of any investigations, complaints, reports,
86 records, proceedings, and other information received by the
87 Commission and related to complaints made to the Commission
88 or investigations conducted by the Commission pursuant to this
89 section, including the identity of the complainant or respondent,
90 except as follows:

91 (i) Once there has been a finding that probable cause exists
92 to believe that a respondent has violated the provisions of this
93 chapter and the respondent has been served by the Commission
94 with a copy of the Review Board's order and the statement of
95 charges prepared pursuant to the provisions of subsection (g) of
96 this section, the complaint and all reports, records, non-privi-
97 leged and nondeliberative material introduced at any probable
98 cause hearing held pursuant to the complaint cease to be
99 confidential

100 (ii) After a finding of probable cause, any subsequent
101 hearing held in the matter for the purpose of receiving evidence
102 or the arguments of the parties or their representatives shall be
103 open to the public and all reports, records and nondeliberative
104 materials introduced into evidence at the hearing, as well as the
105 Commission's orders, are not confidential.

106 (iii) The Commission may release any information relating
107 to an investigation at any time if the release has been agreed to
108 in writing by the respondent.

109 (iv) The complaint and the identity of the complainant shall
110 be disclosed to a person named as respondent immediately upon
111 the respondent's request.

112 (v) Where the Commission is otherwise required by the
113 provisions of this chapter to disclose information or to proceed
114 in such a manner that disclosure is necessary and required to
115 fulfill those requirements.

116 (2) If, in a specific case, the Commission finds that there is
117 a reasonable likelihood that the dissemination of information or
118 opinion in connection with a pending or imminent proceeding
119 will interfere with a fair hearing or otherwise prejudice the due
120 administration of justice, the Commission shall order that all or
121 a portion of the information communicated to the Commission
122 to cause an investigation and all allegations of ethical miscon-
123 duct or criminal acts contained in a complaint shall be confi-
124 dential, and the person providing the information or filing a
125 complaint shall be bound to confidentiality until further order
126 of the Commission.

127 (3) If a complainant knowingly discloses confidential
128 information in violation of this subsection, the Commission
129 may impose the sanctions specified in subsection (r) of this
130 section and in addition, or in lieu thereof, dismiss the com-
131 plaint.

132 (f) If the members of the Review Board fail to find probable
133 cause, the proceedings shall be dismissed by the Commission
134 in an order signed by the majority members of the Review
135 Board. Copies of the order of dismissal shall be sent to the
136 complainant and served upon the respondent forthwith. If the
137 Review Board decides by a unanimous vote that there is

138 probable cause to believe that a violation under this chapter has
139 occurred, the members of the Review Board shall sign an order
140 directing the Commission staff to prepare a statement of
141 charges, to assign the matter for hearing to the Commission or
142 a hearing examiner as the Commission may subsequently
143 direct. The Commission shall then schedule a hearing, to be
144 held within ninety days after the date of the order, to determine
145 the truth or falsity of the charges. The Commission's review of
146 the evidence presented shall be de novo. For the purpose of this
147 section, service of process upon the respondent is obtained at
148 the time the respondent or the respondent's agent physically
149 receives the process, regardless of whether the service of
150 process is in person or by certified mail.

151 (g) At least eighty days prior to the date of the hearing, the
152 Commission shall serve the respondent by certified mail, return
153 receipt requested, with the statement of charges and a notice of
154 hearing setting forth the date, time and place for the hearing.
155 The scheduled hearing may be continued only upon a showing
156 of good cause by the respondent or under other circumstances
157 as the Commission, by legislative rule, directs.

158 (h) The Commission may sit as a hearing board to adjudi-
159 cate the case or may permit an assigned hearing examiner
160 employed by the Commission to preside at the taking of
161 evidence. The Commission shall, by legislative rule, establish
162 the general qualifications for hearing examiners. The legisla-
163 tive rule shall also contain provisions which ensure that the
164 functions of a hearing examiner will be conducted in an
165 impartial manner and describe the circumstances and proce-
166 dures for disqualification of hearing examiners.

167 (i) A member of the Commission or a hearing examiner
168 presiding at a hearing may:

169 (1) Administer oaths and affirmations, compel the atten-
170 dance of witnesses and the production of documents, examine
171 witnesses and parties and otherwise take testimony and estab-
172 lish a record;

173 (2) Rule on offers of proof and receive relevant evidence;

174 (3) Take depositions or have depositions taken when the
175 ends of justice will be served;

176 (4) Regulate the course of the hearing;

177 (5) Hold conferences for the settlement or simplification of
178 issues by consent of the parties;

179 (6) Dispose of procedural requests or similar matters;

180 (7) Accept stipulated agreements;

181 (8) Take other action authorized by the Ethics Commission
182 consistent with the provisions of this chapter.

183 (j) With respect to allegations of a violation under this
184 chapter, the complainant has the burden of proof. The West
185 Virginia Rules of Evidence governing proceedings in the courts
186 of this state shall be given like effect in hearings held before the
187 Commission or a hearing examiner. The Commission shall, by
188 rule, regulate the conduct of hearings so as to provide full
189 procedural due process to a respondent. Hearings before a
190 hearing examiner shall be recorded electronically. When
191 requested by either of the parties, the presiding officer shall
192 order a transcript, verified by oath or affirmation, of each
193 hearing held and so recorded. In the discretion of the Commis-
194 sion, a record of the proceedings may be made by a certified
195 court reporter. Unless otherwise ordered by the Commission,
196 the cost of preparing a transcript shall be paid by the party
197 requesting the transcript. Upon a showing of indigency, the

198 Commission may provide a transcript without charge. Within
199 fifteen days following the hearing, either party may submit to
200 the hearing examiner that party's proposed findings of fact.
201 The hearing examiner shall thereafter prepare his or her own
202 proposed findings of fact and make copies of the findings
203 available to the parties. The hearing examiner shall then submit
204 the entire record to the Commission for final decision.

205 (k) The recording of the hearing or the transcript of
206 testimony, as the case may be, and the exhibits, together with
207 all papers and requests filed in the proceeding, and the proposed
208 findings of fact of the hearing examiner and the parties,
209 constitute the exclusive record for decision by the Commission,
210 unless by leave of the Commission a party is permitted to
211 submit additional documentary evidence or take and file
212 depositions or otherwise exercise discovery.

213 (l) The Commission shall set a time and place for the
214 hearing of arguments by the complainant and respondent, or
215 their respective representatives, and shall notify the parties
216 thereof. Briefs may be filed by the parties in accordance with
217 procedural rules promulgated by the Commission. The Com-
218 mission shall issue a final decision in writing within forty-five
219 days of the receipt of the entire record of a hearing held before
220 a hearing examiner or, in the case of an evidentiary hearing held
221 by the Commission, acting as a hearing board in lieu of a
222 hearing examiner, within twenty-one days following the close
223 of the evidence.

224 (m) A decision on the truth or falsity of the charges against
225 the respondent and a decision to impose sanctions must be
226 approved by at least seven members of the Commission.

227 (n) Members of the Commission shall recuse themselves
228 from a particular case upon their own motion with the approval
229 of the Commission or for good cause shown upon motion of a

230 party. The remaining members of the Commission shall, by
231 majority vote, select a temporary member of the Commission
232 to replace a recused member: *Provided*, That the temporary
233 member selected to replace a recused member shall be a person
234 of the same status or category, provided by subsection (b),
235 section one of this article, as the recused member.

236 (o) Except for statements made in the course of official
237 duties to explain Commission procedures, no member or
238 employee or former member or employee of the Commission
239 may make any public or nonpublic comment about any pro-
240 ceeding previously or currently before the Commission. Any
241 member or employee or former member or employee of the
242 Commission who violates this subsection is subject to the
243 penalties contained in subsection (e), section ten of this article.
244 In addition, violation of this subsection by a current member or
245 employee of the Commission is grounds for immediate removal
246 from office or termination of employment.

247 (p) A complainant may be assisted by a member of the
248 Commission staff assigned by the Commission after a determi-
249 nation of probable cause.

250 (q) No employee of the Commission assigned to prosecute
251 a complaint may participate in the Commission deliberations or
252 communicate with Commission members or the public concern-
253 ing the merits of a complaint.

254 (r)(1) If the Commission finds by evidence beyond a
255 reasonable doubt that the facts alleged in the complaint are true
256 and constitute a material violation of this article, it may impose
257 one or more of the following sanctions:

258 (A) Public reprimand;

259 (B) Cease and desist orders;

260 (C) Orders of restitution for money, things of value, or
261 services taken or received in violation of this chapter;

262 (D) Fines not to exceed five thousand dollars per violation;
263 or

264 (E) Reimbursement to the Commission for the actual costs
265 of investigating and prosecuting a violation. Any reimburse-
266 ment ordered by the Commission for its costs under this
267 paragraph shall be collected by the Commission and deposited
268 into the special revenue account created pursuant to section six,
269 article one of this chapter.

270 (2) In addition to imposing the above-specified sanctions,
271 the Commission may recommend to the appropriate govern-
272 mental body that a respondent be terminated from employment
273 or removed from office.

274 (3) The Commission may institute civil proceedings in the
275 circuit court of the county in which a violation occurred for the
276 enforcement of sanctions.

277 (s) At any stage of the proceedings under this section, the
278 Commission may enter into a conciliation agreement with a
279 respondent if the agreement is deemed by a majority of the
280 members of the Commission to be in the best interest of the
281 state and the respondent. Any conciliation agreement must be
282 disclosed to the public: *Provided*, That negotiations leading to
283 a conciliation agreement, as well as information obtained by the
284 Commission during the negotiations, shall remain confidential
285 except as may be otherwise set forth in the agreement.

286 (t) Decisions of the Commission involving the issuance of
287 sanctions may be appealed to the Circuit Court of Kanawha
288 County, West Virginia, or to the circuit court of the county
289 where the violation is alleged to have occurred, only by the
290 respondent, and only upon the grounds set forth in section four,
291 article five, chapter twenty-nine-a of this code.

292 (u)(1) Any person who in good faith files a verified
293 complaint or any person, official, or agency who gives credible
294 information resulting in a formal complaint filed by Commis-
295 sion staff is immune from any civil liability that otherwise
296 might result by reason of such actions.

297 (2) If the Commission determines, by clear and convincing
298 evidence, that a person filed a complaint or provided informa-
299 tion which resulted in an investigation knowing that the
300 material statements in the complaint or the investigation request
301 or the information provided were not true; filed an unsubstanti-
302 ated complaint or request for an investigation in reckless
303 disregard of the truth or falsity of the statements contained
304 therein; or filed one or more unsubstantiated complaints which
305 constituted abuse of process, the Commission shall:

306 (A) Order the complainant or informant to reimburse the
307 respondent for his or her reasonable costs;

308 (B) Order the complainant or informant to reimburse the
309 respondent for his or her reasonable attorney fees; and

310 (C) Order the complainant or informant to reimburse the
311 Commission for the actual costs of its investigation.

312 In addition, the Commission may decline to process any
313 further complaints brought by the complainant, the initiator of
314 the investigation or the informant.

315 (3) The sanctions authorized in this subsection are not
316 exclusive and do not preclude any other remedies or rights of
317 action the respondent may have against the complainant or
318 informant under the law.

319 (v)(1) If at any stage in the proceedings under this section
320 it appears to a Review Board, a hearing examiner or the
321 Commission that there is credible information or evidence that

322 the respondent may have committed a criminal violation, the
323 matter shall be referred to the full Commission for its consider-
324 ation. If, by a vote of two thirds of the members of the full
325 Commission, it is determined that probable cause exists to
326 believe a criminal violation has occurred, the Commission shall
327 refer the matter to the appropriate county prosecuting attorney
328 having jurisdiction for a criminal investigation and possible
329 prosecution. Deliberations of the Commission with regard to
330 referring a matter for criminal investigation by a prosecuting
331 attorney shall be private and confidential. Notwithstanding any
332 other provision of this article, once a referral for criminal
333 investigation is made under the provisions of this subsection,
334 the ethics proceedings shall be held in abeyance until action on
335 the referred matter is concluded. If the referral of the matter to
336 the prosecuting attorney results in a criminal conviction of the
337 respondent, the Commission may resume its investigation or
338 prosecution of the ethics violation, but may not impose a fine
339 as a sanction if a violation is found to have occurred.

340 (2) If fewer than two thirds of the full Commission deter-
341 mine that a criminal violation has occurred, the Commission
342 shall remand the matter to the Review Board, the hearing
343 examiner or the Commission itself as a hearing board, as the
344 case may be, for further proceedings under this article.

345 (w) The provisions of this section shall apply to violations
346 of this chapter occurring after the thirtieth day of September,
347 one thousand nine hundred eighty-nine, and within one year
348 before the filing of a complaint: *Provided*, That the applicable
349 statute of limitations for violations which occur on or after the
350 first day of July, two thousand five, is two years after the date
351 on which the alleged violation occurred.

**§6B-2-5. Ethical standards for elected and appointed officials
and public employees.**

1 (a) *Persons subject to section.* — The provisions of this
2 section apply to all elected and appointed public officials and
3 public employees, whether full or part time, in state, county,
4 municipal governments and their respective boards, agencies,
5 departments and commissions and in any other regional or local
6 governmental agency, including county school boards.

7 (b) *Use of public office for private gain.* — (1) A public
8 official or public employee may not knowingly and intention-
9 ally use his or her office or the prestige of his or her office for
10 his or her own private gain or that of another person. Incidental
11 use of equipment or resources available to a public official or
12 public employee by virtue of his or her position for personal or
13 business purposes resulting in de minimis private gain does not
14 constitute use of public office for private gain under this
15 subsection. The performance of usual and customary duties
16 associated with the office or position or the advancement of
17 public policy goals or constituent services, without compensa-
18 tion, does not constitute the use of prestige of office for private
19 gain.

20 (2) The Legislature, in enacting this subsection, recognizes
21 that there may be certain public officials or public employees
22 who bring to their respective offices or employment their own
23 unique personal prestige which is based upon their intelligence,
24 education, experience, skills and abilities, or other personal
25 gifts or traits. In many cases, these persons bring a personal
26 prestige to their office or employment which inures to the
27 benefit of the state and its citizens. Those persons may, in fact,
28 be sought by the state to serve in their office or employment
29 because, through their unusual gifts or traits, they bring stature
30 and recognition to their office or employment and to the state
31 itself. While the office or employment held or to be held by
32 those persons may have its own inherent prestige, it would be
33 unfair to those individuals and against the best interests of the
34 citizens of this state to deny those persons the right to hold
35 public office or to be publicly employed on the grounds that

36 they would, in addition to the emoluments of their office or
37 employment, be in a position to benefit financially from the
38 personal prestige which otherwise inheres to them. Accord-
39 ingly, the Commission is directed, by legislative rule, to
40 establish categories of public officials and public employees,
41 identifying them generally by the office or employment held,
42 and offering persons who fit within those categories the
43 opportunity to apply for an exemption from the application of
44 the provisions of this subsection. Exemptions may be granted
45 by the Commission, on a case-by-case basis, when it is shown
46 that: (A) The public office held or the public employment
47 engaged in is not such that it would ordinarily be available or
48 offered to a substantial number of the citizens of this state; (B)
49 the office held or the employment engaged in is such that it
50 normally or specifically requires a person who possesses
51 personal prestige; and (C) the person's employment contract or
52 letter of appointment provides or anticipates that the person will
53 gain financially from activities which are not a part of his or her
54 office or employment.

55 (c) *Gifts.* — (1) A public official or public employee may
56 not solicit any gift unless the solicitation is for a charitable
57 purpose with no resulting direct pecuniary benefit conferred
58 upon the official or employee or his or her immediate family:
59 *Provided,* That no public official or public employee may
60 solicit for a charitable purpose any gift from any person who is
61 also an official or employee of the state and whose position is
62 subordinate to the soliciting official or employee: *Provided,*
63 *however,* That nothing herein shall prohibit a candidate for
64 public office from soliciting a lawful political contribution. No
65 official or employee may knowingly accept any gift, directly or
66 indirectly, from a lobbyist or from any person whom the official
67 or employee knows or has reason to know:

68 (A) Is doing or seeking to do business of any kind with his
69 or her agency;

70 (B) Is engaged in activities which are regulated or con-
71 trolled by his or her agency; or

72 (C) Has financial interests which may be substantially and
73 materially affected, in a manner distinguishable from the public
74 generally, by the performance or nonperformance of his or her
75 official duties.

76 (2) Notwithstanding the provisions of subdivision (1) of
77 this subsection, a person who is a public official or public
78 employee may accept a gift described in this subdivision, and
79 there shall be a presumption that the receipt of such gift does
80 not impair the impartiality and independent judgment of the
81 person. This presumption may be rebutted only by direct
82 objective evidence that the gift did impair the impartiality and
83 independent judgment of the person or that the person knew or
84 had reason to know that the gift was offered with the intent to
85 impair his or her impartiality and independent judgment. The
86 provisions of subdivision (1) of this subsection do not apply to:

87 (A) Meals and beverages;

88 (B) Ceremonial gifts or awards which have insignificant
89 monetary value;

90 (C) Unsolicited gifts of nominal value or trivial items of
91 informational value;

92 (D) Reasonable expenses for food, travel and lodging of the
93 official or employee for a meeting at which the official or
94 employee participates in a panel or has a speaking engagement;

95 (E) Gifts of tickets or free admission extended to a public
96 official or public employee to attend charitable, cultural or
97 political events, if the purpose of such gift or admission is a
98 courtesy or ceremony customarily extended to the office;

99 (F) Gifts that are purely private and personal in nature; or

100 (G) Gifts from relatives by blood or marriage, or a member
101 of the same household.

102 (3) The Commission shall, through legislative rule promul-
103 gated pursuant to chapter twenty-nine-a of this code, establish
104 guidelines for the acceptance of a reasonable honorarium by
105 public officials and elected officials. The rule promulgated
106 shall be consistent with this section. Any elected public official
107 may accept an honorarium only when: (1) That official is a
108 part-time elected public official; (2) the fee is not related to the
109 official's public position or duties; (3) the fee is for services
110 provided by the public official that are related to the public
111 official's regular, nonpublic trade, profession, occupation,
112 hobby or avocation; and (4) the honorarium is not provided in
113 exchange for any promise or action on the part of the public
114 official.

115 (4) Nothing in this section shall be construed so as to
116 prohibit the giving of a lawful political contribution as defined
117 by law.

118 (5) The Governor or his designee may, in the name of the
119 state of West Virginia, accept and receive gifts from any public
120 or private source. Any gift so obtained shall become the
121 property of the state and shall, within thirty days of the receipt
122 thereof, be registered with the Commission and the Division of
123 Culture and History.

124 (6) Upon prior approval of the joint committee on govern-
125 ment and finance, any member of the Legislature may solicit
126 donations for a regional or national legislative organization
127 conference or other legislative organization function to be held
128 in the state for the purpose of deferring costs to the state for
129 hosting of the conference or function. Legislative organizations
130 are bipartisan regional or national organizations in which the

131 joint committee on government and finance authorizes payment
132 of dues or other membership fees for the Legislature's partici-
133 pation and which assist this and other state legislatures and their
134 staff through any of the following:

135 (i) Advancing the effectiveness, independence and integrity
136 of legislatures in the states of the United States;

137 (ii) Fostering interstate cooperation and facilitating infor-
138 mation exchange among state legislatures;

139 (iii) Representing the states and their legislatures in the
140 American federal system of government;

141 (iv) Improving the operations and management of state
142 legislatures and the effectiveness of legislators and legislative
143 staff, and to encourage the practice of high standards of conduct
144 by legislators and legislative staff;

145 (v) Promoting cooperation between state legislatures in the
146 United States and legislatures in other countries.

147 The solicitations may only be made in writing. The legisla-
148 tive organization may act as fiscal agent for the conference and
149 receive all donations. In the alternative, a bona fide banking
150 institution may act as the fiscal agent. The official letterhead of
151 the Legislature may not be used by the legislative member in
152 conjunction with the fund raising or solicitation effort. The
153 legislative organization for which solicitations are being made
154 shall file with the Joint Committee on Government and Finance
155 and with the Secretary of State for publication in the State
156 Register as provided in article two of chapter twenty-nine-a of
157 the Code, copies of letters, brochures and other solicitation
158 documents, along with a complete list of the names and last
159 known addresses of all donors and the amount of donations
160 received. Any solicitation by a legislative member shall
161 contain the following disclaimer:

162 “This solicitation is endorsed by [name of member]. This
163 endorsement does not imply support of the soliciting organiza-
164 tion, nor of the sponsors who may respond to the solicitation.
165 A copy of all solicitations are on file with the West Virginia
166 Legislature’s Joint Committee on Government and Finance, and
167 with the Secretary of State and are available for public review.”

168 (7) Upon written notice to the Commission, any member of
169 the Board of Public Works may solicit donations for a regional
170 or national organization conference or other function related to
171 the office of the member to be held in the state for the purpose
172 of deferring costs to the state for hosting of the conference or
173 function. The solicitations may only be made in writing. The
174 organization may act as fiscal agent for the conference and
175 receive all donations. In the alternative, a bona fide banking
176 institution may act as the fiscal agent. The official letterhead of
177 the office of the Board of Public Works member may not be
178 used in conjunction with the fund raising or solicitation effort.
179 The organization for which solicitations are being made shall
180 file with the Joint Committee on Government and Finance, with
181 the Secretary of State for publication in the state register as
182 provided in article two of chapter twenty-nine-a of the code and
183 with the Commission, copies of letters, brochures and other
184 solicitation documents, along with a complete list of the names
185 and last known addresses of all donors and the amount of
186 donations received. Any solicitation by a member of the Board
187 of Public Works shall contain the following disclaimer: “This
188 solicitation is endorsed by (name of member of Board of Public
189 Works.) This endorsement does not imply support of the
190 soliciting organization, nor of the sponsors who may respond to
191 the solicitation. Copies of all solicitations are on file with the
192 West Virginia Legislature’s Joint Committee on Government
193 and Finance, with the West Virginia Secretary of State and with
194 the West Virginia Ethics Commission and are available for
195 public review.” Any moneys in excess of those donations
196 needed for the conference or function shall be deposited in the

197 Capitol Dome and Capitol Improvement Fund established in
198 section two, article four of chapter five-a of this code.

199 (d) *Interests in public contracts.* — (1) In addition to the
200 provisions of section fifteen, article ten, chapter sixty-one of
201 this code, no elected or appointed public official or public
202 employee or member of his or her immediate family or business
203 with which he or she is associated may be a party to or have an
204 interest in the profits or benefits of a contract which the official
205 or employee may have direct authority to enter into, or over
206 which he or she may have control: *Provided*, That nothing
207 herein shall be construed to prevent or make unlawful the
208 employment of any person with any governmental body:
209 *Provided, however*, That nothing herein shall be construed to
210 prohibit a member of the Legislature from entering into a
211 contract with any governmental body, or prohibit a part-time
212 appointed public official from entering into a contract which the
213 part-time appointed public official may have direct authority to
214 enter into or over which he or she may have control when the
215 official has not participated in the review or evaluation thereof,
216 has been recused from deciding or evaluating and has been
217 excused from voting on the contract and has fully disclosed the
218 extent of his or her interest in the contract.

219 (2) In the absence of bribery or a purpose to defraud, an
220 elected or appointed public official or public employee or a
221 member of his or her immediate family or a business with
222 which he or she is associated shall not be considered as having
223 an interest in a public contract when such a person has a limited
224 interest as an owner, shareholder or creditor of the business
225 which is the contractor on the public contract involved. A
226 limited interest for the purposes of this subsection is:

227 (A) An interest:

228 (i) Not exceeding ten percent of the partnership or the
229 outstanding shares of a corporation; or

230 (ii) Not exceeding thirty thousand dollars interest in the
231 profits or benefits of the contract; or

232 (B) An interest as a creditor:

233 (i) Not exceeding ten percent of the total indebtedness of a
234 business; or

235 (ii) Not exceeding thirty thousand dollars interest in the
236 profits or benefits of the contract.

237 (3) Where the provisions of subdivisions (1) and (2) of this
238 subsection would result in the loss of a quorum in a public body
239 or agency, in excessive cost, undue hardship, or other substan-
240 tial interference with the operation of a state, county, munici-
241 pality, county school board or other governmental agency, the
242 affected governmental body or agency may make written
243 application to the Ethics Commission for an exemption from
244 subdivisions (1) and (2) of this subsection.

245 (e) *Confidential information.* — No present or former
246 public official or employee may knowingly and improperly
247 disclose any confidential information acquired by him or her in
248 the course of his or her official duties nor use such information
249 to further his or her personal interests or the interests of another
250 person.

251 (f) *Prohibited representation.* — No present or former
252 elected or appointed public official or public employee shall,
253 during or after his or her public employment or service,
254 represent a client or act in a representative capacity with or
255 without compensation on behalf of any person in a contested
256 case, rate-making proceeding, license or permit application,
257 regulation filing or other particular matter involving a specific
258 party or parties which arose during his or her period of public
259 service or employment and in which he or she personally and
260 substantially participated in a decision-making, advisory or

261 staff support capacity, unless the appropriate government
262 agency, after consultation, consents to such representation. A
263 staff attorney, accountant or other professional employee who
264 has represented a government agency in a particular matter
265 shall not thereafter represent another client in the same or
266 substantially related matter in which that client's interests are
267 materially adverse to the interests of the government agency,
268 without the consent of the government agency: *Provided*, That
269 this prohibition on representation shall not apply when the
270 client was not directly involved in the particular matter in
271 which the professional employee represented the government
272 agency, but was involved only as a member of a class. The
273 provisions of this subsection shall not apply to legislators who
274 were in office and legislative staff who were employed at the
275 time it originally became effective on the first day of July, one
276 thousand nine hundred eighty-nine, and those who have since
277 become legislators or legislative staff and those who shall serve
278 hereafter as legislators or legislative staff.

279 (g) *Limitation on practice before a board, agency, commis-*
280 *sion or department.* — (1) No elected or appointed public
281 official and no full-time staff attorney or accountant shall,
282 during his or her public service or public employment or for a
283 period of one year after the termination of his or her public
284 service or public employment with a governmental entity
285 authorized to hear contested cases or promulgate or propose
286 rules, appear in a representative capacity before the governmen-
287 tal entity in which he or she serves or served or is or was
288 employed in the following matters:

289 (A) A contested case involving an administrative sanction,
290 action or refusal to act;

291 (B) To support or oppose a proposed rule;

292 (C) To support or contest the issuance or denial of a license
293 or permit;

294 (D) A rate-making proceeding; and

295 (E) To influence the expenditure of public funds.

296 (2) As used in this subsection, “represent” includes any
297 formal or informal appearance before, or any written or oral
298 communication with, any public agency on behalf of any
299 person: *Provided*, That nothing contained in this subsection
300 shall prohibit, during any period, a former public official or
301 employee from being retained by or employed to represent,
302 assist or act in a representative capacity on behalf of the public
303 agency by which he or she was employed or in which he or she
304 served. Nothing in this subsection shall be construed to prevent
305 a former public official or employee from representing another
306 state, county, municipal or other governmental entity before the
307 governmental entity in which he or she served or was employed
308 within one year after the termination of his or her employment
309 or service in the entity.

310 (3) A present or former public official or employee may
311 appear at any time in a representative capacity before the
312 Legislature, a county commission, city or town council or
313 county school board in relation to the consideration of a statute,
314 budget, ordinance, rule, resolution or enactment.

315 (4) Members and former members of the Legislature and
316 professional employees and former professional employees of
317 the Legislature shall be permitted to appear in a representative
318 capacity on behalf of clients before any governmental agency
319 of the state or of county or municipal governments, including
320 county school boards.

321 (5) An elected or appointed public official, full-time staff
322 attorney or accountant who would be adversely affected by the
323 provisions of this subsection may apply to the Ethics Commis-
324 sion for an exemption from the six months prohibition against
325 appearing in a representative capacity, when the person’s

326 education and experience is such that the prohibition would, for
327 all practical purposes, deprive the person of the ability to earn
328 a livelihood in this state outside of the governmental agency.
329 The Ethics Commission shall by legislative rule establish
330 general guidelines or standards for granting an exemption or
331 reducing the time period, but shall decide each application on
332 a case-by-case basis.

333 (h) *Employment by regulated persons.* — (1) No full-time
334 official or full-time public employee may seek employment
335 with, be employed by, or seek to purchase, sell or lease real or
336 personal property to or from any person who:

337 (A) Had a matter on which he or she took, or a subordinate
338 is known to have taken, regulatory action within the preceding
339 twelve months; or

340 (B) Has a matter before the agency to which he or she is
341 working or a subordinate is known by him or her to be working.

342 (2) Within the meaning of this section, the term “employ-
343 ment” includes professional services and other services
344 rendered by the public official or public employee, whether
345 rendered as employee or as an independent contractor; “seek
346 employment” includes responding to unsolicited offers of
347 employment as well as any direct or indirect contact with a
348 potential employer relating to the availability or conditions of
349 employment in furtherance of obtaining employment; and
350 “subordinate” includes only those agency personnel over whom
351 the public official or public employee has supervisory responsi-
352 bility.

353 (3) A full-time public official or full-time public employee
354 who would be adversely affected by the provisions of this
355 subsection may apply to the Ethics Commission for an exemp-
356 tion from the prohibition contained in subdivision (1), of this
357 subsection. The Ethics Commission shall by legislative rule

358 establish general guidelines or standards for granting an
359 exemption, but shall decide each application on a case-by-case
360 basis.

361 (4) A full-time public official or full-time public employee
362 may not take personal regulatory action on a matter affecting a
363 person by whom he or she is employed or with whom he or she
364 is seeking employment or has an agreement concerning future
365 employment.

366 (5) A full-time public official or full-time public employee
367 may not receive private compensation for providing informa-
368 tion or services that he or she is required to provide in carrying
369 out his or her public job responsibilities.

370 (i) *Members of the Legislature required to vote.* — Mem-
371 bers of the Legislature who have asked to be excused from
372 voting or who have made inquiry as to whether they should be
373 excused from voting on a particular matter and who are
374 required by the presiding officer of the House of Delegates or
375 Senate of West Virginia to vote under the rules of the particular
376 house shall not be guilty of any violation of ethics under the
377 provisions of this section for a vote so cast.

378 (j) *Limitations on participation in licensing and rate-*
379 *making proceedings.* — No public official or employee may
380 participate within the scope of his or her duties as a public
381 official or employee, except through ministerial functions as
382 defined in section three, article one of this chapter, in any
383 license or rate-making proceeding that directly affects the
384 license or rates of any person, partnership, trust, business trust,
385 corporation or association in which the public official or
386 employee or his or her immediate family owns or controls more
387 than ten percent. No public official or public employee may
388 participate within the scope of his or her duties as a public
389 official or public employee, except through ministerial func-
390 tions as defined in section three, article one of this chapter, in

391 any license or rate-making proceeding that directly affects the
392 license or rates of any person to whom the public official or
393 public employee or his or her immediate family, or a partner-
394 ship, trust, business trust, corporation or association of which
395 the public official or employee, or his or her immediate family,
396 owns or controls more than ten percent, has sold goods or
397 services totaling more than one thousand dollars during the
398 preceding year, unless the public official or public employee
399 has filed a written statement acknowledging such sale with the
400 public agency and the statement is entered in any public record
401 of the agency's proceedings. This subsection shall not be
402 construed to require the disclosure of clients of attorneys or of
403 patients or clients of persons licensed pursuant to article three,
404 eight, fourteen, fourteen-a, fifteen, sixteen, twenty, twenty-one
405 or thirty-one, chapter thirty of this code.

406 (k) *Certain compensation prohibited.* — (1) A public
407 employee may not receive additional compensation from
408 another publicly-funded state, county or municipal office or
409 employment for working the same hours, unless:

410 (A) The public employee's compensation from one public
411 employer is reduced by the amount of compensation received
412 from the other public employer;

413 (B) The public employee's compensation from one public
414 employer is reduced on a pro rata basis for any work time
415 missed to perform duties for the other public employer;

416 (C) The public employee uses earned paid vacation,
417 personal or compensatory time or takes unpaid leave from his
418 or her public employment to perform the duties of another
419 public office or employment; or

420 (D) A part-time public employee who does not have
421 regularly scheduled work hours or a public employee who is
422 authorized by one public employer to make up, outside of

423 regularly scheduled work hours, time missed to perform the
424 duties of another public office or employment maintains time
425 records, verified by the public employee and his or her immedi-
426 ate supervisor at least once every pay period, showing the hours
427 that the public employee did, in fact, work for each public
428 employer. The public employer shall submit these time records
429 to the Ethics Commission on a quarterly basis.

430 (2) This section does not prohibit a retired public official or
431 public employee from receiving compensation from a publicly-
432 funded office or employment in addition to any retirement
433 benefits to which the retired public official or public employee
434 is entitled.

435 (l) *Certain expenses prohibited.* — No public official or
436 public employee shall knowingly request or accept from any
437 governmental entity compensation or reimbursement for any
438 expenses actually paid by a lobbyist and required by the
439 provisions of this chapter to be reported, or actually paid by any
440 other person.

441 (m) Any person who is employed as a member of the
442 faculty or staff of a public institution of higher education and
443 who is engaged in teaching, research, consulting or publication
444 activities in his or her field of expertise with public or private
445 entities and thereby derives private benefits from such activities
446 shall be exempt from the prohibitions contained in subsections
447 (b), (c) and (d) of this section when the activity is approved as
448 a part of an employment contract with the governing board of
449 the institution or has been approved by the employee's depart-
450 ment supervisor or the president of the institution by which the
451 faculty or staff member is employed.

452 (n) Except as provided in this section, a person who is a
453 public official or public employee may not solicit private
454 business from a subordinate public official or public employee

455 whom he or she has the authority to direct, supervise or control.
456 A person who is a public official or public employee may
457 solicit private business from a subordinate public official or
458 public employee whom he or she has the authority to direct,
459 supervise or control when:

460 (A) The solicitation is a general solicitation directed to the
461 public at large through the mailing or other means of distribu-
462 tion of a letter, pamphlet, handbill, circular or other written or
463 printed media; or

464 (B) The solicitation is limited to the posting of a notice in
465 a communal work area; or

466 (C) The solicitation is for the sale of property of a kind that
467 the person is not regularly engaged in selling; or

468 (D) The solicitation is made at the location of a private
469 business owned or operated by the person to which the subordi-
470 nate public official or public employee has come on his or her
471 own initiative.

472 (e) The Commission may, by legislative rule promulgated
473 in accordance with chapter twenty-nine-a of this Code, define
474 further exemptions from this section as necessary or appropri-
475 ate.

§6B-2-5b. Ethics training requirements.

1 An individual who, on or after the effective date of this
2 subsection, is elected or appointed to serve in the Legislature,
3 as a member of the Board of Public Works, and those positions
4 in the executive branch of state government which the Governor
5 designates by executive order, shall, within six months of filling
6 such position, attend a training course conducted by the Ethics
7 Commission on the requirements of the Ethics Act. The
8 Commission shall offer the training contemplated by this

9 section once every four years and shall prescribe by legislative
10 rule the nature, duration and content of the training and the
11 manner in which the training will be conducted.

§6B-2-7. Financial disclosure statement; contents.

1 The financial disclosure statement required under this
2 article shall contain the following information:

3 (1) The name, residential and business addresses of the
4 person filing the statement and all names under which the
5 person does business.

6 (2) The name and address of each employer of the person.

7 (3) The name and address of each business in which the
8 person filing the statement has or had in the last year an interest
9 of ten thousand dollars at fair market value or five percent
10 ownership interest, if that interest is valued at more ten thou-
11 sand dollars.

12 (4) The identification, by category, of every source of
13 income over one thousand dollars received during the preceding
14 calendar year, in his or her own name or by any other person for
15 his or her use or benefit, by the person filing the statement and
16 a brief description of the nature of the services for which the
17 income was received. This subdivision does not require a
18 person filing the statement who derives income from a business,
19 profession or occupation to disclose the individual sources and
20 items of income that constitute the gross income of that
21 business, profession or occupation nor does this subdivision
22 require a person filing the statement to report the source or
23 amount of income derived by his or her spouse.

24 (5) If the person, profited or benefitted in the year prior to
25 the date of filing from a contract for the sale of goods or
26 services to a state, county, municipal or other local governmen-

27 tal agency either directly or through a partnership, corporation
28 or association in which the person owned or controlled more
29 than ten percent, the person shall describe the nature of the
30 goods or services and identify the governmental agencies which
31 purchased the goods or services.

32 (6) Each interest group or category listed below doing
33 business in this state with which the person filing the statement,
34 did business or furnished services and from which the person
35 received more than twenty percent of his or her gross income
36 during the preceding calendar year. The groups or categories
37 are electric utilities, gas utilities, telephone utilities, water
38 utilities, cable television companies, interstate transportation
39 companies, intrastate transportation companies, oil or gas retail
40 companies, banks, savings and loan associations, loan or
41 finance companies, manufacturing companies, surface mining
42 companies, deep mining companies, mining equipment compa-
43 nies, chemical companies, insurance companies, retail compa-
44 nies, beer, wine or liquor companies or distributors, recreation
45 related companies, timbering companies, hospitals or other
46 health care providers, trade associations, professional associa-
47 tions, associations of public employees or public officials,
48 counties, cities or towns, labor organizations, waste disposal
49 companies, wholesale companies, groups or associations
50 promoting gaming or lotteries, advertising companies, media
51 companies, race tracks and promotional companies.

52 (7) The names of all persons, excluding that person's
53 immediate family, parents or grandparents residing or transact-
54 ing business in the state to whom the person filing the state-
55 ment, owes, on the date of execution of this statement in the
56 aggregate in his or her own name or in the name of any other
57 person more than five thousand dollars: *Provided*, That nothing
58 herein shall require the disclosure of a mortgage on the person's
59 primary and secondary residences or of automobile loans on
60 automobiles maintained for the use of the person's immediate

61 family, or of a student loan, nor shall this section require the
62 disclosure of debts which result from the ordinary conduct of
63 the person's business, profession, or occupation or of debts of
64 the person filing the statement to any financial institution, credit
65 card company, or business, in which the person has an owner-
66 ship interest: *Provided, however,* That the previous proviso
67 shall not exclude from disclosure loans obtained pursuant to the
68 linked deposit program provided for in article one-a, chapter
69 twelve of this code or any other loan or debt incurred which
70 requires approval of the state or any of its political subdivisions.

71 (8) The names of all persons except immediate family
72 members, parents and grandparents residing or transacting
73 business in the state (other than a demand or savings account in
74 a bank, savings and loan association, credit union or building
75 and loan association or other similar depository) who owes on
76 the date of execution of this statement more, in the aggregate,
77 than five thousand dollars to the person filing the statement,
78 either in his or her own name or to any other person for his or
79 her use or benefit. This subdivision does not require the
80 disclosure of debts owed to the person filing the statement
81 which debts result from the ordinary conduct of the person's
82 business, profession or occupation or of loans made by the
83 person filing the statement to any business in which the person
84 has an ownership interest.

85 (9) The source of each gift, including those described in
86 subdivision (2), subsection (c), section five of this article,
87 having a value of over one hundred dollars, received from a
88 person having a direct and immediate interest in a governmental
89 activity over which the person filing the statement has control,
90 shall be reported by the person filing the statement when such
91 gift is given to said person in his or her name or for his or her
92 use or benefit during the preceding calendar year: *Provided,*
93 That, effective from passage of the amendments to this section
94 enacted during the First Extraordinary Session of the Legisla-

95 ture in two thousand five, any person filing a statement required
96 to be filed pursuant to this section on or after the first day of
97 January, two thousand five, is not required to report those gifts
98 described in subdivision (2), subsection (c), section five of this
99 article that are otherwise required to be reported under section
100 four, article three of this chapter: *Provided, however,* That gifts
101 received by will or by virtue of the laws of descent and distribu-
102 tion, or received from one's spouse, child, grandchild, parents
103 or grandparents, or received by way of distribution from an
104 inter vivos or testamentary trust established by the spouse or
105 child, grandchild, or by an ancestor of the person filing the
106 statement are not required to be reported. As used in this
107 subdivision, any series or plurality of gifts which exceeds in the
108 aggregate the sum of one hundred dollars from the same source
109 or donor, either directly or indirectly, and in the same calendar
110 year shall be regarded as a single gift in excess of that aggregate
111 amount.

112 (10) The signature of the person filing the statement.

§6B-2-9. Special prosecutor authorized

1 (a)(1) If after referral to the appropriate county prosecuting
2 attorney under subsection (v), section four of this article the
3 Ethics Commission finds that the prosecuting attorney is, due
4 to ill health or conflict of interest, unable to undertake a
5 criminal investigation or prosecution, the chair of the Ethics
6 Commission may, upon a two-thirds vote of the members of the
7 Ethics Commission, petition the appropriate circuit court for the
8 appointment of a special prosecutor through the West Virginia
9 Prosecuting Attorneys Institute pursuant to the provisions of
10 section six, article four, chapter seven of this Code for the
11 purpose of conducting an investigation to determine whether a
12 violation of the criminal law of this state has occurred.

13 (2) If the West Virginia Prosecuting Attorneys Institute is
14 unable, due to a conflict of interest of its Executive Director, to

15 assign a special prosecuting attorney to a criminal investigation
16 or prosecution, the chair of the Ethics Commission may, upon
17 a two-thirds vote of the members of the Ethics Commission,
18 petition the appropriate circuit court for the appointment of a
19 special prosecutor through communication with the Board of
20 Directors of the West Virginia Prosecuting Attorneys Institute.

21 (b) A special prosecutor shall have the same authority as a
22 county prosecutor to investigate and prosecute persons subject
23 to this article for criminal violations committed in connection
24 with their public office or employment which constitute
25 felonies. No person who is serving as a prosecuting attorney or
26 assistant prosecuting attorney of any county is required to take
27 an additional oath when appointed to serve as a special prose-
28 cuting attorney.

29 (c) The ethics committee shall be authorized to employ and
30 assign the necessary professional and clerical staff to assist any
31 such special prosecutor in the performance of his or her duties.

32 (d) The special prosecutor shall be empowered to make a
33 presentment to any regularly or specially impaneled grand jury
34 in the appointing circuit court. The special prosecutor shall be
35 empowered to prosecute any person indicted by such grand
36 jury.

§6B-2-10. Violations and penalties.

1 (a) Any person who violates the provisions of subsection
2 (e), (f) or (g), section five of this article, and any person, other
3 than a complainant, who violates the provisions of subsection
4 (e), section four of this article is guilty of a misdemeanor and,
5 upon conviction, shall be confined in the county or regional jail
6 for a period not to exceed six months or fined not more than
7 one thousand dollars, or both. A member or employee of the
8 Commission convicted of violating subsection (e), section four

9 of this article is subject to immediate removal from office or
10 discharge from employment.

11 (b) Any person who violates the provisions of subsection
12 (f), section six of this article by willfully and knowingly filing
13 a false financial statement or knowingly and willfully conceal-
14 ing a material fact in filing the statement is guilty of a misde-
15 meanor and, upon conviction, shall be fined not more than one
16 thousand dollars, or confined in the county or regional jail not
17 more than one year, or both.

18 (c) Any person who knowingly fails or refuses to file a
19 financial statement required by section six of this article, is
20 guilty of a misdemeanor and, upon conviction, shall be fined
21 not less than one hundred dollars nor more than one thousand
22 dollars.

23 (d) If any Commission member or staff knowingly violates
24 subsection (o), section four of this article, such person, upon
25 conviction thereof, shall be guilty of a misdemeanor and shall
26 be fined not less than one hundred dollars nor more than one
27 thousand dollars.

ARTICLE 3. LOBBYISTS

§6B-3-1. Definitions.

§6B-3-2. Registration of lobbyists.

§6B-3-3a. Registration fees.

§6B-3-3b. Conflict of interest.

§6B-3-3c. Lobbyist training course.

§6B-3-4. Reporting by lobbyists.

§6B-3-7. Duties of lobbyists.

§6B-3-11. Compliance audits.

§6B-3-1. Definitions.

1 As used in this article, unless the context in which used
2 clearly indicates otherwise:

3 (1) "Compensation" means money or any other thing of
4 value received or to be received by a lobbyist from an employer
5 for services rendered.

6 (2) "Employer" or "lobbyist's employer" means any person
7 who employs or retains a lobbyist.

8 (3) "Expenditure" means payment, distribution, loan,
9 advance deposit, reimbursement, or gift of money, real or
10 personal property or any other thing of value; or a contract,
11 promise or agreement, whether or not legally enforceable.

12 (4) "Government officer or employee" means a member of
13 the Legislature, a legislative employee, the Governor and other
14 members of the Board of Public Works, heads of executive
15 departments and any other public officer or public employee
16 under the legislative or executive branch of state government
17 who is empowered or authorized to make policy and perform
18 nonministerial functions. In the case of elected offices included
19 herein, the term "government officer or employee" includes
20 candidates who have been elected but who have not yet
21 assumed office.

22 (5) "Legislation" means bills, resolutions, motions, amend-
23 ments, nominations and other matters pending or proposed in
24 either house of the Legislature and includes any other matters
25 that may be the subject of action by either house or any
26 committee of the Legislature and all bills or resolutions that,
27 having passed both houses, are pending approval or veto by the
28 Governor.

29 (6) "Lobbying" or "lobbying activity" means the act of
30 communicating with a government officer or employee to
31 promote, advocate or oppose or otherwise attempt to influence:

32 (i) The passage or defeat or the executive approval or veto
33 of any legislation which may be considered by the Legislature
34 of this state; or

35 (ii) The adoption or rejection of any rule, regulation,
36 legislative rule, standard, rate, fee or other delegated legislative
37 or quasilegislative action to be taken or withheld by any
38 executive department.

39 (7) "Lobbying firm" means any business entity, including
40 an individual contract lobbyist, which meets either of the
41 following criteria:

42 (A) The business entity receives or becomes entitled to
43 receive any compensation, other than reimbursement for
44 reasonable travel expenses, for the purpose of lobbying on
45 behalf of any other person, and any partner, owner, officer or
46 employee of the business entity.

47 (B) The business entity receives or becomes entitled to
48 receive any compensation, other than reimbursement for
49 reasonable travel expenses, to communicate directly with any
50 elected state official, agency official or legislative official for
51 the purpose of lobbying on behalf of any other person.

52 (8)(A) "Lobbyist" means any individual employed by a
53 lobbying firm or who is otherwise employed or contracts for
54 economic consideration, other than reimbursement for reason-
55 able travel expenses, to communicate directly or through his or
56 her agents with any elective state official, agency official or
57 legislative official for the purpose of promoting, advocating,
58 opposing or otherwise attempting to influence:

59 (i) The passage or defeat or the executive approval or veto
60 of any legislation which may be considered by the Legislature
61 of this state; or

62 (ii) The adoption or rejection of any rule, legislative rule,
63 standard, rate, fee or other delegated legislative or
64 quasilegislative action to be taken or withheld by any executive
65 department.

66 (B) The term "lobbyist" does not include the following
67 persons, who are exempt from the registration and reporting
68 requirements set forth in this article, unless they engage in
69 activities which would otherwise subject them to the registra-
70 tion and reporting requirements:

71 (i) Persons who limit their lobbying activities to appearing
72 before public sessions of committees of the Legislature, or
73 public hearings of state agencies, are exempt.

74 (ii) Persons who limit their lobbying activities to attending
75 receptions, dinners, parties or other group functions and make
76 no expenditure in connection with such lobbying are exempt.

77 (iii) Persons who engage in news or feature reporting
78 activities and editorial comment as working members of the
79 press, radio or television and persons who publish or dissemi-
80 nate such news, features or editorial comment through a
81 newspaper, book, regularly published periodical, radio station
82 or television station are exempt.

83 (iv) Persons who lobby without compensation or other
84 consideration, other than reimbursement for reasonable travel
85 expenses, for acting as lobbyists, who are not employed by a
86 lobbying firm or lobbyist employer, and whose total expendi-
87 tures in connection with lobbying activities do not exceed one
88 hundred fifty dollars during any calendar year, are exempt. The
89 exemptions contained in this subparagraph and in subparagraph
90 (ii) are intended to permit and encourage citizens of this state
91 to exercise their constitutional rights to assemble in a peaceable
92 manner, consult for the common good, instruct their representa-
93 tives, and apply for a redress of grievances. Accordingly, such
94 persons may lobby without incurring any registration or
95 reporting obligation under this article. Any person exempt
96 under this subparagraph or subparagraph (ii) may at his or her
97 option register and report under this article.

98 (v) Persons who lobby on behalf of a nonprofit organization
99 with regard to legislation, without compensation, and who
100 restrict their lobbying activities to no more than twenty days or
101 parts thereof during any regular session of the Legislature, are
102 exempt. The Commission may promulgate a legislative rule to
103 require registration and reporting by persons who would
104 otherwise be exempt under this subparagraph, if it determines
105 that such rule is necessary to prevent frustration of the purposes
106 of this article. Any person exempt under this subparagraph
107 may, at his or her option, register and report under this article.

108 (vi) The Governor, members of the Governor's staff,
109 members of the Board of Public Works, officers and employees
110 of the executive branch who communicate with a member of
111 the Legislature on the request of that member, or who commu-
112 nicate with the Legislature, through the proper official channels,
113 requests for legislative action or appropriations which are
114 deemed necessary for the efficient conduct of the public
115 business or which are made in the proper performance of their
116 official duties, are exempt.

117 (vii) Members of the Legislature are exempt.

118 (viii) Persons employed by the Legislature for the purpose
119 of aiding in the preparation or enactment of legislation or the
120 performance of legislative duties are exempt.

121 (ix) Persons rendering professional services in drafting
122 proposed legislation or in advising or rendering opinions to
123 clients as to the construction and effect of proposed or pending
124 legislation are exempt.

125 (9) "Person" means any individual, partnership, trust,
126 estate, business trust, association or corporation; any depart-
127 ment, commission, board, publicly supported college or
128 university, division, institution, bureau or any other instrumen-

129 tality of the state; or any county, municipal corporation, school
130 district or any other political subdivision of the state.

§6B-3-2. Registration of lobbyists.

1 (a) Before engaging in any lobbying activity, or within
2 thirty days after being employed as a lobbyist, whichever
3 occurs first, a lobbyist shall register with the Ethics Commis-
4 sion by filing a lobbyist registration statement. The registration
5 statement shall contain information and be in a form prescribed
6 by the Ethics Commission by legislative rule, including, but not
7 limited to, the following information:

8 (1) The registrant's name, business address, telephone
9 numbers and any temporary residential and business addresses
10 and telephone numbers used or to be used by the registrant
11 while lobbying during a legislative session;

12 (2) The name, address and occupation or business of the
13 registrant's employer;

14 (3) A statement as to whether the registrant is employed or
15 retained by his or her employer solely as a lobbyist or is a
16 regular employee performing services for the employer which
17 include, but are not limited to, lobbying;

18 (4) A statement as to whether the registrant is employed or
19 retained by his or her employer under any agreement, arrange-
20 ment or understanding according to which the registrant's
21 compensation, or any portion of the registrant's compensation,
22 is or will be contingent upon the success of his or her lobbying
23 activity;

24 (5) The general subject or subjects, if known, on which the
25 registrant will lobby or employ some other person to lobby in
26 a manner which requires registration under this article; and

27 (6) An appended written authorization from each of the
28 lobbyist's employers confirming the lobbyist's employment and
29 the subjects on which the employer is to be represented.

30 (b) Any lobbyist who receives or is to receive compensation
31 from more than one person for services as a lobbyist shall file
32 a separate notice of representation with respect to each person
33 compensating him or her for services performed as a lobbyist.
34 When a lobbyist whose fee for lobbying with respect to the
35 same subject is to be paid or contributed by more than one
36 person, then the lobbyist may file a single statement, in which
37 he or she shall detail the name, business address and occupation
38 of each person paying or contributing to the fee.

39 (c) Whenever a change, modification or termination of the
40 lobbyist's employment occurs, the lobbyist shall, within one
41 week of the change, modification or termination, furnish full
42 information regarding the change, modification or termination
43 by filing with the Commission an amended registration state-
44 ment.

45 (d) Each lobbyist who has registered shall file a new
46 registration statement, revised as appropriate, on the Monday
47 preceding the second Wednesday in January of each odd-
48 numbered year and failure to do so terminates his or her
49 authorization to lobby. Until the registration is renewed, the
50 person may not engage in lobbying activities unless he or she
51 is otherwise exempt under paragraph (B), subdivision (7),
52 section one of this article.

§6B-3-3a. Registration fees.

1 (a) Each lobbyist shall, at the time he or she registers, pay
2 the Commission a base registration fee of one hundred dollars,
3 plus one hundred dollars for each employer represented, to be
4 filed with the initial registration statement and with each new

5 registration statement filed by the lobbyist in subsequent odd
6 numbered years. Whenever a lobbyist modifies his or her
7 registration to add additional employers an additional registra-
8 tion fee of one hundred dollars for each additional employer
9 represented shall be paid to the Commission.

10 (b) All fees authorized and collected pursuant to this article
11 shall be paid to the Ethics Commission and thereafter deposited
12 into the special revenue account created pursuant to section six,
13 article one of this chapter.

§6B-3-3b. Conflict of interest.

1 A lobbyist or a lobbyist's immediate family member may
2 not participate in any decision as a member of a state or county
3 board, council, commission or public service district if the
4 lobbyist may receive direct, personal economic or pecuniary
5 benefit from a decision of that state or county board, council,
6 commission or public service district. The lobbyist's economic
7 or pecuniary benefit must affect him or her directly and not
8 merely as a member of a class.

§6B-3-3c. Lobbyist training course.

1 The Commission shall provide a training course for
2 registered lobbyists and prospective lobbyists at least twice
3 each year regarding the provisions of the ethics code relevant
4 to lobbyists. One such course shall be conducted during the
5 month of January. In addition to the registration fees autho-
6 rized in section three-a of this article, the Commission may
7 collect a reasonable fee from those attending lobbyist training,
8 which is to be collected by the Ethics Commission and depos-
9 ited in the special revenue account created pursuant to section
10 six, article one of this chapter. To maintain registration and
11 engage in lobbying activities, a lobbyist must complete one
12 such training course per year.

§6B-3-4. Reporting by lobbyists.

1 (a) A registered lobbyist shall file with the Commission
2 reports of his or her lobbying activities, signed by the lobbyist.
3 The reports shall be filed three times a year as follows:

4 (1) On or before the fifteenth day of May, a lobbyist shall
5 report all lobbying activities in which he or she engaged from
6 the first day of January through the thirtieth day of April.

7 (2) On or before the fifteenth day of September, a lobbyist
8 shall report all lobbying activities in which he or she engaged
9 from the first day of May through the thirty-first day of August;

10 (3) On or before the fifteenth day of January, a lobbyist
11 shall report all lobbying activities in which he or she engaged
12 from the first day of September through the thirty-first day of
13 December.

14 (b) If the date on which a lobbyist expenditure report is due
15 falls on a Saturday, Sunday or legal holiday, the report will be
16 considered timely filed if it is postmarked not later than the next
17 business day. If a registered lobbyist files a late report, the
18 lobbyist shall pay the Commission a fee of ten dollars for each
19 late day, not to exceed a total of two hundred fifty dollars. If a
20 registered lobbyist fails to file a report or to pay the required fee
21 for filing an untimely report, the Commission may, after written
22 notice sent by registered mail, return receipt requested, suspend
23 the lobbyist's privileges as a registered lobbyist until the
24 lobbyist has satisfactorily complied with all reporting require-
25 ments and paid the required fee.

26 (c)(1) Except as otherwise provided in this section, each
27 report filed by a lobbyist shall show the total amount of all
28 expenditures for lobbying activities made or incurred by on
29 behalf of the lobbyist during the period covered by the report.
30 The report shall also show subtotals segregated according to

31 financial category, including meals and beverages; living
32 accommodations; advertising; travel; contributions; gifts to
33 public officials or employees or to members of the immediate
34 family of a public official or employee; and other expenses or
35 services.

36 (2) Lobbyists are not required to report the following:

37 (A) Unreimbursed personal living and travel expenses not
38 incurred directly for lobbying;

39 (B) Any expenses incurred for the lobbyist's own living
40 accommodations;

41 (C) Any expenses incurred for the lobbyist's own travel to
42 and from public meetings or hearings of the legislative and
43 executive branches; or

44 (D) Any expenses incurred for telephone and any office
45 expenses, including rent and salaries and wages paid for staff
46 and secretarial assistance.

47 (d) If a lobbyist is employed by more than one employer,
48 the report shall show the proportionate amount of the expendi-
49 tures in each category incurred on behalf of each of his or her
50 employers.

51 (e) The report shall describe the subject matter of the
52 lobbying activities in which the lobbyist has been engaged
53 during the reporting period.

54 (f) If, during the period covered by the report, the lobbyist
55 made expenditures or expenditures were made or incurred on
56 behalf of the lobbyist in the reporting categories of meals and
57 beverages, living accommodations, travel, gifts or other
58 expenditures, other than for those expenditures governed by
59 subsection (g) of this section, the lobbyist shall report the name
60 of the public official or employee to whom or on whose behalf

61 the expenditures were made, the total amount of the expendi-
62 tures, and the subject matter of the lobbying activity, if any:
63 *Provided*, That a registered lobbyist who entertains more than
64 one public official or public employee at a time with meals and
65 beverages complies with the provisions of this section if he or
66 she reports the names of the public officials or public employ-
67 ees entertained and the total amount expended for meals and
68 beverages for all of the public officials or public employees
69 entertained: *Provided, however*, That where several lobbyists
70 join in entertaining one or more public officials or public
71 employees at a time with meals and beverages, each lobbyist
72 complies with the provisions of this section by reporting the
73 names of the public officials or public employees entertained
74 and his or her proportionate share of the total amount expended
75 for meals and beverages for all of the public officials or public
76 employees entertained. Under this subsection, no portion of the
77 amount of an expenditure for a dinner, party or other function
78 sponsored by a lobbyist's employer need be attributed to a
79 particular public official or employee who attends the function
80 if the sponsor has invited to the function all the members of: (1)
81 The Legislature; (2) either house of the Legislature; (3) a
82 standing or select committee of either house; or (4) a joint
83 committee of the two houses of the Legislature. However, the
84 amount spent for the function shall be added to other expendi-
85 tures for the purpose of determining the total amount of
86 expenditures reported under subdivision (1), subsection (c) of
87 this section: *Provided further*, That if the expenditure is for a
88 function to which the entire membership of the Legislature has
89 been invited, the lobbyist need only report that fact, the total
90 amount of the expenditure and the subject matter of the
91 lobbying activity.

92 (g) If, during the period covered by the report, the lobbyist
93 made expenditures in the reporting categories of meals and
94 beverages, lodging, travel, gifts and scheduled entertainment for
95 or on behalf of a particular public official or public employee

96 in return for the participation of the public official or employee
97 in a panel or speaking engagement at a meeting, the lobbyist
98 shall report the name of the public official or employee to
99 whom or on whose behalf the expenditures were made and the
100 total amount of the expenditures.

§6B-3-7. Duties of lobbyists.

1 A person required to register as a lobbyist under this article
2 also has the following obligations, the violation of which
3 constitutes cause for revocation of his or her registration and
4 termination of his or her lobbying privileges and may subject
5 the person, and the person's employer, if employer aids, abets,
6 ratifies or confirms the violation, to other civil liabilities as
7 provided by this chapter.

8 (1) Any person required to register as a lobbyist shall
9 obtain, preserve and make available for inspection by the
10 Commission at any time all accounts, bills, receipts, books,
11 papers and documents necessary to substantiate the financial
12 reports required to be made under this article for a period of at
13 least two years from the date of the filing of the statement to
14 which those items relate: *Provided*, That if a lobbyist is
15 required under the terms of his or her employment contract to
16 turn any records over to his or her employer, responsibility for
17 the preservation of the records under this subsection shall rest
18 with the employer.

19 (2) In addition, a person required to register as a lobbyist
20 may not:

21 (A) Engage in any lobbying activity before registering as a
22 lobbyist;

23 (B) Knowingly deceive or attempt to deceive any govern-
24 ment officer or employee as to any fact pertaining to a matter
25 which is the subject of lobbying activity;

26 (C) Cause or influence the introduction of any legislation
27 for the purpose of thereafter being employed to secure its
28 defeat;

29 (D) Exercise any undue influence, extortion or unlawful
30 retaliation upon any government officer or employee by reason
31 of the government officer or employee's position with respect
32 to, or his or her vote upon, any matter which is the subject of
33 lobbying activity;

34 (E) Exercise undue influence upon any legislator or other
35 privately employed government officer or employee through
36 communications with the person's employer;

37 (F) Give a gift to any government officer or employee in
38 excess of or in violation of any limitations on gifts set forth in
39 subsection (c), section five, article two of this chapter or give
40 any gift, whether lawful or unlawful, to a government officer or
41 employee without the government officer or employee's
42 knowledge and consent.

§6B-3-11. Compliance audits.

1 (a) The Commission shall initiate, by lottery, random audits
2 of lobbyist registration statements and disclosure reports
3 required to be filed under this chapter on or after the first day of
4 July, two thousand five: *Provided*, That the Commission may
5 not conduct compliance audits pursuant to this section until it
6 has proposed for promulgation and received final approval from
7 the Legislature of a legislative rule in accordance with the
8 provisions of chapter twenty-nine-a of this Code setting forth,
9 among other things, the manner in which the audit is to be
10 conducted, the information, documents and materials to be
11 considered during the audit, the selection and qualification of
12 the auditor(s), the audit procedures to be employed by the
13 auditors and the preparation and contents of any post-audit
14 reports.

15 (b) The Commission may hold up to four lotteries per year.
16 The number of lotteries held within a given year will be a
17 matter within the Commission's discretion.

18 (c) The number of audits to be conducted will be deter-
19 mined by the Commission through resolutions adopted at public
20 meetings and based on various factors, including the complex-
21 ity, results and time required to complete the audits.

22 (d) No lobbyist or lobbyist's employer will be subject to a
23 random audit more than once in any 24-month period.

CHAPTER 2

**(S. B. 1001 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed January 27, 2005; in effect from passage.]

[Approved by the Governor on February 14, 2005.]

AN ACT to amend and reenact §3-8-2a of the Code of West Virginia, 1931, as amended; and to amend and reenact §5A-4-2 of said code, all relating to authorizing the excess contribution received by inaugural committees to be used for the enhancement of the Governor's Mansion; and creating the Governor's Mansion Fund.

Be it enacted by the Legislature of West Virginia:

That §3-8-2a of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §5A-4-2 of said code be amended and reenacted, all to read as follows:

Chapter

3. Elections.

5A. Department of Administration.

CHAPTER 3. ELECTIONS.**ARTICLE 8. REGULATION AND CONTROL OF ELECTIONS.****§3-8-2a. Detailed accounts and verified financial statements for certain inaugural events; limitations; reporting requirements.**

1 (a) For purposes of this section:

2 (1) "Inaugural committee" includes any person, organiza-
3 tion or group of persons soliciting or receiving contributions for
4 the purpose of funding an inaugural event for a person elected
5 to a statewide public office; and

6 (2) "Inaugural event" means any event or events held
7 between the general election of a person elected to a statewide
8 public office and ninety days after the general election, whether
9 the event is sponsored by the inaugural committee or the state
10 political party committee representing the party of the person
11 elected and for which the person elected is a prominent partici-
12 pant or for which solicitations of contributions include the name
13 of the person elected in prominent display.

14 (b) Any inaugural committee soliciting or receiving
15 contributions for the funding of all or any part of an inaugural
16 event for any person elected to a statewide office that receives
17 an individual contribution in excess of two hundred fifty dollars
18 for any such event shall file and retain detailed records of any
19 such contribution.

20 (c) No person may contribute more than five thousand
21 dollars for any inaugural event. For purposes of this section,
22 "contribution" does not include volunteer personal services but
23 does include in-kind contributions of materials or supplies.

24 (d) Any inaugural committee, financial agent or any person
25 or officer acting on behalf of such committee which is subject

26 to the provisions of this section shall file a verified financial
27 statement with the Secretary of State on a form prescribed by
28 the state election commission within ninety days of the event.
29 The financial statement shall contain information as may be
30 required by the provisions of this section relating to any
31 contribution in excess of two hundred fifty dollars. The
32 Secretary of State shall file and retain such statements as public
33 records for a period of not less than six years.

34 (e) In addition to any other information required by the
35 state election commission, the report of contributions required
36 by the provisions of this section shall include the methodology
37 of the fundraising, the nature of the expenditures made and the
38 names, addresses and amounts paid to any person.

39 (f) Amounts received by an inaugural committee for any
40 person elected to a statewide public office in excess of the
41 amount expended for an inaugural event may be contributed to
42 any educational, cultural or charitable organization, or to the
43 governor's mansion fund created in section two, article four,
44 chapter five-a of this code. The inaugural committee shall,
45 within sixty days after filing the report required by subsection
46 (d) of this section, expend any excess moneys and report, on a
47 form prescribed by the Secretary of State, any amounts contrib-
48 uted to the governor's mansion fund, any amounts contributed
49 to educational, cultural or charitable organizations and the
50 names of the organizations to which such excess moneys were
51 contributed. The Secretary of State shall file and retain such
52 records as public records for a period of not less than six years.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 4. GENERAL SERVICES DIVISION.

§5A-4-2. Care, control and custody of capitol buildings and grounds.

1 (a) The director has the full responsibility for the care,
2 control and custody of the capitol buildings and in this connec-
3 tion he or she shall:

4 (1) Furnish janitorial services, which are to be provided by
5 employees of the Department of Administration for the main
6 capitol building, including east and west wings, together with
7 all the departments in the building, or connected with the
8 building, regardless of the budget or budgets, departmental or
9 otherwise, from which the janitorial services are paid, and shall
10 furnish janitorial supplies, light, heat and ventilation for all the
11 rooms and corridors of the buildings: *Provided*, That nothing
12 in this section shall be construed to prohibit contracts for
13 janitorial services with sheltered workshops. The President of
14 the Senate and Speaker of the House of Delegates, or their
15 respective designees, have charge of the halls and committee
16 rooms of their respective houses and any other quarters at the
17 State Capitol provided for the use of the Legislature or its staff
18 and shall keep the areas properly cleaned, warmed and in good
19 order and shall do and perform any other duties in relation to
20 the areas as either house may require;

21 (2) Landscape and take care of the lawns and gardens; and

22 (3) Direct the making of all minor repairs to and alterations
23 of the capitol buildings and governor's mansion and the
24 grounds of the buildings and mansion. Major repairs and
25 alterations shall be made under the supervision of the director,
26 subject to the direction of the secretary.

27 (b) The offices of the assistants and employees appointed
28 to perform these duties shall be located where designated by the
29 secretary, except that they shall not be located in any of the
30 legislative chambers, offices, rooms or halls. Office hours shall
31 be arranged so that emergency or telephone service is available
32 at all times. The hours shall be arranged so that janitorial
33 service shall not interfere with other employment during regular
34 office hours.

35 (c) There is created in the state treasury a special revenue
36 account to be named the “Capitol Dome and Capitol Improve-
37 ments Fund”. The fund shall consist of moneys received under
38 section ten, article twenty-two-a, chapter twenty-nine of this
39 code and funds from any other source. Moneys in the fund
40 shall be expended for maintenance and repairs of the capitol
41 dome and other capital improvements and repairs to state-
42 owned buildings.

43 (d) There is hereby created in the state treasury a special
44 revenue fund to be known as the “Governor’s Mansion Fund”.
45 The fund shall operate as a special revenue fund whereby all
46 deposits and payments thereto do not expire to the general
47 revenue fund, but shall remain in the fund and be available for
48 expenditure in succeeding fiscal years. This fund shall consist
49 of moneys deposited in the fund pursuant to the provisions of
50 section two-a, article eight, chapter three of this Code as well as
51 interest earned on investments made from moneys deposited in
52 the fund. Moneys from this fund shall be expended by the
53 director for enhancement of the governor’s mansion subject to
54 the direction of the secretary of administration and the discre-
55 tion of the Governor: *Provided*, That any furniture, fixtures and
56 equipment purchased with moneys from the Governor’s
57 Mansion Fund are property of the State of West Virginia.



CHAPTER 3

(S. B. 1002 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed January 29, 2005; in effect from passage.]

[Approved by the Governor on February 14, 2005.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-1-28; to amend said code by adding thereto a new article, designated §5B-1-1, §5B-1-2, §5B-1-3, §5B-1-4, §5B-1-5, §5B-1-6 and §5B-1-7; to amend and reenact §5B-2-2, §5B-2-3 and §5B-2-8 of said code; to amend said code by adding thereto a new section, designated §5B-2-14; to amend and reenact §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-6 and §5B-2E-9 of said code; to amend and reenact §5D-1-4 and §5D-1-5 of said code; to amend said code by adding thereto a new section, designated §5D-1-24; to amend and reenact §5F-1-2 of said code; to amend and reenact §5F-2-1 and §5F-2-2 of said code; to amend and reenact §7-22-3, §7-22-6, §7-22-7, §7-22-8, §7-22-10, §7-22-11, §7-22-12, §7-22-14 and §7-22-15 of said code; to amend and reenact §8-38-3, §8-38-6, §8-38-7, §8-38-8, §8-38-10, §8-38-11, §8-38-12, §8-38-14 and §8-38-15 of said code; to amend and reenact §12-7-4 and §12-7-5 of said code; to amend and reenact §13-2C-21 of said code; to amend and reenact §17-24-4 of said code; to amend and reenact §18-9D-1 of said code; to amend and reenact §18B-3D-1, §18B-3D-2, §18B-3D-3, §18B-3D-4 and §18B-3D-5 of said code; to amend and reenact §22C-1-4 of said code; to amend and reenact §29-8-2 of said code; to amend and reenact §29-22-18a of said code; to amend and reenact §31-15A-3 and §31-15A-11 of said code; and to amend and reenact §31-18-4 and §31-18-5 of said code, all relating to the reorganization of the executive branch of state government; establishing prerequisites for bond issuance and refunding; creating a new department of commerce in the executive branch of state government; creating the office of secretary as the chief executive officer of the department of commerce; providing for the transfer to and incorporation into the department of commerce of the bureau of commerce and numerous state divisions, agencies and boards and allied, advisory, affiliated and related entities and funds; describing the powers, duties and authority of the secretary, administrators, division heads and employees of the department of commerce; providing for annual reports by the secretary of the department of commerce

to the governor; providing for the delegation of powers and duties for the secretary of the department of commerce; extending authority of executive agencies to transfer funds; providing for interdepartmental communication of certain confidential information in certain cases; providing for an appeal in instances relating to the interference of government by the department of commerce; establishing the economic development authority as an independent agency within the executive branch; providing for the appointment and duties of the executive director of the development office; transferring authority from the council for community and economic development to the development office in certain cases; transferring rule-making authority from the council for community and economic development to the development office or its executive director; transferring the certified development community program to the economic development office; revising the powers and duties of the development office; transferring authority to approve tourism development projects from the council for community and economic development to the executive director of the development office; transferring authority to approve county and municipal economic opportunity development district projects from the council for community and economic development to the development office; authorizing the development office to determine economic viability of waste tire processing facilities; transferring authority to approve disposal of equipment purchased with workforce development grant funds from council for community and economic development to development office; transferring authority to administer the state fund for community and technical college and workforce development from council for community and economic development to development office; authorizing executive director of development office to approve expenditure of grant funds; authorizing executive director of development office to appoint advisory committee to review applications for workforce development grants; transferring authority to administer economic development project bridge loan fund from the council for community and economic development

to the economic development authority; expiring terms of members of public energy authority board; reconstituting composition of public energy authority board; providing for governor to chair the public energy authority board; restoring authority of public energy authority to initiate, acquire, construct, finance or issue bonds for electric power projects and transmission facilities; restoring authority of public energy authority to exercise powers of eminent domain; providing for sunset review of public energy authority; modifying membership of the jobs investment trust board; providing for the composition and appointment of the jobs investment trust fund board; providing for governor to chair the jobs investment trust board; authorizing the governor to appoint an executive director of the jobs investment trust board; establishing the water development authority as an independent agency within the executive branch; modifying composition of the water development authority; providing for governor to chair the water development authority; authorizing the governor to appoint an executive director of the water development authority; modifying composition of school building authority; decreasing terms of certain members of school building authority; providing for governor to chair the school building authority; authorizing the governor to appoint an executive director of the school building authority; authorizing governor to remove members of school building authority for cause; providing for governor to chair the infrastructure and jobs development council; providing applications for infrastructure projects to be submitted to the executive director of the development office; providing for governor to chair the housing development fund board; authorizing the governor to appoint an executive director of the housing development fund board; clarifying that the Blennerhassett Island historical state park is within the division of natural resources; clarifying division of tourism in West Virginia development office; and making technical corrections.

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 §5-1-28; that said code be amended by adding thereto a new article, designated §5B-1-1, §5B-1-2, §5B-1-3, §5B-1-4, §5B-1-5, §5B-1-6 and §5B-1-7; that §5B-2-2, §5B-2-3 and §5B-2-8 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §5B-2-14; that §5B-2E-3, §5B-2E-4, §5B-2E-5, §5B-2E-6 and §5B-2E-9 of said code be amended and reenacted; that §5D-1-4 and §5D-1-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §5D-1-24; that §5F-1-2 of said code be amended and reenacted; that §5F-2-1 and §5F-2-2 of said code be amended and reenacted; that §7-22-3, §7-22-6, §7-22-7, §7-22-8, §7-22-10, §7-22-11, §7-22-12, §7-22-14 and §7-22-15 of said code be amended and reenacted; that §8-38-3, §8-38-6, §8-38-7, §8-38-8, §8-38-10, §8-38-11, §8-38-12, §8-38-14 and §8-38-15 of said code be amended and reenacted; that §12-7-4 and §12-7-5 of said code be amended and reenacted; that §13-2C-21 of said code be amended and reenacted; that §17-24-4 of said code be amended and reenacted; that §18-9D-1 of said code be amended and reenacted; that §18B-3D-1, §18B-3D-2, §18B-3D-3, §18B-3D-4 and §18B-3D-5 of said code be amended and reenacted; that §22C-1-4 of said code be amended and reenacted; that §29-8-2 of said code be amended and reenacted; that §29-22-18a of said code be amended and reenacted; that §31-15A-3 and §31-15A-11 of said code be amended and reenacted; and that §31-18-4 and §31-18-5 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.**
- 5B. Economic Development Act of 1985.**
- 5D. Public Energy Authority.**
- 5F. Reorganization of the Executive Branch of State Government.**
- 7. County Commissions and Officers.**
- 8. Municipal Corporations.**
- 12. Public Moneys and Securities.**
- 13. Public Bonded Indebtedness.**
- 17. Roads and Highways.**

- 18. Education.
- 18B. Higher Education.
- 22C. Environmental Resources; Boards, Authorities, Commissions and
Compacts.
- 29. Miscellaneous Boards and Officers.
- 31. Corporations.

**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 1. THE GOVERNOR.

§5-1-28. Prerequisites for bond issuance and refunding.

1 (a) On and after the first day of February, two thousand
2 five, bonds may not be issued or refunded by the state of West
3 Virginia or any of its agencies, boards or commissions without
4 the express written direction of the governor, if:

5 (1) The ultimate user of the proceeds of the bonds is the
6 state of West Virginia or any of its agencies, boards, commis-
7 sions or departments; or

8 (2) The issuance or refunding of the bonds implicates the
9 state's credit rating.

10 (b) Prior to any state agency, board or commission partici-
11 pating in any formal presentation to any nationally recognized
12 rating agency, with respect to the proposed issuance or refund-
13 ing of bonds where the ultimate user of the proceeds of the
14 bonds is the state of West Virginia or any of its agencies,
15 boards, commissions or departments, or the issuance or
16 refunding of the bonds implicates the state's credit rating, the
17 chair or director of the state agency, board or commission shall
18 provide written notice to the governor, the president of the

19 Senate and the speaker of the House of Delegates of the date,
 20 time and place of the formal presentation at least ten days in
 21 advance.

22 (c) All bond sale requirements established in this code shall
 23 apply unless contrary to the provisions of this section.

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

Article

1. **Department of Commerce.**
2. **West Virginia Development Office.**
- 2E. **West Virginia Tourism Development Act.**

ARTICLE 1. DEPARTMENT OF COMMERCE. August 3, 2005

§5B-1-1. Department of commerce; office of secretary of department of commerce.

§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the department of commerce.

§5B-1-3. Powers and duties of secretary, administrators, division heads and employees.

§5B-1-4. Reports by secretary.

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

§5B-1-6. Confidentiality of information.

§5B-1-7. Right of appeal from interference with functioning of agency.

§5B-1-1. Department of commerce; office of secretary of department of commerce.

1 (a) The secretary of commerce is the chief executive officer
 2 of the department. The governor shall appoint the secretary, by
 3 and with the advice and consent of the Senate, for the term for
 4 which the governor is elected. Any reference in this code to the
 5 bureau of commerce means the department of commerce. Any
 6 reference in this code to the commissioner of the department of
 7 commerce means the secretary of commerce. As used in this
 8 article, "secretary" means the secretary of commerce and
 9 "department" means department of commerce.

10 (b) The department may receive federal funds.

11 (c) The secretary serves at the will and pleasure of the
12 governor. The annual salary of the secretary is ninety thousand
13 dollars.

**§5B-1-2. Agencies, boards, commissions, divisions and offices
comprising the department of commerce.**

1 The department of commerce consists of the following
2 agencies, boards, commissions, divisions and offices, including
3 all of the allied, advisory, affiliated or related entities which are
4 incorporated in and shall be administered as part of the depart-
5 ment of commerce:

6 (1) Division of labor provided in article one, chapter
7 twenty-one of this code, which includes:

8 (A) Occupational safety and health review commission
9 provided in article three-a, chapter twenty-one of this code; and

10 (B) Board of manufactured housing construction and safety
11 provided in article nine, chapter twenty-one of this code;

12 (2) Office of miners' health, safety and training provided in
13 article one, chapter twenty-two-a of this code. The following
14 boards are transferred to the office of miners' health, safety and
15 training for purposes of administrative support and liaison with
16 the office of the governor:

17 (A) Board of coal mine health and safety and coal mine
18 safety and technical review committee provided in article six,
19 chapter twenty-two-a of this code;

20 (B) Board of miner training, education and certification
21 provided in article seven, chapter twenty-two-a of this code;
22 and

23 (C) Mine inspectors' examining board provided in article
24 nine, chapter twenty-two-a of this code;

25 (3) The West Virginia development office, which includes
26 the division of tourism and the tourism commission provided in
27 article two, chapter five-b of this code;

28 (4) Division of natural resources and natural resources
29 commission provided in article one, chapter twenty of this code;

30 (5) Division of forestry provided in article one-a, chapter
31 nineteen of this code; and

32 (6) Geological and economic survey provided in article
33 two, chapter twenty-nine of this code.

§5B-1-3. Powers and duties of secretary, administrators, division heads and employees.

1 (a) The secretary controls and supervises the department
2 and is responsible for the work of each department employee.

3 (b) The secretary has the power and authority specified in
4 this article, in article two, chapter five-f of this code and as
5 otherwise specified in this code.

6 (c) The secretary may assess agencies, boards, commis-
7 sions, divisions and offices in the department for the payment
8 of expenses of the office of the secretary.

9 (d) The secretary may employ professional staff, including,
10 but not limited to, certified public accountants, economists and
11 attorneys, assistants and other employees as necessary for the
12 efficient operation of the department.

13 (e) The secretary and administrators, division heads and
14 other employees of the department shall perform their duties as
15 specified in this code and as may be prescribed by the governor.

§5B-1-4. Reports by secretary.

1 The secretary shall report annually to the governor concern-
2 ing the conduct of the department and make other reports as the
3 governor may require.

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

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

§5B-1-6. Confidentiality of information.

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

14 (b) *Interdepartmental communication of confidential*
15 *information.* — Notwithstanding any provision of this code to
16 the contrary, information that is confidential pursuant to this
17 code in the possession of any division, agency, board, commis-
18 sion or office of the department may be disclosed to the
19 secretary or an employee in the office of the secretary. The
20 secretary or employee shall safeguard the information and may
21 not further disclose the information except under the same
22 conditions, restrictions and limitations applicable to the
23 administrator of the agency, board, commission, division or
24 office of the department in whose hands the information is

25 confidential. This subsection does not require disclosure of
26 individually identifiable health care or other information that is
27 prohibited from disclosure by federal law. This subsection is a
28 specific exemption from the disclosure requirements of article
29 one, chapter twenty-nine-b of this code.

30 (c) The provisions of this section:

31 (1) Apply only to information that is actually disclosed by
32 a division, agency, board, commission or office within a
33 department to the secretary, or an employee in the office of the
34 secretary, of that department;

35 (2) Do not authorize disclosure or exempt from the provi-
36 sions of article one, chapter twenty-nine-b of this code any
37 confidential information of a division, agency, board, commis-
38 sion or office within a department to any person or entity other
39 than the secretary, or an employee in the office of the secretary,
40 of that department;

41 (3) Apply only to disclosure between a division, agency,
42 board, commission or office within a department and the
43 secretary, or an employee in the office of the secretary, of that
44 department.

**§5B-1-7. Right of appeal from interference with functioning of
agency.**

1 Any governmental entity may appeal to the governor for
2 review upon a showing that application of the secretary's
3 authority may interfere with the successful functioning of that
4 entity. The governor's decision controls on appeal.

ARTICLE 2. WEST VIRGINIA DEVELOPMENT OFFICE.

§5B-2-2. Council for community and economic development; members, appoint-
ment and expenses; meetings; appointment and compensation of
director.

§5B-2-3. Powers and duties of council for community and economic development.

§5B-2-8. Division of tourism and tourism commission created; members, appointment and expenses.

§5B-2-14. Certified development community program.

§5B-2-2. Council for community and economic development; members, appointment and expenses; meetings; appointment and compensation of director.

1 (a) The council for community and economic development,
2 within the West Virginia development office, is a body corpo-
3 rate and politic, constituting a public corporation and govern-
4 ment instrumentality. Membership on the council consists of:

5 (1) No less than nine nor more than eleven members to be
6 appointed by the governor, with the advice and consent of the
7 Senate, representing community or regional interests, including
8 economic development, commerce, banking, manufacturing,
9 the utility industry, the mining industry, the telecommunica-
10 tions/data processing industry, small business, labor, tourism or
11 agriculture. One such member shall be a member of a regional
12 planning and development council. Of these members at least
13 three shall represent each congressional district of the state and
14 appointments shall be made in such a manner as to provide a
15 broad geographical distribution of members of the council;

16 (2) Four at-large members to be appointed by the governor
17 with the advice and consent of the Senate;

18 (3) The president of the West Virginia economic develop-
19 ment council; and

20 (4) The chair, or his or her designee, of the tourism com-
21 mission created pursuant to the provisions of section eight of
22 this article.

23 In addition, the president of the Senate and the speaker of
24 the House of Delegates, or his or her designee, shall serve as ex
25 officio nonvoting members.

26 (b) The governor appoints the members of the council to
27 four-year terms. A member whose term has expired continues
28 to serve until the successor is duly appointed and qualified.
29 Except as otherwise provided in this section, any member is
30 eligible for reappointment. A vacancy is filled by appointment
31 by the governor in the same manner as the original appoint-
32 ment. A member appointed to fill a vacancy serves for the
33 remainder of the unexpired term.

34 (c) Members of the council are not compensated for
35 services performed as members, but receive reasonable and
36 necessary expenses actually incurred in the performance of their
37 duties in a manner consistent with guidelines of the travel
38 management office of the department of administration. A
39 majority of the voting members constitute a quorum for the
40 purpose of conducting business. The council shall elect its
41 chair for a term to run concurrent with the term of office of the
42 member elected as chair. The chair is eligible for successive
43 terms in that position.

44 (d) The governor shall appoint an executive director of the
45 West Virginia development office who is qualified for the
46 position by reason of his or her extensive education and
47 experience in the field of professional economic development.
48 The executive director shall serve at the will and pleasure of the
49 governor. The salary of the director shall annually be fixed by
50 the council. The director shall have overall management
51 responsibility and administrative control and supervision within
52 the West Virginia development office. It is the intention of the
53 Legislature that the director provide professional and technical
54 expertise in the field of professional economic and tourism
55 development in order to support the policy-making functions of
56 the council, but that the director not be a public officer, agent,
57 servant or contractor within the meaning of section thirty-eight,
58 article VI of the constitution of West Virginia and not be a
59 statutory officer within the meaning of section one, article two,

60 chapter five-f of this code. Subject to the provisions of the
61 contract provided in section four of this article, the director may
62 hire and fire economic development representatives employed
63 pursuant to the provisions of section five of this article.

64 (e) The executive director of the West Virginia develop-
65 ment office may promulgate rules to carry out the purposes and
66 programs of the West Virginia development office to include
67 generally the programs available and the procedure and
68 eligibility of applications relating to assistance under the
69 programs. These rules are not subject to the provisions of
70 chapter twenty-nine-a of this code, but shall be filed with the
71 secretary of state. The executive director may adopt any of the
72 rules previously promulgated by the council for community and
73 economic development.

§5B-2-3. Powers and duties of council for community and economic development.

1 The council for community and economic development
2 shall enhance economic growth and development through the
3 development of a comprehensive economic development
4 strategy for West Virginia. "Comprehensive economic devel-
5 opment strategy" means a plan that outlines strategies and
6 activities designed to continue, diversify or expand the eco-
7 nomic base of the state as a whole; create jobs; develop a highly
8 skilled workforce; facilitate business access to capital, includ-
9 ing venture capital; advertise and market the resources offered
10 by the state with respect to the needs of business and industry;
11 facilitate cooperation among local, regional and private
12 economic development enterprises; improve infrastructure on
13 a state, regional and community level; improve the business
14 climate generally; and leverage funding from sources other than
15 the state, including federal and private sources.

§5B-2-8. Division of tourism and tourism commission created; members, appointment and expenses.

1 (a) There is hereby created within the West Virginia
2 development office the division of tourism and an independent
3 tourism commission, which is a body corporate and politic,
4 constituting a public corporation and government instrumental-
5 ity. The commission consists of thirteen members:

6 (1) Nine members to be appointed by the governor, with the
7 advice and consent of the Senate, representing participants in
8 the state's tourism industry. At least seven of the members
9 shall be from the private sector. Of the nine members so
10 appointed, one shall represent a convention and visitors bureau
11 and another shall be a member of a convention and visitors
12 bureau. In making the appointments the governor may select
13 from a list provided by the West Virginia hospitality and travel
14 association of qualified applicants. Of the nine members so
15 appointed, no more than three shall be from each congressional
16 district within the state and shall be appointed to provide the
17 broadest geographic distribution which is feasible;

18 (2) One member to be appointed by the governor from the
19 membership of the council for community and economic
20 development created pursuant to the provisions of section two
21 of this article;

22 (3) One member to be appointed by the governor to
23 represent public sector nonstate participants in the tourism
24 industry within the state;

25 (4) The secretary of transportation or his or her designee, ex
26 officio; and

27 (5) The director of the division of natural resources or his
28 or her designee, ex officio.

29 (b) Each member appointed by the governor shall serve
30 staggered terms of four years. Any member whose term has
31 expired shall serve until his or her successor has been ap-
32 pointed. Any person appointed to fill a vacancy shall serve
33 only for the unexpired term. Any member shall be eligible for
34 reappointment. In cases of vacancy in the office of member,
35 such vacancy shall be filled by the governor in the same manner
36 as the original appointment.

37 (c) Members of the commission shall not be entitled to
38 compensation for services performed as members. A majority
39 of these members shall constitute a quorum for the purpose of
40 conducting business. The governor shall appoint a chair of the
41 commission for a term to run concurrent with the term of the
42 office of the member appointed to be the chair. The chair is
43 eligible for successive terms in that position.

§5B-2-14. Certified development community program.

1 The certified development community program is contin-
2 ued and is transferred to, incorporated in and administered as a
3 program of the West Virginia development office. The program
4 shall provide funding assistance to the participating economic
5 development corporations or authorities through a matching
6 grant program. The West Virginia development office shall
7 establish criteria for awarding matching grants to the corpora-
8 tions or authorities within the limits of funds appropriated by
9 the Legislature for the program. The matching grants to
10 eligible corporations or authorities are in the amount of thirty
11 thousand dollars for each fiscal year, if sufficient funds are
12 appropriated by the Legislature. The West Virginia develop-
13 ment office shall recognize existing county, regional or
14 multicounty corporations or authorities where appropriate.

15 In developing its plan, the West Virginia development
16 office shall consider resources and technical support available

17 through other agencies, both public and private, including, but
18 not limited to, the state college and university systems; the
19 West Virginia housing development fund; the West Virginia
20 economic development authority; the West Virginia parkways,
21 economic development and tourism authority; the West
22 Virginia round table; the West Virginia chamber of commerce;
23 regional planning and development councils; regional partner-
24 ship for progress councils; and state appropriations.

ARTICLE 2E. WEST VIRGINIA TOURISM DEVELOPMENT ACT.

§5B-2E-3. Definitions.

§5B-2E-4. Additional powers and duties of the development office.

§5B-2E-5. Tourism development project application; evaluation standards; consult-
ing services; preliminary and final approval of projects; limitation of
amount annual tourism development project tax credit.

§5B-2E-6. Agreement between development office and approved company.

§5B-2E-9. Promulgation of rules.

§5B-2E-3. Definitions.

1 As used in this article, unless the context clearly indicates
2 otherwise:

3 (1) "Agreement" means a tourism development agreement
4 entered into, pursuant to section six of this article, between the
5 development office and an approved company with respect to
6 a tourism development project.

7 (2) "Approved company" means any eligible company
8 approved by the development office pursuant to section five of
9 this article seeking to undertake a tourism development project.

10 (3) "Approved costs" means:

11 (A) Included costs:

12 (i) Obligations incurred for labor and to vendors, contrac-
13 tors, subcontractors, builders, suppliers, delivery persons and
14 material persons in connection with the acquisition, construc-

15 tion, equipping, installation or expansion of a tourism develop-
16 ment project;

17 (ii) The costs of acquiring real property or rights in real
18 property and any costs incidental thereto;

19 (iii) The cost of contract bonds and of insurance of all kinds
20 that may be required or necessary during the course of the
21 acquisition, construction, equipping, installation or expansion
22 of a tourism development project which is not paid by the
23 vendor, supplier, delivery person, contractor or otherwise
24 provided;

25 (iv) All costs of architectural and engineering services,
26 including, but not limited to: Estimates, plans and specifica-
27 tions, preliminary investigations and supervision of construc-
28 tion, installation, as well as for the performance of all the duties
29 required by or consequent to the acquisition, construction,
30 equipping, installation or expansion of a tourism development
31 project;

32 (v) All costs required to be paid under the terms of any
33 contract for the acquisition, construction, equipping, installation
34 or expansion of a tourism development project;

35 (vi) All costs required for the installation of utilities,
36 including, but not limited to: Water, sewer, sewer treatment,
37 gas, electricity, communications and off-site construction of
38 utility extensions to the boundaries of the real estate on which
39 the facilities are located, all of which are to be used to improve
40 the economic situation of the approved company in a manner
41 that allows the approved company to attract persons; and

42 (vii) All other costs comparable with those described in this
43 subdivision;

44 (B) *Excluded costs.* — The term “approved costs” does not
45 include any portion of the cost required to be paid for the

46 acquisition, construction, equipping and installation or expansion
47 of a tourism development project that is financed with
48 governmental incentives, grants or bonds or for which the
49 eligible taxpayer elects to qualify for other tax credits, including,
50 but not limited to, those provided by article thirteen-q,
51 chapter eleven of this code.

52 (4) "Base tax revenue amount" means the average monthly
53 amount of consumer sales and service tax collected by an
54 approved company, based on the twelve-month period ending
55 immediately prior to the opening of a new tourism development
56 project for business, as certified by the state tax commissioner.

57 (5) "Development office" means the West Virginia development
58 office as provided in article two of this chapter.

59 (6) "Crafts and products center" means a facility primarily
60 devoted to the display, promotion and sale of West Virginia
61 products and at which a minimum of eighty percent of the sales
62 occurring at the facility are of West Virginia arts, crafts or
63 agricultural products.

64 (7) "Eligible company" means any corporation, limited
65 liability company, partnership, limited liability partnership, sole
66 proprietorship, business trust, joint venture or any other entity
67 operating or intending to operate a tourism development
68 project, whether owned or leased, within the state that meets the
69 standards required by the development office. An eligible
70 company may operate or intend to operate directly or indirectly
71 through a lessee.

72 (8) "Entertainment destination center" means a facility
73 containing a minimum of two hundred thousand square feet of
74 building space adjacent or complementary to an existing
75 tourism attraction, an approved tourism development project or
76 a major convention facility and which provides a variety of
77 entertainment and leisure options that contain at least one major

78 theme restaurant and at least three additional entertainment
79 venues, including, but not limited to, live entertainment,
80 multiplex theaters, large-format theaters, motion simulators,
81 family entertainment centers, concert halls, virtual reality or
82 other interactive games, museums, exhibitions or other cultural
83 and leisure time activities. Entertainment and food and drink
84 options shall occupy a minimum of sixty percent of total gross
85 area, as defined in the application, available for lease and other
86 retail stores shall occupy no more than forty percent of the total
87 gross area available for lease.

88 (9) "Final approval" means the action taken by the execu-
89 tive director of the development office qualifying the eligible
90 company to receive the tax credits provided in this article.

91 (10) "Preliminary approval" means the action taken by the
92 executive director of the development office conditioning final
93 approval.

94 (11) "State agency" means any state administrative body,
95 agency, department, division, board, commission or institution
96 exercising any function of the state that is not a municipal
97 corporation or political subdivision.

98 (12) "Tourism attraction" means a cultural or historical site,
99 a recreation or entertainment facility, an area of natural
100 phenomenon or scenic beauty, a West Virginia crafts and
101 products center or an entertainment destination center. A
102 tourism development project or attraction does not include any
103 of the following:

104 (A) Lodging facility, unless:

105 (i) The facility constitutes a portion of a tourism develop-
106 ment project and represents less than fifty percent of the total
107 approved cost of the tourism development project, or the
108 facility is to be located on recreational property owned or leased

109 by the state or federal government and the facility has received
110 prior approval from the appropriate state or federal agency;

111 (ii) The facility involves the restoration or rehabilitation of
112 a structure that is listed individually in the national register of
113 historic places or is located in a national register historic district
114 and certified by the state historic preservation officer as
115 contributing to the historic significance of the district and the
116 rehabilitation or restoration project has been approved in
117 advance by the state historic preservation officer; or

118 (iii) The facility involves the construction, reconstruction,
119 restoration, rehabilitation or upgrade of a full-service lodging
120 facility or the reconstruction, restoration, rehabilitation or
121 upgrade of an existing structure into a full-service lodging
122 facility having not less than five hundred guest rooms, with
123 construction, reconstruction, restoration, rehabilitation or
124 upgrade costs exceeding ten million dollars;

125 (B) A facility that is primarily devoted to the retail sale of
126 goods, other than an entertainment destination center, a West
127 Virginia crafts and products center or a tourism development
128 project where the sale of goods is a secondary and subordinate
129 component of the project; and

130 (C) A recreational facility that does not serve as a likely
131 destination where individuals who are not residents of the state
132 would remain overnight in commercial lodging at or near the
133 new tourism development project or existing attraction.

134 (13) "Tourism development project" means the acquisition,
135 including the acquisition of real estate by a leasehold interest
136 with a minimum term of ten years, construction and equipping
137 of a tourism attraction; the construction and installation of
138 improvements to facilities necessary or desirable for the
139 acquisition, construction, installation or expansion of a tourism
140 attraction, including, but not limited to, surveys, installation of

141 utilities, which may include water, sewer, sewage treatment,
142 gas, electricity, communications and similar facilities; and
143 off-site construction of utility extensions to the boundaries of
144 the real estate on which the facilities are located, all of which
145 are to be used to improve the economic situation of the ap-
146 proved company in a manner that allows the approved company
147 to attract persons.

148 (14) "Tourism development project tax credit" means the
149 tourism development project tax credit allowed by section
150 seven of this article.

§5B-2E-4. Additional powers and duties of the development office.

1 The development office has the following powers and
2 duties, in addition to those set forth in this case, necessary to
3 carry out the purposes of this article including, but not limited
4 to:

5 (1) Make preliminary and final approvals of all applications
6 for tourism development projects and enter into agreements
7 pertaining to tourism development projects with approved
8 companies;

9 (2) Employ fiscal consultants, attorneys, appraisers and
10 other agents as the executive director of the development office
11 finds necessary or convenient for the preparation and adminis-
12 tration of agreements and documents necessary or incidental to
13 any tourism development project; and

14 (3) Impose and collect fees and charges in connection with
15 any transaction.

§5B-2E-5. Tourism development project application; evaluation standards; consulting services; preliminary and final approval of projects; limitation of amount annual tourism development project tax credit.

1 (a) Each eligible company that seeks to qualify a tourism
2 development project for the tax credit provided by this article
3 must file a written application for approval of the project with
4 the development office.

5 (b) With respect to each eligible company making an
6 application to the development office for the tourism develop-
7 ment project tax credit, the development office shall make
8 inquiries and request documentation, including a completed
9 application, from the applicant that shall include: A description
10 and location of the project; capital and other anticipated
11 expenditures for the project and the sources of funding therefor;
12 the anticipated employment and wages to be paid at the project;
13 business plans that indicate the average number of days in a
14 year in which the project will be in operation and open to the
15 public; and the anticipated revenues and expenses generated by
16 the project.

17 (c) Based upon a review of the application and additional
18 documentation provided by the eligible company, if the
19 executive director of the development office determines that the
20 applicant and the tourism development project may reasonably
21 satisfy the criteria for final approval set forth in subsection (d)
22 of this section, then the director of the development office may
23 grant a preliminary approval of the applicant and the tourism
24 development project.

25 (d) After preliminary approval by the executive director of
26 the development office, the development office shall engage the
27 services of a competent consulting firm or firms to analyze the
28 data made available by the applicant and to collect and analyze
29 additional information necessary to determine that, in the
30 independent judgment of the consultant, the tourism develop-
31 ment project:

32 (1) Likely will attract at least twenty-five percent of its
33 visitors from outside of this state;

34 (2) Will have approved costs in excess of one million
35 dollars;

36 (3) Will have a significant and positive economic impact on
37 the state considering, among other factors, the extent to which
38 the tourism development project will compete directly with or
39 complement existing tourism attractions in the state and the
40 amount by which increased tax revenues from the tourism
41 development project will exceed the credit given to the ap-
42 proved company;

43 (4) Will produce sufficient revenues and public demand to
44 be operating and open to the public for a minimum of one
45 hundred days per year; and

46 (5) Will provide additional employment opportunities in the
47 state.

48 (e) The applicant shall pay to the development office, prior
49 to the engagement of the services of a competent consulting
50 firm or firms pursuant to the provisions of subsection (d) of this
51 section, for the cost of the consulting report or reports and shall
52 cooperate with the consulting firm or firms to provide all of the
53 data that the consultant considers necessary or convenient to
54 make its determination under subsection (d) of this section.

55 (f) The executive director of the development office, within
56 thirty days following receipt of the consultant's report or
57 reports, shall review, in light of the consultant's report or
58 reports, the reasonableness of the project's budget and timetable
59 for completion and, in addition to the criteria for final approval
60 set forth in subsection (d) of this section, the following criteria:

61 (1) The quality of the proposed tourism development
62 project and how it addresses economic problems in the area in
63 which the tourism development project will be located;

64 (2) Whether there is substantial and credible evidence that
65 the tourism development project is likely to be started and
66 completed in a timely fashion;

67 (3) Whether the tourism development project will, directly
68 or indirectly, improve the opportunities in the area where the
69 tourism development project will be located for the successful
70 establishment or expansion of other industrial or commercial
71 businesses;

72 (4) Whether the tourism development project will, directly
73 or indirectly, assist in the creation of additional employment
74 opportunities in the area where the tourism development project
75 will be located;

76 (5) Whether the project helps to diversify the local econ-
77 omy;

78 (6) Whether the project is consistent with the goals of this
79 article;

80 (7) Whether the project is economically and fiscally sound
81 using recognized business standards of finance and accounting;
82 and

83 (8) The ability of the eligible company to carry out the
84 tourism development project.

85 (g) The development office may establish other criteria for
86 consideration when approving the applications.

87 (h) The executive director of the development office may
88 give its final approval to the applicant's application for a
89 tourism development project and may grant to the applicant the
90 status of an approved company: *Provided*, That the total
91 amount of tourism development project tax credits for all
92 approved companies may not exceed one million five hundred

93 thousand dollars each calendar year. The executive director of
94 the development office shall act to approve or not approve any
95 application within sixty days following the receipt of the
96 consultant's report or reports or the receipt of any additional
97 information requested by the development office, whichever is
98 later. The decision by the executive director of the develop-
99 ment office is final.

§5B-2E-6. Agreement between development office and approved company.

1 The development office, upon final approval of an applica-
2 tion by the executive director, may enter into an agreement with
3 any approved company with respect to its tourism development
4 project. The terms and provisions of each agreement shall
5 include, but not be limited to:

6 (1) The amount of approved costs of the project that qualify
7 for the sales tax credit, provided in section seven of this article.
8 Within three months of the completion date, the approved
9 company shall document the actual cost of the project through
10 a certification of the costs to the development office by an
11 independent certified public accountant acceptable to the
12 development office; and

13 (2) A date certain by which the approved company shall
14 have completed and opened the tourism development project to
15 the public. Any approved company that has received final
16 approval may request and the development office may grant an
17 extension or change, however, in no event shall the extension
18 exceed three years from the date of final approval to the
19 completion date specified in the agreement with the approved
20 company.

§5B-2E-9. Promulgation of rules.

1 The executive director of the development office may
2 promulgate rules to implement the tourism development project

3 application approval process and to describe the criteria and
4 procedures it has established in connection therewith. These
5 rules are not subject to the provisions of chapter twenty-nine-a
6 of this code but shall be filed with the secretary of state.

CHAPTER 5D. PUBLIC ENERGY AUTHORITY.

ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.

§5D-1-4. West Virginia public energy authority continued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

§5D-1-5. Powers, duties and responsibilities of authority generally; termination of certain powers.

§5D-1-24. Continuation of board.

§5D-1-4. West Virginia public energy authority continued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

1 (a) The West Virginia public energy authority is continued.
2 The authority is a governmental instrumentality of the state and
3 a body corporate. The exercise by the authority of the powers
4 conferred by this article and the carrying out of its purposes and
5 duties are essential governmental functions and for a public
6 purpose.

7 (b) The authority is controlled, managed and operated by a
8 seven-member board known as the West Virginia public energy
9 authority board, which is continued. The seven members
10 include the governor or designee; the secretary of the depart-
11 ment of environmental protection or designee; the director of
12 the economic development authority or designee; and four
13 members representing the general public. The public members
14 are appointed by the governor, by and with the advice and

15 consent of the Senate, for terms of one, two, three and four
16 years, respectively.

17 (c) On the thirty-first day of March, two thousand five, the
18 terms of all appointed members, appointed prior to the amend-
19 ment of this section during the first extraordinary session of the
20 seventy-seventh Legislature, expire. Not later than the
21 thirty-first day of March, two thousand five, the governor
22 appoints the public members required in subsection (b) of this
23 section to assume the duties of the office immediately, pending
24 the advice and consent of the Senate.

25 (d) The successor of each appointed member is appointed
26 for a four-year term. A vacancy is filled by appointment by the
27 governor in the same manner as the original appointment. A
28 member appointed to fill a vacancy serves for the remainder of
29 the unexpired term. Each board member serves until a succes-
30 sor is appointed.

31 (e) No more than three of the public members may at any
32 one time belong to the same political party. No more than two
33 public members may be employed by or associated with any
34 industry the authority is empowered to affect. One member
35 shall be a person with significant experience in the advocacy of
36 environmental protection. Board members may be reappointed
37 to serve additional terms.

38 (f) All members of the board shall be citizens of the state.
39 Before engaging in their duties, each member of the board shall
40 comply with the requirements of article one, chapter six of this
41 code and give bond in the sum of twenty-five thousand dollars
42 in the manner provided in article two, chapter six of this code.
43 The governor may remove any board member for cause as
44 provided in article six, chapter six of this code.

45 (g) The governor serves as chair. The board annually elects
46 one of its public members as vice chair, and appoints a secre-
47 tary-treasurer who need not be a member of the board.

48 (h) Four members of the board constitute a quorum and the
49 affirmative vote of the majority of members present at any
50 meeting is necessary for any action taken by vote of the board.
51 A vacancy in the membership of the board does not impair the
52 rights of a quorum by such vote to exercise all the rights and
53 perform all the duties of the board and the authority.

54 (i) The person appointed as secretary-treasurer, including
55 a board member if so appointed, shall give bond in the sum of
56 fifty thousand dollars in the manner provided in article two,
57 chapter six of this code.

58 (j) Each public member receives the same compensation
59 and expense reimbursement as is paid to members of the
60 Legislature for their interim duties as recommended by the
61 citizens legislative compensation commission and authorized
62 by law for each day or portion thereof engaged in the discharge
63 of official duties. All expenses incurred by the board shall be
64 paid in a manner consistent with guidelines of the travel
65 management office of the department of administration and are
66 payable solely from funds of the authority or from funds
67 appropriated to the authority for such purpose by the Legisla-
68 ture. Liability or obligation is not incurred by the authority
69 beyond the extent to which moneys are available from funds of
70 the authority or from such appropriations.

71 (k) The governor may appoint an executive director, with
72 the advice and consent of the Senate, who serves at the gover-
73 nor's will and pleasure. The director is responsible for manag-
74 ing and administering the daily functions of the authority and
75 for performing all other functions necessary to the effective
76 operation of the authority.

§5D-1-5. Powers, duties and responsibilities of authority generally; termination of certain powers.

1 The West Virginia public energy authority has and may
2 exercise all powers necessary or appropriate to execute its
3 corporate purpose. The authority may:

4 (1) Adopt, amend and repeal bylaws necessary and proper
5 for the regulation of its affairs and the conduct of its business
6 and rules to implement and make effective its powers and
7 duties, such rules to be promulgated in accordance with the
8 provisions of chapter twenty-nine-a of this code.

9 (2) Adopt and use an official seal and alter the same at
10 pleasure.

11 (3) Maintain a principal office and, if necessary, regional
12 suboffices at locations properly designated or provided.

13 (4) Sue and be sued in its own name and plead and be
14 impleaded in its own name, and particularly to enforce the
15 obligations and covenants made under this article. Any actions
16 against the authority shall be brought in the circuit court of
17 Kanawha County.

18 (5) Foster, encourage and promote the mineral development
19 industry. The authority is encouraged to maximize the use of
20 the West Virginia mineral development industry, but is not
21 prohibited from utilizing nonstate mineral resources.

22 (6) Represent the state with respect to national initiatives
23 concerning the mineral development industry and international
24 marketing activities affecting the mineral development industry.

25 (7) Engage in strategic planning to enable the state to cope
26 with changes affecting or which may affect the mineral
27 development industry.

28 (8) Acquire, whether by purchase, construction, gift, lease,
29 lease-purchase or otherwise, any electric power project or
30 natural gas transmission project. In the event that an electric
31 power project to be constructed pursuant to this article is
32 designed to utilize coal wastes for the generation of electricity
33 or the production of other energy, such project shall also be
34 capable of using coal as its primary energy input: *Provided,*
35 That it shall be demonstrated to the authority's satisfaction that
36 quantities of coal wastes exist in amounts sufficient to provide
37 energy input for such project for the term of the bonds or notes
38 issued by the authority to finance the project and are accessible
39 to the project.

40 (9) Lease, lease with an option by the lessee to purchase,
41 sell, by installment sale or otherwise, or otherwise dispose of,
42 to persons other than governmental agencies, any or all of its
43 electric power projects or natural gas transmission projects for
44 such rentals or amounts and upon such terms and conditions as
45 the public energy authority board may deem advisable.

46 (10) Finance one or more electric power projects or natural
47 gas transmission projects by making secured loans to persons
48 other than governmental agencies to provide funds for the
49 acquisition, by purchase, construction or otherwise, of any such
50 project or projects.

51 (11) Issue bonds for the purpose of financing the cost of
52 acquisition and construction of one or more electric power
53 projects or natural gas transmission projects or any additions,
54 extensions or improvements thereto which will be sold, leased
55 with an option by the lessee to purchase, leased or otherwise
56 disposed of to persons other than governmental agencies or for
57 the purpose of loaning the proceeds thereof to persons other
58 than governmental agencies for the acquisition and construction
59 of said projects or both. Such bonds shall be issued and the
60 payment of such bonds secured in the manner provided by the

61 applicable provisions of sections seven, eight, nine, ten, eleven,
62 twelve, thirteen and seventeen, article two-c, chapter thirteen of
63 this code: *Provided*, That the principal and interest on such
64 bonds shall be payable out of the revenues derived from the
65 lease, lease with an option by the lessee to purchase, sale or
66 other disposition of or from loan payments in connection with
67 the electric power project or natural gas transmission project for
68 which the bonds are issued, or any other revenue derived from
69 such electric power project or natural gas transmission project.

70 (12) In the event that the electric power project or natural
71 gas transmission project is to be owned by a governmental
72 agency, apply to the economic development authority for the
73 issuance of bonds payable solely from revenues as provided in
74 article fifteen, chapter thirty-one of this code: *Provided*, That
75 the economic development authority shall not issue any such
76 bonds except by an act of general law: *Provided, however*, That
77 the authority shall require that in the construction of any such
78 project, prevailing wages shall be paid as part of a project
79 specific agreement which also takes into account terms and
80 conditions contained in the West Virginia - Ohio valley market
81 retention and recovery agreement or a comparable agreement.

82 (13) Acquire by gift or purchase, hold and dispose of real
83 and personal property in the exercise of its powers and the
84 performance of its duties as set forth in this article.

85 (14) Acquire in the name of the state, by purchase or
86 otherwise, on such terms and in such manner as it deems
87 proper, or by the exercise of the right of eminent domain in the
88 manner provided in chapter fifty-four of this code, such real
89 property or parts thereof or rights therein, rights-of-way,
90 property, rights, easements and interests it deems necessary for
91 carrying out the provisions of this article and compensation
92 shall be paid for public or private lands so taken; and the
93 authority may sell any of the real property or parts thereof or

94 rights therein, rights-of-way, property, rights, easements and
95 interests acquired hereunder in such manner and upon such
96 terms and conditions as the authority deems proper: *Provided,*
97 That if the authority determines that land or an interest therein
98 acquired by the authority through the exercise of the power of
99 eminent domain for the purpose of this article is no longer
100 necessary or useful for such purposes, and if the authority
101 desires to sell such land or interest therein, the authority shall
102 first offer to sell such land or interest to the owner or owners
103 from whom it was acquired, at a price equal to its fair market
104 value: *Provided, however,* That if the prior owner or owners
105 shall decline to reacquire the land or interest therein, the
106 authority shall be authorized to dispose of such property by
107 direct sale, auction, or competitive bidding. In no case shall
108 such land or an interest therein acquired under this subdivision
109 be sold for less than its fair market value. This article does not
110 authorize the authority to take or disturb property or facilities
111 belonging to any public utility or to a common carrier, which
112 property or facilities are required for the proper and convenient
113 operation of such public utility or common carrier, except for
114 the acquisition of easements or rights-of-way which will not
115 unreasonably interfere with the operation of the property or
116 facilities of such public utility or common carrier, and in the
117 event of the taking or disturbance of property or facilities of
118 public utility or common carrier, provision shall be made for
119 the restoration, relocation or duplication of such property or
120 facilities elsewhere at the sole cost of the authority.

121 The term “real property” as used in this article is defined to
122 include lands, structures, franchises and interests in land,
123 including lands under water and riparian rights, and any and all
124 other things and rights usually included within the said term,
125 and includes also any and all interests in such property less than
126 full title, such as easements, rights-of-way, uses, leases, licenses
127 and all other incorporeal hereditaments and every estate,
128 interest or right, legal or equitable, including terms for years

129 and liens thereon by way of judgments, mortgages or otherwise,
130 and also all claims for damages for such real estate.

131 For the purposes of this section, "fair market value" shall
132 be determined by an appraisal made by an independent person
133 or firm chosen by the authority. The appraisal shall be per-
134 formed using the principles contained in the "Uniform Ap-
135 praisal Standards for Federal Land Acquisitions" published
136 under the auspices of the Interagency Land Acquisition
137 Conference, United States Government Printing Office, 1972.

138 (15) Make and enter into all contracts and agreements and
139 execute all instruments necessary or incidental to the perfor-
140 mance of its duties and the execution of its powers: *Provided*,
141 That if any electric power project or natural gas transmission
142 project is to be constructed by a person other than a governmen-
143 tal agency, and with whom the authority has contracted to lease,
144 sell or finance such project upon its completion, then the
145 authority shall not be required to comply with the provisions of
146 article twenty-two, chapter five of this code requiring the
147 solicitation of competitive bids for the construction of such a
148 project.

149 (16) Employ managers, superintendents and other employ-
150 ees, and retain or contract with consulting engineers, financial
151 consultants, accountants, architects, attorneys, and such other
152 consultants and independent contractors as are necessary in its
153 judgment to carry out the provisions of this article, and fix the
154 compensation or fees thereof. All expenses thereof shall be
155 payable solely from the proceeds of bonds issued by the
156 economic development authority, from the proceeds of bonds
157 issued by or loan payments, lease payments or other payments
158 received by the authority, from revenues and from funds
159 appropriated for such purpose by the Legislature.

160 (17) Receive and accept from any federal agency, or any
161 other source, grants for or in aid of the construction of any

162 project or for research and development with respect to electric
163 power projects, natural gas transmission projects or other
164 energy projects, and receive and accept aid or contribution from
165 any source of money, property, labor or other things of value to
166 be held, used and applied only for the purpose for which such
167 grants and contributions are made.

168 (18) Purchase property coverage and liability insurance for
169 any electric power project or natural gas transmission project or
170 other energy project and for the principal office and suboffices
171 of the authority, insurance protecting the authority and its
172 officers and employees against liability, if any, for damage to
173 property or injury to or death of persons arising from its
174 operations and any other insurance which may be provided for
175 under a resolution authorizing the issuance of bonds or in any
176 trust agreement securing the same.

177 (19) Charge, alter and collect transportation fees and other
178 charges for the use or services of any natural gas transmission
179 project as provided in this article.

180 (20) Charge and collect fees or other charges from any
181 energy project undertaken as a result of this article.

182 (21) When the electric power project is owned and operated
183 by the authority, charge reasonable fees in connection with the
184 making and providing of electric power and the sale thereof to
185 corporations, states, municipalities or other entities in the
186 furtherance of the purposes of this article.

187 (22) Purchase and sell electricity or other energy produced
188 by an electric power project in and out of the state of West
189 Virginia.

190 (23) Enter into wheeling contracts for the transmission of
191 electric power over the authority's or another party's lines.

192 (24) Make and enter into contracts for the construction of
193 a project facility and joint ownership with another utility and
194 the provisions of this article shall not constrain the authority
195 from participating as a joint partner therein.

196 (25) Make and enter into joint ownership agreements.

197 (26) Establish or increase reserves from moneys received
198 or to be received by the authority to secure or to pay the
199 principal of and interest on the bonds issued by the economic
200 development authority pursuant to the provisions of article
201 fifteen, chapter thirty-one of this code or bonds issued by the
202 authority.

203 (27) Broker the purchase of natural gas for resale to
204 end-users: *Provided*, That whenever there are local distribution
205 company pipelines already in place the authority shall arrange
206 to transport the gas through such pipelines at the rates approved
207 by the public service commission of West Virginia.

208 (28) Engage in market research, feasibility studies, com-
209 mercial research, and other studies and research pertaining to
210 electric power projects and natural gas transmission projects or
211 any other functions of the authority pursuant to this article.

212 (29) Enter upon any lands, waters and premises in the state
213 for the purpose of making surveys and examinations as it may
214 deem necessary or convenient for the purpose of this article,
215 and such entry shall not be deemed a trespass, nor shall an entry
216 for such purposes be deemed an entry under any condemnation
217 proceedings which may be then pending and the authority shall
218 make reimbursement for any actual damages resulting to such
219 lands, waters and premises as a result of such activities.

220 (30) Participate in any reorganization proceeding pending
221 pursuant to the United States Code (being the act of congress
222 establishing a uniform system of bankruptcy throughout the

223 United States, as amended) or any receivership proceeding in a
224 state or federal court for the reorganization or liquidation of a
225 responsible buyer or responsible tenant. The authority may file
226 its claim against any such responsible buyer or responsible
227 tenant in any of the foregoing proceedings, vote upon any
228 question pending therein, which requires the approval of the
229 creditors participating in any reorganization proceeding or
230 receivership, exchange any evidence of such indebtedness for
231 any property, security or evidence of indebtedness offered as a
232 part of the reorganization of such responsible buyer or responsi-
233 ble tenant or of any entity formed to acquire the assets thereof
234 and may compromise or reduce the amount of any indebtedness
235 owing to it as a part of any such reorganization.

236 (31) Make or enter into management contracts with a
237 second party or parties to operate any electric power project or
238 any gas transmission project and associated facilities, or other
239 related energy project, either during construction or permanent
240 operation.

241 (32) Do all acts necessary and proper to carry out the
242 powers expressly granted to the authority in this article.

243 (33) Nothing herein shall be construed to permit the
244 transportation of gas produced outside of this state through a
245 natural gas transmission project.

246 (34) The authority shall, after consultation with other
247 agencies of state government having environmental regulatory
248 functions, promulgate legislative rules pursuant to chapter
249 twenty-nine-a of this code, to establish standards and principles
250 to be applied to all projects in assessing the effects of projects
251 on the environment: *Provided*, That when a proposed project
252 requires an environmental impact statement pursuant to the
253 National Environmental Policy Act of 1969, a copy of the
254 environmental impact statement shall be filed with the authority

255 and be made available prior to any final decision or final
256 approval of any project and prior to the conducting of any
257 public hearings regarding the project, and in any such case, no
258 assessment pursuant to the legislative rule need be made.

§5D-1-24. Continuation of board.

1 The West Virginia public energy authority board shall
2 continue to exist, pursuant to the provisions of article ten,
3 chapter four of this code, until the first day of July, two
4 thousand ten, unless sooner terminated, continued or reestab-
5 lished pursuant to the provisions of that article.

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

Article

1. **General Provisions.**
2. **Transfer of Agencies and Boards.**

ARTICLE 1. GENERAL PROVISIONS.

**§5F-1-2. Executive departments created; offices of secretary
created.**

1 (a) There are created, within the executive branch of the
2 state government, the following departments:

- 3 (1) Department of administration;
- 4 (2) Department of education and the arts;
- 5 (3) Department of environmental protection;
- 6 (4) Department of health and human resources;
- 7 (5) Department of military affairs and public safety;
- 8 (6) Department of revenue;

9 (7) Department of transportation; and

10 (8) Department of commerce.

11 (b) Each department will be headed by a secretary ap-
12 pointed by the governor with the advice and consent of the
13 Senate. Each secretary serves at the will and pleasure of the
14 governor.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

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

§5F-2-2. Power and authority of secretary of each department.

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

1 (a) The following agencies and boards, including all of the
2 allied, advisory, affiliated or related entities and funds associ-
3 ated with any agency or board, are transferred to and incorpo-
4 rated in and administered as a part of the department of
5 administration:

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

8 (2) Public employees insurance agency and public employ-
9 ees insurance agency advisory board provided in article sixteen,
10 chapter five of this code;

11 (3) Governor's mansion advisory committee provided for
12 in article five, chapter five-a of this code;

13 (4) Commission on uniform state laws provided in article
14 one-a, chapter twenty-nine of this code;

15 (5) Education and state employees grievance board pro-
16 vided for in article twenty-nine, chapter eighteen of this code
17 and article six-a, chapter twenty-nine of this code;

18 (6) Board of risk and insurance management provided for
19 in article twelve, chapter twenty-nine of this code;

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

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

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

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

28 (11) Consolidated public retirement board provided in
29 article ten-d, chapter five of this code.

30 (b) The following agencies and boards, including all of the
31 allied, advisory, affiliated or related entities and funds associ-
32 ated with any agency or board, are transferred to and incorpo-
33 rated in and administered as a part of the department of
34 commerce:

35 (1) Division of labor provided in article one, chapter
36 twenty-one of this code, which includes:

37 (A) Occupational safety and health review commission
38 provided in article three-a, chapter twenty-one of this code; and

39 (B) Board of manufactured housing construction and safety
40 provided in article nine, chapter twenty-one of this code;

41 (2) Office of miners' health, safety and training provided in
42 article one, chapter twenty-two-a of this code. The following
43 boards are transferred to the office of miners' health, safety and
44 training for purposes of administrative support and liaison with
45 the office of the governor:

46 (A) Board of coal mine health and safety and coal mine
47 safety and technical review committee provided in article six,
48 chapter twenty-two-a of this code;

49 (B) Board of miner training, education and certification
50 provided in article seven, chapter twenty-two-a of this code;
51 and

52 (C) Mine inspectors' examining board provided in article
53 nine, chapter twenty-two-a of this code;

54 (3) The West Virginia development office, which includes
55 the division of tourism and the tourism commission provided in
56 article two, chapter five-b of this code;

57 (4) Division of natural resources and natural resources
58 commission provided in article one, chapter twenty of this code;

59 (5) Division of forestry provided in article one-a, chapter
60 nineteen of this code; and

61 (6) Geological and economic survey provided in article
62 two, chapter twenty-nine of this code.

63 (c) The economic development authority provided for in
64 article fifteen, chapter thirty-one of this code is continued as an
65 independent agency within the executive branch.

66 (d) The water development authority and board provided in
67 article one, chapter twenty-two-c of this code is continued as an
68 independent agency within the executive branch.

69 (e) Bureau of employment programs provided in article
70 one, chapter twenty-one-a of this code is continued as an
71 independent agency within the executive branch.

72 (f) Workers' compensation commission provided in article
73 one, chapter twenty-three of this code is continued as an
74 independent agency within the executive branch.

75 (g) Bureau of environment is abolished and the following
76 agencies and boards, including all allied, advisory and affiliated
77 entities, are transferred to the department of environmental
78 protection for purposes of administrative support and liaison
79 with the office of the governor:

80 (1) Air quality board provided in article two, chapter
81 twenty-two-b of this code;

82 (2) Solid waste management board provided in article three,
83 chapter twenty-two-c of this code;

84 (3) Environmental quality board, or its successor board,
85 provided in article three, chapter twenty-two-b of this code;

86 (4) Surface mine board provided in article four, chapter
87 twenty-two-b of this code;

88 (5) Oil and gas inspectors' examining board provided in
89 article seven, chapter twenty-two-c of this code;

90 (6) Shallow gas well review board provided in article eight,
91 chapter twenty-two-c of this code; and

92 (7) Oil and gas conservation commission provided in article
93 nine, chapter twenty-two-c of this code.

94 (h) The following agencies and boards, including all of the
95 allied, advisory, affiliated or related entities and funds associ-
96 ated with any agency or board, are transferred to and incorpo-
97 rated in and administered as a part of the department of
98 education and the arts:

99 (1) Library commission provided in article one, chapter ten
100 of this code;

101 (2) Educational broadcasting authority provided in article
102 five, chapter ten of this code;

103 (3) Division of culture and history provided in article one,
104 chapter twenty-nine of this code;

105 (4) Division of rehabilitation services provided in section
106 two, article ten-a, chapter eighteen of this code.

107 (i) The following agencies and boards, including all of the
108 allied, advisory, affiliated or related entities and funds associ-
109 ated with any agency or board, are transferred to and incorpo-
110 rated in and administered as a part of the department of health
111 and human resources:

112 (1) Human rights commission provided for in article eleven,
113 chapter five of this code;

114 (2) Division of human services provided for in article two,
115 chapter nine of this code;

116 (3) Bureau for public health provided for in article one,
117 chapter sixteen of this code;

118 (4) Office of emergency medical services and advisory
119 council thereto provided for in article four-c, chapter sixteen of
120 this code;

121 (5) Health care authority provided for in article
122 twenty-nine-b, chapter sixteen of this code;

123 (6) Commission on mental retardation provided for in
124 article fifteen, chapter twenty-nine of this code;

125 (7) Women's commission provided for in article twenty,
126 chapter twenty-nine of this code; and

127 (8) The child support enforcement division provided for in
128 chapter forty-eight of this code.

129 (j) The following agencies and boards, including all of the
130 allied, advisory, affiliated or related entities and funds associ-
131 ated with any agency or board, are transferred to and incorpo-
132 rated in and administered as a part of the department of military
133 affairs and public safety:

134 (1) Adjutant general's department provided for in article
135 one-a, chapter fifteen of this code;

136 (2) Armory board provided for in article six, chapter fifteen
137 of this code;

138 (3) Military awards board provided for in article one-g,
139 chapter fifteen of this code;

140 (4) West Virginia state police provided for in article two,
141 chapter fifteen of this code;

142 (5) Office of emergency services and disaster recovery
143 board provided for in article five, chapter fifteen of this code
144 and emergency response commission provided for in article
145 five-a of said chapter;

146 (6) Sheriffs' bureau provided for in article eight, chapter
147 fifteen of this code;

148 (7) Division of corrections provided for in chapter
149 twenty-five of this code;

150 (8) Fire commission provided for in article three, chapter
151 twenty-nine of this code;

152 (9) Regional jail and correctional facility authority provided
153 for in article twenty, chapter thirty-one of this code;

154 (10) Board of probation and parole provided for in article
155 twelve, chapter sixty-two of this code; and

156 (11) Division of veterans' affairs and veterans' council
157 provided for in article one, chapter nine-a of this code.

158 (k) The following agencies and boards, including all of the
159 allied, advisory, affiliated or related entities and funds associ-
160 ated with any agency or board, are transferred to and incorpo-
161 rated in and administered as a part of the department of
162 revenue:

163 (1) Tax division provided for in article one, chapter eleven
164 of this code;

165 (2) Racing commission provided for in article twenty-three,
166 chapter nineteen of this code;

167 (3) Lottery commission and position of lottery director
168 provided for in article twenty-two, chapter twenty-nine of this
169 code;

170 (4) Agency of insurance commissioner provided for in
171 article two, chapter thirty-three of this code;

172 (5) Office of alcohol beverage control commissioner
173 provided for in article sixteen, chapter eleven of this code and
174 article two, chapter sixty of this code;

175 (6) Board of banking and financial institutions provided for
176 in article three, chapter thirty-one-a of this code;

177 (7) Lending and credit rate board provided for in chapter
178 forty-seven-a of this code;

179 (8) Division of banking provided for in article two, chapter
180 thirty-one-a of this code;

181 (9) The state budget office, formerly known as the budget
182 section of the finance division, department of administration,
183 previously provided for in article two, chapter five-a of this
184 code and now provided for in article two of this chapter;

185 (10) The municipal bond commission provided for in article
186 three, chapter thirteen of this code;

187 (11) The office of tax appeals provided for in article ten-a,
188 chapter eleven of this code; and

189 (12) The state athletic commission provided for in article
190 five-a, chapter twenty-nine of this code.

191 (1) The following agencies and boards, including all of the
192 allied, advisory, affiliated or related entities and funds associ-
193 ated with any agency or board, are transferred to and incorpo-
194 rated in and administered as a part of the department of
195 transportation:

196 (1) Division of highways provided for in article two-a,
197 chapter seventeen of this code;

198 (2) Parkways, economic development and tourism authority
199 provided for in article sixteen-a, chapter seventeen of this code;

200 (3) Division of motor vehicles provided for in article two,
201 chapter seventeen-a of this code;

202 (4) Driver's licensing advisory board provided for in article
203 two, chapter seventeen-b of this code;

204 (5) Aeronautics commission provided for in article two-a,
205 chapter twenty-nine of this code;

206 (6) State rail authority provided for in article eighteen,
207 chapter twenty-nine of this code; and

208 (7) Port authority provided for in article sixteen-b, chapter
209 seventeen of this code.

210 (m) Except for powers, authority and duties that have been
211 delegated to the secretaries of the departments by the provisions
212 of section two of this article, the existence of the position of
213 administrator and of the agency and the powers, authority and
214 duties of each administrator and agency are not affected by the
215 enactment of this chapter.

216 (n) Except for powers, authority and duties that have been
217 delegated to the secretaries of the departments by the provisions
218 of section two of this article, the existence, powers, authority
219 and duties of boards and the membership, terms and qualifica-
220 tions of members of the boards are not affected by the enact-
221 ment of this chapter and all boards which are appellate bodies
222 or were otherwise established to be independent decision
223 makers will not have their appellate or independent deci-
224 sion-making status affected by the enactment of this chapter.

225 (o) Any department previously transferred to and incorpo-
226 rated in a department created in section two, article one of this
227 chapter by prior enactment of this section in chapter three, acts
228 of the Legislature, first extraordinary session, one thousand nine
229 hundred eighty-nine, and subsequent amendments means a
230 division of the appropriate department. Wherever reference is
231 made to any department transferred to and incorporated in a
232 department created in section two, article one of this chapter,
233 the reference means a division of the appropriate department
234 and any reference to a division of a department so transferred
235 and incorporated means a section of the appropriate division of
236 the department.

237 (p) When an agency, board or commission is transferred
238 under a bureau or agency other than a department headed by a
239 secretary pursuant to this section, that transfer is solely for
240 purposes of administrative support and liaison with the office
241 of the governor, a department secretary or a bureau. Nothing in
242 this section extends the powers of department secretaries under
243 section two of this article to any person other than a department
244 secretary and nothing limits or abridges the statutory powers
245 and duties of statutory commissioners or officers pursuant to
246 this code.

§5F-2-2. Power and authority of secretary of each department.

1 (a) Notwithstanding any other provision of this code to the
2 contrary, the secretary of each department shall have plenary
3 power and authority within and for the department to:

4 (1) Employ and discharge within the office of the secretary
5 such employees as may be necessary to carry out the functions
6 of the secretary, which employees shall serve at the will and
7 pleasure of the secretary;

8 (2) Cause the various agencies and boards to be operated
9 effectively, efficiently and economically, and develop goals,
10 objectives, policies and plans that are necessary or desirable for
11 the effective, efficient and economical operation of the depart-
12 ment;

13 (3) Eliminate or consolidate positions, other than positions
14 of administrators or positions of board members, and name a
15 person to fill more than one position;

16 (4) Delegate, assign, transfer or combine responsibilities or
17 duties to or among employees, other than administrators or
18 board members;

19 (5) Reorganize internal functions or operations;

20 (6) Formulate comprehensive budgets for consideration by
21 the governor, and transfer within the department funds appro-
22 priated to the various agencies of the department which are not
23 expended due to cost savings resulting from the implementation
24 of the provisions of this chapter: *Provided*, That no more than
25 twenty-five percent of the funds appropriated to any one agency
26 or board may be transferred to other agencies or boards within
27 the department: *Provided, however*, That no funds may be
28 transferred from a special revenue account, dedicated account,
29 capital expenditure account or any other account or funds
30 specifically exempted by the Legislature from transfer, except
31 that the use of appropriations from the state road fund trans-
32 ferred to the office of the secretary of the department of
33 transportation is not a use other than the purpose for which such
34 funds were dedicated and is permitted: *Provided further*, That
35 if the Legislature by subsequent enactment consolidates
36 agencies, boards or functions, the secretary may transfer the
37 funds formerly appropriated to such agency, board or function
38 in order to implement such consolidation. The authority to
39 transfer funds under this section shall expire on the thirtieth day
40 of June, two thousand six;

41 (7) Enter into contracts or agreements requiring the
42 expenditure of public funds, and authorize the expenditure or
43 obligating of public funds as authorized by law: *Provided*, That
44 the powers granted to the secretary to enter into contracts or
45 agreements and to make expenditures or obligations of public
46 funds under this provision shall not exceed or be interpreted as
47 authority to exceed the powers heretofore granted by the
48 Legislature to the various commissioners, directors or board
49 members of the various departments, agencies or boards that
50 comprise and are incorporated into each secretary's department
51 under this chapter;

52 (8) Acquire by lease or purchase property of whatever kind
53 or character and convey or dispose of any property of whatever

54 kind or character as authorized by law: *Provided*, That the
55 powers granted to the secretary to lease, purchase, convey or
56 dispose of such property shall not exceed or be interpreted as
57 authority to exceed the powers heretofore granted by the
58 Legislature to the various commissioners, directors or board
59 members of the various departments, agencies or boards that
60 comprise and are incorporated into each secretary's department
61 under this chapter;

62 (9) Conduct internal audits;

63 (10) Supervise internal management;

64 (11) Promulgate rules, as defined in section two, article
65 one, chapter twenty-nine-a of this code, to implement and make
66 effective the powers, authority and duties granted and imposed
67 by the provisions of this chapter, such promulgation to be in
68 accordance with the provisions of chapter twenty-nine-a of this
69 code;

70 (12) Grant or withhold written consent to the proposal of
71 any rule, as defined in section two, article one, chapter
72 twenty-nine-a of this code, by any administrator, agency or
73 board within the department, without which written consent no
74 proposal of a rule shall have any force or effect;

75 (13) Delegate to administrators such duties of the secretary
76 as the secretary may deem appropriate from time to time to
77 facilitate execution of the powers, authority and duties dele-
78 gated to the secretary; and

79 (14) Take any other action involving or relating to internal
80 management not otherwise prohibited by law.

81 (b) The secretaries of the departments hereby created shall
82 engage in a comprehensive review of the practices, policies and
83 operations of the agencies and boards within their departments

84 to determine the feasibility of cost reductions and increased
85 efficiency which may be achieved therein, including, but not
86 limited to, the following:

87 (1) The elimination, reduction and restrictions in the use of
88 the state's vehicle or other transportation fleet;

89 (2) The elimination, reduction and restrictions in the
90 preparation of state government publications, including annual
91 reports, informational materials and promotional materials;

92 (3) The termination or rectification of terms contained in
93 lease agreements between the state and private sector for
94 offices, equipment and services;

95 (4) The adoption of appropriate systems for accounting,
96 including consideration of an accrual basis financial accounting
97 and reporting system;

98 (5) The adoption of revised procurement practices to
99 facilitate cost effective purchasing procedures, including
100 consideration of means by which domestic businesses may be
101 assisted to compete for state government purchases; and

102 (6) The computerization of the functions of the state
103 agencies and boards.

104 (c) Notwithstanding the provisions of subsections (a) and
105 (b) of this section, none of the powers granted to the secretaries
106 herein shall be exercised by the secretary if to do so would
107 violate or be inconsistent with the provisions of any federal law
108 or regulation, any federal-state program or federally delegated
109 program or jeopardize the approval, existence or funding of any
110 such program and the powers granted to the secretary shall be
111 so construed.

112 (d) The layoff and recall rights of employees within the
113 classified service of the state as provided in subsections five
114 and six, section ten, article six, chapter twenty-nine of this code
115 shall be limited to the organizational unit within the agency or
116 board and within the occupational group established by the
117 classification and compensation plan for the classified service
118 of the agency or board in which the employee was employed
119 prior to the agency or board's transfer or incorporation into the
120 department: *Provided*, That the employee shall possess the
121 qualifications established for the job class. The duration of
122 recall rights provided in this subsection shall be limited to two
123 years or the length of tenure, whichever is less. Except as
124 provided in this subsection, nothing contained in this section
125 shall be construed to abridge the rights of employees within the
126 classified service of the state as provided in sections ten and
127 ten-a, article six, chapter twenty-nine of this code or the right of
128 classified employees of the board of regents to the procedures
129 and protections set forth in article twenty-six-b, chapter
130 eighteen of this code.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 22. COUNTY ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.

- §7-22-3. Definitions.
- §7-22-6. Notice; hearing.
- §7-22-7. Application to development office for approval of an economic opportunity development district project.
- §7-22-8. Establishment of the economic opportunity development district fund.
- §7-22-10. Ordinance to create district as approved by development office and authorized by the Legislature.
- §7-22-11. District board; duties.
- §7-22-12. Special district excise tax authorized.
- §7-22-14. Modification of included area; notice; hearing.
- §7-22-15. Abolishment and dissolution of district; notice; hearing.

§7-22-3. Definitions.

1 For purposes of this article, the term:

2 (1) "County commission" means the governing body of
3 a county of this state;

4 (2) "Development expenditures" means payments for
5 governmental functions, programs, activities, facility construc-
6 tion, improvements and other goods and services which a
7 district board is authorized to perform or provide under section
8 five of this article;

9 (3) "District" means an economic opportunity development
10 district created pursuant to this article;

11 (4) "District board" means a district board created pursuant
12 to section ten of this article; and

13 (5) "Eligible property" means any taxable or exempt real
14 property located in a district established pursuant to this article.

§7-22-6. Notice; hearing.

1 (a) *General.* — A county commission desiring to create an
2 economic opportunity development district shall conduct a
3 public hearing.

4 (b) *Notice of hearing.* — Notice of the public hearing shall
5 be published as a Class I-0 legal advertisement in compliance
6 with article three, chapter fifty-nine of this code at least twenty
7 days prior to the scheduled hearing. In addition to the time and
8 place of the hearing, the notice must also state:

9 (1) The purpose of the hearing;

10 (2) The name of the proposed district;

11 (3) The general purpose of the proposed district;

12 (4) The geographic boundaries of the property proposed to
13 be included in the district; and

14 (5) The proposed method of financing any costs involved,
15 including the base and rate of special district excise tax that
16 may be imposed upon sales of tangible personal property and
17 taxable services from business locations situated within the
18 proposed district.

19 (c) *Opportunity to be heard.* — At the time and place set
20 forth in the notice, the county commission shall afford the
21 opportunity to be heard to any owner of real property situated
22 in the proposed district and any residents of the county.

23 (d) *Application to West Virginia development office.* — If
24 the county commission, following the public hearing, deter-
25 mines it advisable and in the public interest to establish an
26 economic opportunity development district, it shall apply to the
27 West Virginia development office for approval of the economic
28 opportunity development district project pursuant to the
29 procedures provided in section seven of this article.

**§7-22-7. Application to development office for approval of an
economic opportunity development district project.**

1 (a) *General.* — The development office shall receive and
2 act on applications filed with it by county commissions
3 pursuant to section six of this article. Each application must
4 include:

5 (1) A true copy of the notice described in section six of this
6 article;

7 (2) The total cost of the project;

8 (3) A reasonable estimate of the number of months needed
9 to complete the project;

10 (4) A general description of the capital improvements,
11 additional or extended services and other proposed develop-

12 ment expenditures to be made in the district as part of the
13 project;

14 (5) A description of the proposed method of financing the
15 development expenditures, together with a description of the
16 reserves to be established for financing ongoing development
17 or redevelopment expenditures necessary to permanently
18 maintain the optimum economic viability of the district
19 following its inception: *Provided*, That the amounts of the
20 reserves shall not exceed the amounts that would be required by
21 ordinary commercial capital market considerations;

22 (6) A description of the sources and anticipated amounts of
23 all financing, including, but not limited to, proceeds from the
24 issuance of any bonds or other instruments, revenues from the
25 special district excise tax and enhanced revenues from property
26 taxes and fees;

27 (7) A description of the financial contribution of the county
28 commission to the funding of development expenditures;

29 (8) Identification of any businesses that the county commis-
30 sion expects to relocate their business locations from the district
31 to another place in the state in connection with the establish-
32 ment of the district or from another place in this state to the
33 district: *Provided*, That for purposes of this article, any entities
34 shall be designated “relocated entities”;

35 (9) Identification of any businesses currently conducting
36 business in the proposed economic opportunity development
37 district that the county commission expects to continue doing
38 business there after the district is created;

39 (10) A good faith estimate of the aggregate amount of
40 consumers sales and service tax that was actually remitted to
41 the tax commissioner by all business locations identified as
42 provided in subdivisions (8) and (9) of this subsection with

43 respect to their sales made and services rendered from their
44 then current business locations that will be relocated from, or
45 to, or remain in the district, for the twelve full calendar months
46 next preceding the date of the application: *Provided*, That for
47 purposes of this article, the aggregate amount is designated as
48 “the base tax revenue amount”;

49 (11) A good faith estimate of the gross annual district tax
50 revenue amount;

51 (12) The proposed application of any surplus from all
52 funding sources to further the objectives of this article;

53 (13) The tax commissioner’s certification of: (i) The
54 amount of consumers sales and service taxes collected from
55 businesses located in the economic opportunity district during
56 the twelve calendar months preceding the calendar quarter
57 during which the application will be submitted to the develop-
58 ment office; (ii) the estimated amount of economic opportunity
59 district excise tax that will be collected during the first twelve
60 months after the month in which the tax commissioner would
61 first begin to collect that tax; and (iii) the estimated amount of
62 economic opportunity district excise tax that will be collected
63 during the first thirty-six months after the month in which the
64 tax commissioner would first begin to collect that tax; and

65 (14) Any additional information the development office
66 may require.

67 (b) *Review of applications.* — The development office shall
68 review all project proposals for conformance to statutory and
69 regulatory requirements, the reasonableness of the project’s
70 budget and timetable for completion and the following criteria:

71 (1) The quality of the proposed project and how it addresses
72 economic problems in the area in which the project will be
73 located;

74 (2) The merits of the project determined by a cost-benefit
75 analysis that incorporates all costs and benefits, both public and
76 private;

77 (3) Whether the project is supported by significant private
78 sector investment and substantial credible evidence that, but for
79 the existence of sales tax increment financing, the project would
80 not be feasible;

81 (4) Whether the economic opportunity district excise tax
82 dollars will leverage or be the catalyst for the effective use of
83 private, other local government, state or federal funding that is
84 available;

85 (5) Whether there is substantial and credible evidence that
86 the project is likely to be started and completed in a timely
87 fashion;

88 (6) Whether the project will, directly or indirectly, improve
89 the opportunities in the area where the project will be located
90 for the successful establishment or expansion of other industrial
91 or commercial businesses;

92 (7) Whether the project will, directly or indirectly, assist in
93 the creation of additional long-term employment opportunities
94 in the area and the quality of jobs created in all phases of the
95 project, to include, but not be limited to, wages and benefits;

96 (8) Whether the project will fulfill a pressing need for the
97 area, or part of the area, in which the economic opportunity
98 district is located;

99 (9) Whether the county commission has a strategy for
100 economic development in the county and whether the project is
101 consistent with that strategy;

102 (10) Whether the project helps to diversify the local
103 economy;

104 (11) Whether the project is consistent with the goals of this
105 article;

106 (12) Whether the project is economically and fiscally sound
107 using recognized business standards of finance and accounting;
108 and

109 (13) The ability of the county commission and the project
110 developer or project team to carry out the project: *Provided,*
111 That no project may be approved by the development office
112 unless the amount of all development expenditures proposed to
113 be made in the first twenty-four months following the creation
114 of the district results in capital investment of more than fifty
115 million dollars in the district and the county submits clear and
116 convincing information, to the satisfaction of the development
117 office, that such investment will be made if the development
118 office approves the project and the Legislature authorizes the
119 county commission to levy an excise tax on sales of goods and
120 services made within the economic opportunity district as
121 provided in this article.

122 (c) *Additional criteria.* — The development office may
123 establish other criteria for consideration when approving the
124 applications.

125 (d) *Action on the application.* — The executive director of
126 the development office shall act to approve or not approve any
127 application within thirty days following the receipt of the
128 application or the receipt of any additional information re-
129 quested by the development office, whichever is the later.

130 (e) *Certification of project.* — If the executive director of
131 the development office approves a county's economic opportu-
132 nity district project application, he or she shall issue to the
133 county commission a written certificate evidencing the ap-
134 proval.

135 The certificate shall expressly state a base tax revenue
136 amount, the gross annual district tax revenue amount and the
137 estimated net annual district tax revenue amount which, for
138 purposes of this article, is the difference between the gross
139 annual district tax revenue amount and the base tax revenue
140 amount, all of which the development office has determined
141 with respect to the district's application based on any investiga-
142 tion it considers reasonable and necessary, including, but not
143 limited to, any relevant information the development office
144 requests from the tax commissioner and the tax commissioner
145 provides to the development office: *Provided*, That in deter-
146 mining the net annual district tax revenue amount, the develop-
147 ment office may not use a base tax revenue amount less than
148 that amount certified by the tax commissioner but, in lieu of
149 confirmation from the tax commissioner of the gross annual
150 district tax revenue amount, the development office may use the
151 estimate of the gross annual district tax revenue amount
152 provided by the county commission pursuant to subsection (a)
153 of this section.

154 (f) *Certification of enlargement of geographic boundaries*
155 *of previously certified district.* — If the executive director of
156 the development office approves a county's economic opportu-
157 nity district project application to expand the geographic
158 boundaries of a previously certified district, he or she shall
159 issue to the county commission a written certificate evidencing
160 the approval.

161 The certificate shall expressly state a base tax revenue
162 amount, the gross annual district tax revenue amount and the
163 estimated net annual district tax revenue amount which, for
164 purposes of this article, is the difference between the gross
165 annual district tax revenue amount and the base tax revenue
166 amount, all of which the development office has determined
167 with respect to the district's application based on any investiga-
168 tion it considers reasonable and necessary, including, but not

169 limited to, any relevant information the development office
170 requests from the tax commissioner and the tax commissioner
171 provides to the development office: *Provided*, That in deter-
172 mining the net annual district tax revenue amount, the develop-
173 ment office may not use a base tax revenue amount less than
174 that amount certified by the tax commissioner but, in lieu of
175 confirmation from the tax commissioner of the gross annual
176 district tax revenue amount, the development office may use the
177 estimate of the gross annual district tax revenue amount
178 provided by the county commission pursuant to subsection (a)
179 of this section.

180 (g) *Promulgation of rules.* — The executive director of the
181 development office may promulgate rules to implement the
182 economic opportunity development district project application
183 approval process and to describe the criteria and procedures it
184 has established in connection therewith. These rules are not
185 subject to the provisions of chapter twenty-nine-a of this code
186 but shall be filed with the secretary of state.

§7-22-8. Establishment of the economic opportunity development district fund.

1 (a) *General.* — There is hereby created a special revenue
2 account in the state treasury designated the “economic opportu-
3 nity development district fund” which is an interest-bearing
4 account and shall be invested in the manner described in section
5 nine-c, article six, chapter twelve of this code with the interest
6 income a proper credit to the fund.

7 (b) *District subaccount.* — A separate and segregated
8 subaccount within the account shall be established for each
9 economic opportunity development district that is approved by
10 the executive director of the development office. In addition to
11 the economic opportunity district excise tax levied and col-
12 lected as provided in this article, funds paid into the account for

13 the credit of any subaccount may also be derived from the
14 following sources:

15 (1) All interest or return on the investment accruing to the
16 subaccount;

17 (2) Any gifts, grants, bequests, transfers, appropriations or
18 donations which are received from any governmental entity or
19 unit or any person, firm, foundation or corporation; and

20 (3) Any appropriations by the Legislature which are made
21 for this purpose.

**§7-22-10. Ordinance to create district as approved by develop-
ment office and authorized by the Legislature.**

1 (a) *General.* — If an economic opportunity development
2 district project has been approved by the executive director of
3 the development office and the levying of a special district
4 excise tax for the district has been authorized by the Legisla-
5 ture, all in accordance with this article, the county commission
6 may create the district by order entered of record as provided in
7 article one of this chapter: *Provided*, That the county commis-
8 sion may not amend, alter or change in any manner the bound-
9 aries of the economic opportunity development district autho-
10 rized by the Legislature. In addition to all other requirements,
11 the order shall contain the following:

12 (1) The name of the district and a description of its bound-
13 aries;

14 (2) A summary of any proposed services to be provided and
15 capital improvements to be made within the district and a
16 reasonable estimate of any attendant costs;

17 (3) The base and rate of any special district excise tax that
18 may be imposed upon sales by businesses for the privilege of

19 operating within the district, which tax shall be passed on to and
20 paid by the consumer, and the manner in which the taxes will
21 be imposed, administered and collected, all of which shall be in
22 conformity with the requirements of this article; and

23 (4) The district board members' terms, their method of
24 appointment and a general description of the district board's
25 powers and duties, which powers may include the authority:

26 (A) To make and adopt all necessary bylaws and rules for
27 its organization and operations not inconsistent with any
28 applicable laws;

29 (B) To elect its own officers, to appoint committees and to
30 employ and fix compensation for personnel necessary for its
31 operations;

32 (C) To enter into contracts with any person, agency,
33 government entity, agency or instrumentality, firm, partnership,
34 limited partnership, limited liability company or corporation,
35 including both public and private corporations, and for-profit
36 and not-for-profit organizations and generally to do any and all
37 things necessary or convenient for the purpose of promoting,
38 developing and advancing the purposes described in section two
39 of this article;

40 (D) To amend or supplement any contracts or leases or to
41 enter into new, additional or further contracts or leases upon the
42 terms and conditions for consideration and for any term of
43 duration, with or without option of renewal, as agreed upon by
44 the district board and any person, agency, government entity,
45 agency or instrumentality, firm, partnership, limited partner-
46 ship, limited liability company or corporation;

47 (E) To, unless otherwise provided in, and subject to the
48 provisions of any contracts or leases to operate, repair, manage
49 and maintain buildings and structures and provide adequate

50 insurance of all types and in connection with the primary use
51 thereof and incidental thereto to provide services, such as retail
52 stores and restaurants, and to effectuate incidental purposes,
53 grant leases, permits, concessions or other authorizations to any
54 person or persons upon the terms and conditions for consider-
55 ation and for the term of duration as agreed upon by the district
56 board and any person, agency, governmental department, firm
57 or corporation;

58 (F) To delegate any authority given to it by law to any of its
59 officers, committees, agents or employees;

60 (G) To apply for, receive and use grants-in-aid, donations
61 and contributions from any source or sources and to accept and
62 use bequests, devises, gifts and donations from any person, firm
63 or corporation;

64 (H) To acquire real property by gift, purchase or construc-
65 tion or in any other lawful manner and hold title thereto in its
66 own name and to sell, lease or otherwise dispose of all or part
67 of any real property which it may own, either by contract or at
68 public auction, upon the approval by the district board;

69 (I) To purchase or otherwise acquire, own, hold, sell, lease
70 and dispose of all or part of any personal property which it may
71 own, either by contract or at public auction;

72 (J) Pursuant to a determination by the district board that
73 there exists a continuing need for redevelopment expenditures
74 and that moneys or funds of the district are necessary therefor,
75 to borrow money and execute and deliver the district's negotia-
76 ble notes and other evidences of indebtedness therefor, on the
77 terms as the district shall determine, and give security therefor
78 as is requisite, including, without limitation, a pledge of the
79 district's rights in its subaccount of the economic opportunity
80 development district fund;

81 (K) To acquire (either directly or on behalf of the municipi-
82 pality) an interest in any entity or entities that own any real
83 property situate in the district, to contribute capital to any entity
84 or entities and to exercise the rights of an owner with respect
85 thereto; and

86 (L) To expend its funds in the execution of the powers and
87 authority given in this section, which expenditures, by the
88 means authorized in this section, are hereby determined and
89 declared as a matter of legislative finding to be for a public
90 purpose and use, in the public interest and for the general
91 welfare of the people of West Virginia, to alleviate and prevent
92 economic deterioration and to relieve the existing critical
93 condition of unemployment existing within the state.

94 (b) *Additional contents of order.* — The county commis-
95 sion's order shall also state the general intention of the county
96 commission to develop and increase services and to make
97 capital improvements within the district.

98 (c) *Mailing of certified copies of order.* — Upon entry of an
99 order establishing an economic opportunity development
100 district excise tax, a certified copy of the order shall be mailed
101 to the state auditor, as ex officio the chief inspector and
102 supervisor of public offices, the state treasurer and the tax
103 commissioner.

§7-22-11. District board; duties.

1 (a) *General.* — The county commission of a county that has
2 been authorized by the Legislature to establish an economic
3 opportunity development district, in accordance with this
4 article, shall provide, by order entered of record, for the
5 appointment of a district board to oversee the operations of the
6 district: *Provided*, That the county commission may, by order,
7 in lieu of appointing a separate district board, designate itself to
8 act as the district board.

9 (b) *Composition of board.* — If a separate district board is
10 to be appointed, it shall be made up of at least seven members,
11 two of which shall be owners, or representatives of owners, of
12 real property situated in the economic opportunity development
13 district and the other five shall be residents of the county within
14 which the district is located.

15 (c) *Annual report.* — The district board, in addition to the
16 duties prescribed by the order creating the district, shall submit
17 an annual report to the county commission and the development
18 office containing:

19 (1) An itemized statement of its receipts and disbursements
20 for the preceding fiscal year;

21 (2) A description of its activities for the preceding fiscal
22 year;

23 (3) A recommended program of services to be performed
24 and capital improvements to be made within the district for the
25 coming fiscal year; and

26 (4) A proposed budget to accomplish its objectives.

27 (d) *Conflict of interest exception.* — Nothing in this article
28 prohibits any member of the district board from also serving on
29 the board of directors of a nonprofit corporation with which the
30 county commission may contract to provide specified services
31 within the district.

32 (e) *Compensation of board members.* — Each member of
33 the district board may receive reasonable compensation for
34 services on the board in the amount determined by the county
35 commission: *Provided,* That when a district board is not
36 created for the district but the work of the board is done by the
37 county commission, the county commissioners shall receive no
38 additional compensation.

§7-22-12. Special district excise tax authorized.

1 (a) *General.* — The county commission of a county,
2 authorized by the Legislature to levy a special district excise tax
3 for the benefit of an economic opportunity development district,
4 may, by order entered of record, impose that tax on the privi-
5 lege of selling tangible personal property and rendering select
6 services in the district in accordance with this section.

7 (b) *Tax base.* — The base of a special district excise tax
8 imposed pursuant to this section shall be identical to the base of
9 the consumers sales and service tax imposed pursuant to article
10 fifteen, chapter eleven of this code on sales made and services
11 rendered within the boundaries of the district: *Provided*, That
12 except for the exemption provided in section nine-f of said
13 article, all exemptions and exceptions from the consumers sales
14 and service tax shall also apply to the special district excise tax
15 and sales of gasoline and special fuel shall not be subject to
16 special district excise tax but shall remain subject to the tax
17 levied by said article.

18 (c) *Tax rate.* — The rate of a special district excise tax
19 levied pursuant to this section shall be stated in an order entered
20 of record by the county commission and equal to the general
21 rate of tax on each dollar of gross proceeds from sales of
22 tangible personal property and services subject to the tax levied
23 by section three, article fifteen, chapter eleven of this code. The
24 tax on fractional parts of a dollar shall be levied and collected
25 in conformity with the provision of said section.

26 (d) *Collection by tax commissioner.* — The order of the
27 county commission imposing a special district excise tax shall
28 provide for the tax to be collected by the tax commissioner in
29 the same manner as the tax levied by section three, article
30 fifteen, chapter eleven of this code is administered, assessed,
31 collected and enforced.

32 (e) *Deposit of net tax collected.* —

33 (1) The order of the county commission imposing a special
34 district excise tax shall provide that the tax commissioner
35 deposit the net amount of tax collected in the special economic
36 opportunity development district fund to the credit of the
37 county commission's subaccount therein for the economic
38 opportunity development district and that the money in the
39 subaccount may only be used to pay for development expendi-
40 tures as provided in this article except as provided in subsection
41 (f) of this section.

42 (2) The state treasurer shall withhold from the county
43 commission's subaccount in the economic opportunity develop-
44 ment district fund and shall deposit in the general revenue fund
45 of this state, on or before the twentieth day of each calendar
46 month next following the effective date of a special district
47 excise tax, a sum equal to one twelfth of the base tax revenue
48 amount last certified by the development office pursuant to
49 section seven of this article.

50 (f) *Effective date of special district excise tax.* — Any taxes
51 imposed pursuant to the authority of this section shall be
52 effective on the first day of the calendar month that begins sixty
53 days after the date of adoption of an order entered of record
54 imposing the tax or the first day of any later calendar month
55 expressly designated in the order.

56 (g) *Copies of order.* — Upon entry of an order levying a
57 special district excise tax, a certified copy of the order shall be
58 mailed to the state auditor, as ex officio the chief inspector and
59 supervisor of public offices, the state treasurer and the tax
60 commissioner.

§7-22-14. Modification of included area; notice; hearing.

1 (a) *General.* — The order creating an economic opportunity
2 development district may not be amended to include additional
3 contiguous property until after the amendment is approved by
4 the executive director of the development office in the same
5 manner as an application to approve the establishment of the
6 district is acted upon under section seven of this article and the
7 amendment is authorized by the Legislature.

8 (b) *Limitations.* — Additional property may not be included
9 in the district unless it is situated within the boundaries of the
10 county and is contiguous to the then current boundaries of the
11 district.

12 (c) *Public hearing required.* —

13 (1) The county commission of any county desiring to
14 amend its order shall designate a time and place for a public
15 hearing upon the proposal to include additional property. The
16 notice shall meet the requirements set forth in section six of this
17 article.

18 (2) At the time and place set forth in the notice, the county
19 commission shall afford the opportunity to be heard to any
20 owners of real property either currently included in or proposed
21 to be added to the existing district and to any other residents of
22 the county.

23 (d) *Application to West Virginia development office.* —
24 Following the hearing, the county commission may, by resolu-
25 tion, apply to the development office to approve inclusion of
26 the additional property in the district.

27 (e) *Consideration by the executive director of the develop-*
28 *ment office.* — Before the executive director of the develop-
29 ment office approves inclusion of the additional property in the
30 district, the development office shall determine the amount of
31 taxes levied by article fifteen, chapter eleven of this code that

32 were collected by businesses located in the area the county
33 commission proposes to add to the district in the same manner
34 as the base amount of tax was determined when the district was
35 first created. The state treasurer shall also deposit one twelfth
36 of this additional tax base amount into the general revenue fund
37 each month, as provided in section twelve of this article.

38 (f) *Legislative action required.* — After the executive
39 director of the development office approves amending the
40 boundaries of the district, the Legislature must amend section
41 nine of this article to allow levy of the special district excise tax
42 on business located in geographic area to be included in the
43 district. After the Legislature amends said section, the county
44 commission may then amend its order: *Provided*, That the
45 order may not be effective any earlier than the first day of the
46 calendar month that begins sixty days after the effective date of
47 the act of the Legislature authorizing the levy on the special
48 district excise tax on businesses located in the geographic area
49 to be added to the boundaries of the district for which the tax is
50 levied or a later date as set forth in the order of the county
51 commission.

52 (g) *Collection of special district excise tax.* — All busi-
53 nesses included in a district because of the boundary amend-
54 ment shall on the effective date of the order, determined as
55 provided in subsection (f) of this section, collect the special
56 district excise tax on all sales on tangible property or services
57 made from locations in the district on or after the effective date
58 of the county commission's order or a later date as set forth in
59 the order.

**§7-22-15. Abolishment and dissolution of district; notice; hear-
ing.**

1 (a) *General.* — Except upon the express written consent of
2 the executive director of the development office and of all the

3 holders or obligees of any indebtedness or other instruments the
4 proceeds of which were applied to any development or redevel-
5 opment expenditures or any indebtedness the payment of which
6 is secured by revenues payable into the fund provided under
7 section eight of this article or by any public property, a district
8 may only be abolished by the county commission when there is
9 no outstanding indebtedness, the proceeds of which were
10 applied to any development or redevelopment expenditures or
11 the payment of which is secured by revenues payable into the
12 fund provided under section eight of this article, or by any
13 public property, and following a public hearing upon the
14 proposed abolishment.

15 (b) *Notice of public hearing.* — Notice of the public
16 hearing required by subsection (a) of this section shall be
17 provided by first-class mail to all owners of real property within
18 the district and shall be published as a Class I-0 legal advertise-
19 ment in compliance with article three, chapter fifty-nine of this
20 code at least twenty days prior to the public hearing.

21 (c) *Transfer of district assets and funds.* — Upon the
22 abolishment of any economic opportunity development district,
23 any funds or other assets, contractual rights or obligations,
24 claims against holders of indebtedness or other financial
25 benefits, liabilities or obligations existing after full payment has
26 been made on all existing contracts, bonds, notes or other
27 obligations of the district are transferred to and assumed by the
28 county commission. Any funds or other assets transferred shall
29 be used for the benefit of the area included in the district being
30 abolished.

31 (d) *Reinstatement of district.* — Following abolishment of
32 a district pursuant to this section, its reinstatement requires
33 compliance with all requirements and procedures set forth in
34 this article for the initial development, approval, establishment
35 and creation of an economic opportunity development district.

CHAPTER 8. MUNICIPAL CORPORATIONS.**ARTICLE 38. MUNICIPAL ECONOMIC OPPORTUNITY DEVELOPMENT DISTRICTS.**

- §8-38-3. Definitions.
- §8-38-6. Notice; hearing.
- §8-38-7. Application to development office for community and economic development for approval of an economic opportunity development district project.
- §8-38-8. Establishment of the economic opportunity development district fund.
- §8-38-10. Ordinance to create district as approved by development office and authorized by the Legislature.
- §8-38-11. District board; duties.
- §8-38-12. Special district excise tax authorized.
- §8-38-14. Modification of included area; notice; hearing.
- §8-38-15. Abolishment and dissolution of district; notice; hearing.

§8-38-3. Definitions.

1 For purposes of this article, the term:

2 (1) "Development expenditures" means payments for
3 governmental functions, programs, activities, facility construc-
4 tion, improvements and other goods and services which a
5 district board is authorized to perform or provide under section
6 five of this article;

7 (2) "District" means an economic opportunity development
8 district created pursuant to this article;

9 (3) "District board" means a district board created pursuant
10 to section ten of this article;

11 (4) "Eligible property" means any taxable or exempt real
12 property located in a district established pursuant to this article;
13 and

14 (5) "Municipality" is a word of art and shall mean, for the
15 purposes of this article, only Class I and Class II cities as
16 classified in section three, article one of this chapter.

§8-38-6. Notice; hearing.

1 (a) *General.* — A municipality desiring to create an
2 economic opportunity development district shall conduct a
3 public hearing.

4 (b) *Notice of hearing.* — Notice of the public hearing shall
5 be published as a Class I-0 legal advertisement in compliance
6 with article three, chapter fifty-nine of this code at least twenty
7 days prior to the scheduled hearing. In addition to the time and
8 place of the hearing, the notice must also state:

9 (1) The purpose of the hearing;

10 (2) The name of the proposed district;

11 (3) The general purpose of the proposed district;

12 (4) The geographic boundaries of the property proposed to
13 be included in the district; and

14 (5) The proposed method of financing any costs involved,
15 including the base and rate of special district excise tax that
16 may be imposed upon sales of tangible personal property and
17 taxable services from business locations situated within the
18 proposed district.

19 (c) *Opportunity to be heard.* — At the time and place set
20 forth in the notice, the municipality shall afford the opportunity
21 to be heard to any owner of real property situated in the
22 proposed district and any residents of the municipality.

23 (d) *Application to West Virginia development office.* — If
24 the municipality, following the public hearing, determines it
25 advisable and in the public interest to establish an economic
26 opportunity development district, it shall apply to the West
27 Virginia development office for approval of the economic

28 opportunity development district project pursuant to the
29 procedures provided in section seven of this article.

**§8-38-7. Application to development office for community and
economic development for approval of an economic
opportunity development district project.**

1 (a) *General.* — The development office shall receive and
2 act on applications filed with it by municipalities pursuant to
3 section six of this article. Each application must include:

4 (1) A true copy of the notice described in section six of this
5 article;

6 (2) The total cost of the project;

7 (3) A reasonable estimate of the number of months needed
8 to complete the project;

9 (4) A general description of the capital improvements,
10 additional or extended services and other proposed develop-
11 ment expenditures to be made in the district as part of the
12 project;

13 (5) A description of the proposed method of financing the
14 development expenditures, together with a description of the
15 reserves to be established for financing ongoing development
16 or redevelopment expenditures necessary to permanently
17 maintain the optimum economic viability of the district
18 following its inception: *Provided*, That the amounts of the
19 reserves shall not exceed the amounts that would be required by
20 ordinary commercial capital market considerations;

21 (6) A description of the sources and anticipated amounts of
22 all financing, including, but not limited to, proceeds from the
23 issuance of any bonds or other instruments, revenues from the
24 special district excise tax and enhanced revenues from property
25 taxes and fees;

26 (7) A description of the financial contribution of the
27 municipality to the funding of development expenditures;

28 (8) Identification of any businesses that the municipality
29 expects to relocate their business locations from the district to
30 another place in the state in connection with the establishment
31 of the district or from another place in this state to the district:
32 *Provided*, That for purposes of this article, any entities shall be
33 designated “relocated entities”;

34 (9) Identification of any businesses currently conducting
35 business in the proposed economic opportunity development
36 district that the municipality expects to continue doing business
37 there after the district is created;

38 (10) A good faith estimate of the aggregate amount of
39 consumers sales and service tax that was actually remitted to
40 the tax commissioner by all business locations identified as
41 provided in subdivisions (8) and (9) of this subsection with
42 respect to their sales made and services rendered from their
43 then current business locations that will be relocated from, or
44 to, or remain in the district, for the twelve full calendar months
45 next preceding the date of the application: *Provided*, That for
46 purposes of this article, the aggregate amount is designated as
47 “the base tax revenue amount”;

48 (11) A good faith estimate of the gross annual district tax
49 revenue amount;

50 (12) The proposed application of any surplus from all
51 funding sources to further the objectives of this article;

52 (13) The tax commissioner’s certification of: (i) The
53 amount of consumers sales and service taxes collected from
54 businesses located in the economic opportunity district during
55 the twelve calendar months preceding the calendar quarter
56 during which the application will be submitted to the develop-

57 ment office; (ii) the estimated amount of economic opportunity
58 district excise tax that will be collected during the first twelve
59 months after the month in which the tax commissioner would
60 first begin to collect that tax; and (iii) the estimated amount of
61 economic opportunity district excise tax that will be collected
62 during the first thirty-six months after the month in which the
63 tax commissioner would first begin to collect that tax; and

64 (14) Any additional information the development office
65 may require.

66 (b) *Review of applications.* — The development office shall
67 review all project proposals for conformance to statutory and
68 regulatory requirements, the reasonableness of the project's
69 budget and timetable for completion and the following criteria:

70 (1) The quality of the proposed project and how it addresses
71 economic problems in the area in which the project will be
72 located;

73 (2) The merits of the project determined by a cost-benefit
74 analysis that incorporates all costs and benefits, both public and
75 private;

76 (3) Whether the project is supported by significant private
77 sector investment and substantial credible evidence that, but for
78 the existence of sales tax increment financing, the project would
79 not be feasible;

80 (4) Whether the economic opportunity development district
81 excise tax dollars will leverage or be the catalyst for the
82 effective use of private, other local government, state or federal
83 funding that is available;

84 (5) Whether there is substantial and credible evidence that
85 the project is likely to be started and completed in a timely
86 fashion;

87 (6) Whether the project will, directly or indirectly, improve
88 the opportunities in the area where the project will be located
89 for the successful establishment or expansion of other industrial
90 or commercial businesses;

91 (7) Whether the project will, directly or indirectly, assist in
92 the creation of additional long-term employment opportunities
93 in the area and the quality of jobs created in all phases of the
94 project, to include, but not be limited to, wages and benefits;

95 (8) Whether the project will fulfill a pressing need for the
96 area, or part of the area, in which the economic opportunity
97 district is located;

98 (9) Whether the municipality has a strategy for economic
99 development in the municipality and whether the project is
100 consistent with that strategy;

101 (10) Whether the project helps to diversify the local
102 economy;

103 (11) Whether the project is consistent with the goals of this
104 article;

105 (12) Whether the project is economically and fiscally sound
106 using recognized business standards of finance and accounting;
107 and

108 (13) The ability of the municipality and the project devel-
109 oper or project team to carry out the project: *Provided*, That no
110 project may be approved by the development office unless the
111 amount of all development expenditures proposed to be made
112 in the first twenty-four months following the creation of the
113 district results in capital investment of more than fifty million
114 dollars in the district and the municipality submits clear and
115 convincing information, to the satisfaction of the development
116 office, that such investment will be made if the development

117 office approves the project and the Legislature authorizes the
118 municipality to levy an excise tax on sales of goods and
119 services made within the economic opportunity development
120 district as provided in this article.

121 (c) *Additional criteria.* — The development office may
122 establish other criteria for consideration when approving the
123 applications.

124 (d) *Action on the application.* — The executive director of
125 the development office shall act to approve or not approve any
126 application within thirty days following the receipt of the
127 application or the receipt of any additional information re-
128 quested by the development office, whichever is the later.

129 (e) *Certification of project.* — If the executive director of
130 the development office approves a municipality's economic
131 opportunity district project application, he or she shall issue to
132 the municipality a written certificate evidencing the approval.

133 The certificate shall expressly state a base tax revenue
134 amount, the gross annual district tax revenue amount and the
135 estimated net annual district tax revenue amount which, for
136 purposes of this article, is the difference between the gross
137 annual district tax revenue amount and the base tax revenue
138 amount, all of which the development office has determined
139 with respect to the district's application based on any investiga-
140 tion it considers reasonable and necessary, including, but not
141 limited to, any relevant information the development office
142 requests from the tax commissioner and the tax commissioner
143 provides to the development office: *Provided*, That in deter-
144 mining the net annual district tax revenue amount, the develop-
145 ment office may not use a base tax revenue amount less than
146 that amount certified by the tax commissioner but, in lieu of
147 confirmation from the tax commissioner of the gross annual
148 district tax revenue amount, the development office may use the
149 estimate of the gross annual district tax revenue amount

150 provided by the municipality pursuant to subsection (a) of this
151 section.

152 (f) *Certification of enlargement of geographic boundaries*
153 *of previously certified district.* — If the executive director of
154 the development office approves a municipality's economic
155 opportunity district project application to expand the geo-
156 graphic boundaries of a previously certified district, he or she
157 shall issue to the municipality a written certificate evidencing
158 the approval.

159 The certificate shall expressly state a base tax revenue
160 amount, the gross annual district tax revenue amount and the
161 estimated net annual district tax revenue amount which, for
162 purposes of this article, is the difference between the gross
163 annual district tax revenue amount and the base tax revenue
164 amount, all of which the development office has determined
165 with respect to the district's application based on any investiga-
166 tion it considers reasonable and necessary, including, but not
167 limited to, any relevant information the development office
168 requests from the tax commissioner and the tax commissioner
169 provides to the development office: *Provided*, That in deter-
170 mining the net annual district tax revenue amount, the develop-
171 ment office may not use a base tax revenue amount less than
172 that amount certified by the tax commissioner but, in lieu of
173 confirmation from the tax commissioner of the gross annual
174 district tax revenue amount, the development office may use the
175 estimate of the gross annual district tax revenue amount
176 provided by the municipality pursuant to subsection (a) of this
177 section.

178 (g) *Promulgation of rules.* — The executive director of the
179 development office may promulgate rules to implement the
180 economic opportunity development district project application
181 approval process and to describe the criteria and procedures it
182 has established in connection therewith. These rules are not

183 subject to the provisions of chapter twenty-nine-a of this code
184 but shall be filed with the secretary of state.

§8-38-8. Establishment of the economic opportunity development district fund.

1 (a) *General.* — There is hereby created a special revenue
2 account in the state treasury designated the “economic opportu-
3 nity development district fund” which is an interest-bearing
4 account and shall be invested in the manner described in section
5 nine-c, article six, chapter twelve of this code with the interest
6 income a proper credit to the fund.

7 (b) *District subaccount.*— A separate and segregated
8 subaccount within the account shall be established for each
9 economic opportunity development district that is approved by
10 the executive director of the development office. In addition to
11 the economic opportunity district excise tax levied and col-
12 lected as provided in this article, funds paid into the account for
13 the credit of any subaccount may also be derived from the
14 following sources:

15 (1) All interest or return on the investment accruing to the
16 subaccount;

17 (2) Any gifts, grants, bequests, transfers, appropriations or
18 donations which are received from any governmental entity or
19 unit or any person, firm, foundation or corporation; and

20 (3) Any appropriations by the Legislature which are made
21 for this purpose.

**§8-38-10. Ordinance to create district as approved by develop-
ment office and authorized by the Legislature.**

1 (a) *General.* — If an economic opportunity development
2 district project has been approved by the executive director of

3 the development office and the levying of a special district
4 excise tax for the district has been authorized by the Legisla-
5 ture, all in accordance with this article, the municipality may
6 create the district by ordinance entered of record as provided in
7 article one of this chapter: *Provided*, That the municipality may
8 not amend, alter or change in any manner the boundaries of the
9 economic opportunity development district authorized by the
10 Legislature. In addition to all other requirements, the ordinance
11 shall contain the following:

12 (1) The name of the district and a description of its bound-
13 aries;

14 (2) A summary of any proposed services to be provided and
15 capital improvements to be made within the district and a
16 reasonable estimate of any attendant costs;

17 (3) The base and rate of any special district excise tax that
18 may be imposed upon sales by businesses for the privilege of
19 operating within the district, which tax shall be passed on to and
20 paid by the consumer, and the manner in which the taxes will
21 be imposed, administered and collected, all of which shall be in
22 conformity with the requirements of this article; and

23 (4) The district board members' terms, their method of
24 appointment and a general description of the district board's
25 powers and duties, which powers may include the authority:

26 (A) To make and adopt all necessary bylaws and rules for
27 its organization and operations not inconsistent with any
28 applicable laws;

29 (B) To elect its own officers, to appoint committees and to
30 employ and fix compensation for personnel necessary for its
31 operations;

32 (C) To enter into contracts with any person, agency,
33 government entity, agency or instrumentality, firm, partnership,
34 limited partnership, limited liability company or corporation,
35 including both public and private corporations, and for-profit
36 and not-for-profit organizations and generally to do any and all
37 things necessary or convenient for the purpose of promoting,
38 developing and advancing the purposes described in section two
39 of this article;

40 (D) To amend or supplement any contracts or leases or to
41 enter into new, additional or further contracts or leases upon the
42 terms and conditions for consideration and for any term of
43 duration, with or without option of renewal, as agreed upon by
44 the district board and any person, agency, government entity,
45 agency or instrumentality, firm, partnership, limited partner-
46 ship, limited liability company or corporation;

47 (E) To, unless otherwise provided in, and subject to the
48 provisions of any contracts or leases to operate, repair, manage,
49 and maintain buildings and structures and provide adequate
50 insurance of all types and in connection with the primary use
51 thereof and incidental thereto to provide services, such as retail
52 stores and restaurants, and to effectuate incidental purposes,
53 grant leases, permits, concessions or other authorizations to any
54 person or persons upon the terms and conditions for consider-
55 ation and for the term of duration as agreed upon by the district
56 board and any person, agency, governmental department, firm
57 or corporation;

58 (F) To delegate any authority given to it by law to any of its
59 officers, committees, agents or employees;

60 (G) To apply for, receive and use grants-in-aid, donations
61 and contributions from any source or sources and to accept and
62 use bequests, devises, gifts and donations from any person, firm
63 or corporation;

64 (H) To acquire real property by gift, purchase or construc-
65 tion or in any other lawful manner and hold title thereto in its
66 own name and to sell, lease or otherwise dispose of all or part
67 of any real property which it may own, either by contract or at
68 public auction, upon the approval by the district board;

69 (I) To purchase or otherwise acquire, own, hold, sell, lease
70 and dispose of all or part of any personal property which it may
71 own, either by contract or at public auction;

72 (J) Pursuant to a determination by the district board that
73 there exists a continuing need for redevelopment expenditures
74 and that moneys or funds of the district are necessary therefor,
75 to borrow money and execute and deliver the district's negotia-
76 ble notes and other evidences of indebtedness therefor, on the
77 terms as the district shall determine, and give security therefor
78 as is requisite, including, without limitation, a pledge of the
79 district's rights in its subaccount of the economic opportunity
80 development district fund;

81 (K) To acquire (either directly or on behalf of the munici-
82 pality) an interest in any entity or entities that own any real
83 property situate in the district, to contribute capital to any entity
84 or entities and to exercise the rights of an owner with respect
85 thereto; and

86 (L) To expend its funds in the execution of the powers and
87 authority given in this section, which expenditures, by the
88 means authorized in this section, are hereby determined and
89 declared as a matter of legislative finding to be for a public
90 purpose and use, in the public interest and for the general
91 welfare of the people of West Virginia, to alleviate and prevent
92 economic deterioration and to relieve the existing critical
93 condition of unemployment existing within the state.

94 (b) *Additional contents of ordinance.* — The municipality's
95 ordinance shall also state the general intention of the municipal-

96 ity to develop and increase services and to make capital
97 improvements within the district.

98 (c) *Mailing of certified copies of ordinance.* — Upon
99 enactment of an ordinance establishing an economic opportu-
100 nity development district excise tax, a certified copy of the
101 ordinance shall be mailed to the state auditor, as ex officio the
102 chief inspector and supervisor of public offices, the state
103 treasurer and the tax commissioner.

§8-38-11. District board; duties.

1 (a) *General.* — The council of a municipality that has been
2 authorized by the development office to establish an economic
3 opportunity development district, in accordance with this
4 article, shall provide, by ordinance, for the appointment of a
5 district board to oversee the operations of the district: *Pro-*
6 *vided,* That the municipality may, in the ordinance, in lieu of
7 appointing a separate district board, designate itself to act as the
8 district board.

9 (b) *Composition of board.* — If a separate district board is
10 to be appointed, it shall be made up of at least seven members,
11 two of which shall be owners, or representatives of owners, of
12 real property situated in the economic opportunity development
13 district and the other five shall be residents of the municipality
14 within which the district is located.

15 (c) *Annual report.* — The district board, in addition to the
16 duties prescribed by the ordinance creating the district, shall
17 submit an annual report to the municipality and the develop-
18 ment office containing:

19 (1) An itemized statement of its receipts and disbursements
20 for the preceding fiscal year;

21 (2) A description of its activities for the preceding fiscal
22 year;

23 (3) A recommended program of services to be performed
24 and capital improvements to be made within the district for the
25 coming fiscal year; and

26 (4) A proposed budget to accomplish its objectives.

27 (d) *Conflict of interest exception.* — Nothing in this article
28 prohibits any member of the district board from also serving on
29 the board of directors of a nonprofit corporation with which the
30 municipality may contract to provide specified services within
31 the district.

32 (e) *Compensation of board members.* — Each member of
33 the district board may receive reasonable compensation for
34 services on the board in the amount determined by the munici-
35 pality: *Provided*, That when a district board is not created for
36 the district but the work of the board is done by the municipal-
37 ity, the members shall receive no additional compensation.

§8-38-12. Special district excise tax authorized.

1 (a) *General.* — The council of a municipality, authorized
2 by the Legislature to levy a special district excise tax for the
3 benefit of an economic opportunity development district, may,
4 by ordinance, impose that tax on the privilege of selling
5 tangible personal property and rendering select services in the
6 district in accordance with this section.

7 (b) *Tax base.* — The base of a special district excise tax
8 imposed pursuant to this section shall be identical to the base of
9 the consumers sales and service tax imposed pursuant to article
10 fifteen, chapter eleven of this code on sales made and services
11 rendered within the boundaries of the district: *Provided*, That
12 except for the exemption provided in section nine-f of said
13 article, all exemptions and exceptions from the consumers sales
14 and service tax shall also apply to the special district excise tax
15 and sales of gasoline and special fuel shall not be subject to

16 special district excise tax but shall remain subject to the tax
17 levied by said article.

18 (c) *Tax rate.* — The rate of a special district excise tax
19 levied pursuant to this section shall be stated in an ordinance
20 enacted by the municipality and equal to the general rate of tax
21 on each dollar of gross proceeds from sales of tangible personal
22 property and services subject to the tax levied by section three,
23 article fifteen, chapter eleven of this code. The tax on fractional
24 parts of a dollar shall be levied and collected in conformity with
25 the provision of said section.

26 (d) *Collection by tax commissioner.* — The ordinance of the
27 municipality imposing a special district excise tax shall provide
28 for the tax to be collected by the tax commissioner in the same
29 manner as the tax levied by section three, article fifteen, chapter
30 eleven of this code is administered, assessed, collected and
31 enforced.

32 (e) *Deposit of net tax collected.* —

33 (1) The ordinance of the municipality imposing a special
34 district excise tax shall provide that the tax commissioner
35 deposit the net amount of tax collected in the special economic
36 opportunity development district fund to the credit of the
37 municipality's subaccount therein for the economic opportunity
38 development district and that the money in the subaccount may
39 only be used to pay for development expenditures as provided
40 in this article except as provided in subsection (f) of this
41 section.

42 (2) The state treasurer shall withhold from the municipal-
43 ity's subaccount in the economic opportunity development
44 district fund and shall deposit in the general revenue fund of
45 this state, on or before the twentieth day of each calendar month
46 next following the effective date of a special district excise tax,
47 a sum equal to one twelfth of the base tax revenue amount last

48 certified by the development office pursuant to section seven of
49 this article.

50 (f) *Effective date of special district excise tax.* — Any taxes
51 imposed pursuant to the authority of this section shall be
52 effective on the first day of the calendar month that begins at
53 least sixty days after the date of enactment of the ordinance
54 imposing the tax or at any later date expressly designated in the
55 ordinance that begins on the first day of a calendar month.

56 (g) *Copies of ordinance.* — Upon enactment of an ordi-
57 nance levying a special district excise tax, a certified copy of
58 the ordinance shall be mailed to the state auditor, as ex officio
59 the chief inspector and supervisor of public offices, the state
60 treasurer and the tax commissioner.

§8-38-14. Modification of included area; notice; hearing.

1 (a) *General.* — The ordinance creating an economic
2 opportunity development district may not be amended to
3 include additional contiguous property until after the amend-
4 ment is approved by the executive director of the development
5 office in the same manner as an application to approve the
6 establishment of the district is acted upon under section seven
7 of this article.

8 (b) *Limitations.* — Additional property may not be included
9 in the district unless it is situated within the boundaries of the
10 municipality and is contiguous to the then current boundaries of
11 the district.

12 (c) *Public hearing required.* —

13 (1) The council of any municipality desiring to amend its
14 ordinance shall designate a time and place for a public hearing
15 upon the proposal to include additional property. The notice

16 shall meet the requirements set forth in section six of this
17 article.

18 (2) At the time and place set forth in the notice, the munici-
19 pality shall afford the opportunity to be heard to any owners of
20 real property either currently included in or proposed to be
21 added to the existing district and to any other residents of the
22 municipality.

23 (d) *Application to West Virginia development office.* —
24 Following the hearing, the municipality may, by resolution,
25 apply to the development office to approve inclusion of the
26 additional property in the district.

27 (e) *Consideration by the executive director of the develop-*
28 *ment office.* — Before the executive director of the develop-
29 ment office approves inclusion of the additional property in the
30 district, the development office shall determine the amount of
31 taxes levied by article fifteen, chapter eleven of this code that
32 were collected by businesses located in the area the municipal-
33 ity proposes to add to the district in the same manner as the
34 base amount of tax was determined when the district was first
35 created. The state treasurer shall also deposit one twelfth of
36 this additional tax base amount into the general revenue fund
37 each month, as provided in section twelve of this article.

38 (f) *Legislative action required.* — After the executive
39 director of the development office approves amending the
40 boundaries of the district, the Legislature must amend section
41 nine of this article to allow levy of the special district excise tax
42 on business located in geographic area to be included in the
43 district. After the Legislature amends said section, the munici-
44 pality may then amend its ordinance: *Provided,* That the
45 ordinance may not be effective any earlier than the first day of
46 the calendar month that begins sixty days after the effective
47 date of the amended ordinance imposing the levy of the special

48 district excise tax on businesses located in the geographic area
49 to be added to the boundaries of the district for which the tax is
50 levied or the first day of a later calendar month as set forth in
51 the ordinance of the municipality.

52 (g) *Collection of special district excise tax.* — All busi-
53 nesses included in a district because of the boundary amend-
54 ment shall on the effective date of the ordinance, determined as
55 provided in subsection (f) of this section, collect the special
56 district excise tax on all sales on tangible property or services
57 made from locations in the district on or after the effective date
58 of the municipality's ordinance or a later date as set forth in the
59 ordinance.

**§8-38-15. Abolishment and dissolution of district; notice; hear-
ing.**

1 (a) *General.* — Except upon the express written consent of
2 the executive director of the development office and of all the
3 holders or obligees of any indebtedness or other instruments the
4 proceeds of which were applied to any development or redevelop-
5 ment expenditures or any indebtedness, the payment of which
6 is secured by revenues payable into the fund provided under
7 section eight of this article or by any public property, a district
8 may only be abolished by the municipality when there is no
9 outstanding indebtedness the proceeds of which were applied to
10 any development or redevelopment expenditures or the pay-
11 ment of which is secured by revenues payable into the fund
12 provided under section eight of this article, or by any public
13 property, and following a public hearing upon the proposed
14 abolishment.

15 (b) *Notice of public hearing.* — Notice of the public
16 hearing required by subsection (a) of this section shall be
17 provided by first-class mail to all owners of real property within
18 the district and shall be published as a Class I-0 legal advertise-

19 ment in compliance with article three, chapter fifty-nine of this
20 code at least twenty days prior to the public hearing.

21 (c) *Transfer of district assets and funds.* — Upon the
22 abolishment of any economic opportunity development district,
23 any funds or other assets, contractual rights or obligations,
24 claims against holders of indebtedness or other financial
25 benefits, liabilities or obligations existing after full payment has
26 been made on all existing contracts, bonds, notes or other
27 obligations of the district are transferred to and assumed by the
28 municipality. Any funds or other assets transferred shall be
29 used for the benefit of the area included in the district being
30 abolished.

31 (d) *Reinstatement of district.* — Following abolishment of
32 a district pursuant to this section, its reinstatement requires
33 compliance with all requirements and procedures set forth in
34 this article for the initial development, approval, establishment
35 and creation of an economic opportunity development district.

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 7. JOBS INVESTMENT TRUST FUND.

§12-7-4. Jobs investment trust board; composition; appointment, term of private members; chairman; quorum.

§12-7-5. Management and control of jobs investment trust vested in board; officers; liability; authority of executive director to act on behalf of board; relationship to higher education institutions.

§12-7-4. Jobs investment trust board; composition; appointment, term of private members; chairman; quorum.

1 (a) The jobs investment trust board is continued. The board
2 is a public body corporate and established to improve and
3 otherwise promote economic development in this state.

4 (b) The board consists of thirteen members, five of whom
5 serve by virtue of their respective positions. These five are the

6 governor or designee; president of West Virginia university or
7 designee; the president of Marshall university or designee; the
8 chancellor of the higher education policy commission or
9 designee; and the executive director of the West Virginia
10 housing development fund. One member is appointed by the
11 governor from a list of two names submitted by the board of
12 directors of the housing development fund. One member is
13 appointed by the governor from a list of two names submitted
14 by the commissioner of the division of tourism. The other six
15 members are appointed from the general public by the gover-
16 nor. Of the general public members appointed by the governor,
17 one is an attorney with experience in finance and investment
18 matters; one is a certified public accountant; one is a represen-
19 tative of labor; one is experienced or involved in innovative
20 business development; and two are present or past executive
21 officers of companies listed on a major stock exchange or large
22 privately held companies. All appointments made pursuant to
23 the provisions of this article are by and with the advice and
24 consent of the Senate.

25 (c) A vacancy on the board is filled by appointment by the
26 governor in the same manner as the original appointment. A
27 member appointed to fill a vacancy serves for the remainder of
28 the unexpired term.

29 (d) The governor may remove any appointed member in
30 case of incompetency, neglect of duty, moral turpitude or
31 malfeasance in office and fill the vacancy as provided in other
32 cases of vacancy.

33 (e) The governor or designee serves as the chair. The board
34 annually elects one of its public members as vice chair and
35 appoints a secretary to keep records of its proceedings who
36 need not be a member of the board.

37 (f) Seven members of the board is a quorum. Action may
38 not be taken by the board except upon the affirmative vote of at

39 least a majority of those members present or participating by
40 any other means as described in subsection (g) of this section,
41 but in any event not fewer than six of the members serving on
42 the board.

43 (g) Members of the board may participate in a meeting of
44 the board by means of conference telephone or similar commu-
45 nication equipment by means of which all persons participating
46 in the meeting can hear each other. Participation in a board
47 meeting pursuant to this subsection constitutes presence in
48 person at the meeting.

49 (h) The members of the board are not compensated for their
50 services as members of the board, but receive reasonable and
51 necessary expenses actually incurred in discharging their duties
52 under this article in a manner consistent with guidelines of the
53 travel management office of the department of administration.

54 (i) The board meets on a quarterly basis or more often if
55 necessary.

56 (j) The governor shall appoint a member for a four-year
57 term. Any member whose term has expired serves until a
58 successor is duly appointed and qualified. Any member is
59 eligible for reappointment.

60 (k) Additionally, one member of the West Virginia House
61 of Delegates, appointed by the speaker of the House of Dele-
62 gates, and one member of the West Virginia Senate, appointed
63 by the president of the Senate, serve as advisory members of the
64 jobs investment trust board and, as advisory members, are ex
65 officio, nonvoting members.

**§12-7-5. Management and control of jobs investment trust vested
in board; officers; liability; authority of executive
director to act on behalf of board; relationship to
higher education institutions.**

1 (a) It is the duty of the board to manage and control the jobs
2 investment trust. With the advice and consent of the Senate, the
3 governor appoints an executive director of the jobs investment
4 trust who is or has been a senior executive of a major financial
5 institution, brokerage firm, investment firm or similar institu-
6 tion, with extensive experience in capital market development.
7 The director serves at the governor's will and pleasure and is
8 responsible for managing and administering the daily functions
9 of the jobs investment trust and for performing other functions
10 necessary to the effective operation of the trust. The compensa-
11 tion of the director is annually fixed by the board.

12 (b) The board annually elects a secretary to keep a record
13 of the proceedings of the board, who need not be a member of
14 the board.

15 (c) The members and officers of the board are not liable
16 personally, either jointly or severally, for any debt or obligation
17 created by the board.

18 (d) The acts of the board are solely the acts of its corpora-
19 tion and are not those of an agent of the state. A debt or
20 obligation of the board is not a debt or obligation of the state.

21 (e) Upon the affirmative vote of at least a majority of those
22 members in attendance or participating by such other means as
23 described in subsection (g), section four of this article in a
24 meeting of the board, but in any event not fewer than six of the
25 members serving on the board, the board may approve any
26 action to be taken and authorize the executive director for and
27 on behalf of the board to execute and deliver all instruments,
28 agreements or other documents that are required or are reason-
29 ably necessary to effectuate the decisions or acts of the board.

30 (f) The West Virginia housing development fund shall
31 provide office space and staff support services for the director
32 and the board shall act as fiscal agent for the board and, as such,

33 shall provide accounting services for the board, invest all funds
34 as directed by the board, service all investment activities of the
35 board and shall make the disbursements of all funds as directed
36 by the board, for which the West Virginia housing development
37 fund shall be reasonably compensated as determined by the
38 board.

39 (g) The board and the executive director shall involve
40 students and faculty members of state institutions of higher
41 education in the board's activities in order to enhance the
42 opportunities at the institutions for learning and for participa-
43 tion in the board's investment activities and in the economic
44 development of the state, whether in research, financial
45 analysis, management participation or in such other ways as the
46 board and the executive director may, in their discretion, find
47 appropriate.

CHAPTER 13. PUBLIC BONDED INDEBTEDNESS.

ARTICLE 2C. INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.

§13-2C-21. Ceiling on issuance of private activity bonds; estab- lishing procedure for allocation and disburse- ments; reservation of funds; limitations; unused allocation; expirations and carryovers.

1 (a) Private activity bonds (as defined in Section 141(a) of
2 the United States Internal Revenue Code of 1986, other than
3 those described in Section 146(g) of the Internal Revenue Code)
4 issued pursuant to this article, including bonds issued by the
5 West Virginia public energy authority pursuant to subsection
6 (11), section five, article one, chapter five-d of this code or
7 under article eighteen, chapter thirty-one of this code, during
8 any calendar year may not exceed the ceiling established by
9 Section 146(d) of the United States Internal Revenue Code. It
10 is hereby determined and declared as a matter of legislative

11 finding: (i) That, in an attempt to promote economic revitaliza-
12 tion of distressed urban and rural areas, certain special tax
13 incentives will be provided for empowerment zones and
14 enterprise communities to be designated from qualifying areas
15 nominated by state and local governments, all as set forth by
16 Section 1391, *et seq.*, of the United States Internal Revenue
17 Code; (ii) that qualified businesses operating in enterprise
18 communities and empowerment zones will be eligible to
19 finance property and provide other forms of financial assistance
20 as provided for in Section 1394 of the United States Internal
21 Revenue Code; and (iii) that it is in the best interest of this state
22 and its citizens to facilitate the acquisition, construction and
23 equipping of projects within designated empowerment zones
24 and enterprise communities by providing an orderly mechanism
25 for the commitment of the annual ceiling for private activity
26 bonds for these projects. It is hereby further determined and
27 declared as a matter of legislative finding: (i) That the produc-
28 tion of bituminous coal in this state has resulted in coal waste
29 which is stored in areas generally referred to as gob piles; (ii)
30 that gob piles are unsightly and have the potential to pollute the
31 environment in this state; (iii) that the utilization of the materi-
32 als in gob piles to produce alternative forms of energy needs to
33 be encouraged; (iv) that Section 142(a)(6) of the United States
34 Internal Revenue Code of 1986 permits the financing of solid
35 waste disposal facilities through the issuance of private activity
36 bonds; and (v) that it is in the best interest of this state and its
37 citizens to facilitate the construction of facilities for the
38 generation of power through the utilization of coal waste by
39 providing an orderly mechanism for the commitment of the
40 annual ceiling for private activity bonds for these projects.

41 (b) On or before the first day of each calendar year, the
42 executive director of the development office shall determine the
43 state ceiling for the year based on the criteria of the United
44 States Internal Revenue Code. The annual ceiling shall be
45 allocated among the several issuers of bonds under this article

46 or under article eighteen, chapter thirty-one of this code as
47 follows:

48 (1) For the calendar year two thousand one, fifty million
49 dollars and for each subsequent calendar year, forty percent of
50 the state ceiling for that year shall be allocated to the West
51 Virginia housing development fund for the purpose of issuing
52 qualified mortgage bonds, qualified mortgage certificates or
53 bonds for qualified residential rental projects;

54 (2) The amount remaining after the allocation to the West
55 Virginia housing development fund described in subdivision (1)
56 of this subsection shall be retained by the West Virginia
57 development office and shall be referred to in this section as the
58 "state allocation";

59 (3) Thirty-five percent of the state allocation shall be set
60 aside by the development office to be made available for
61 lessees, purchasers or owners of proposed projects, hereafter in
62 this section referred to as "nonexempt projects", which do not
63 qualify as exempt facilities as defined by United States Internal
64 Revenue Code. All reservations of private activity bonds for
65 nonexempt projects shall be approved and awarded by the
66 committee based upon an evaluation of general economic
67 benefit and any rule that the development office promulgates
68 pursuant to section two, article two, chapter five-b of this code:
69 *Provided*, That all requests or reservations of funds from
70 projects described in this subsection are submitted to the
71 development office on or before the first day of November of
72 each calendar year: *Provided, however*, That on the fifteenth
73 day of November of each calendar year, the uncommitted
74 portion of this part of the state allocation shall revert to and
75 become part of the state allocation portion described in subsec-
76 tion (g) of this section; and

77 (4) Ten percent of the state allocation shall be made
78 available for lessees, purchasers or owners of proposed com-
79 mercial or industrial projects which qualify as exempt facilities
80 under Section 1394 of the United States Internal Revenue Code.
81 All reservations of private activity bonds for the projects shall
82 be approved and awarded by the committee based upon an
83 evaluation of general economic benefit and any rule that the
84 development office promulgates pursuant to section two, article
85 two, chapter five-b of this code: *Provided*, That all requests for
86 reservations of funds from projects described in this subsection
87 shall be submitted to the development office on or before the
88 first day of November of each calendar year: *Provided*,
89 *however*, That on the fifteenth day of November of each
90 calendar year the uncommitted portion of this part of the state
91 allocation shall revert to and become part of the state allocation
92 portion described in subsection (g) of this section.

93 (c) The remaining fifty-five percent of the state allocation
94 shall be made available for lessees, purchasers or owners of
95 proposed commercial or industrial projects which qualify as
96 exempt facilities as defined by Section 142(a) of the United
97 States Internal Revenue Code. All reservations of private
98 activity bonds for exempt facilities shall be approved and
99 awarded by the committee based upon an evaluation of general
100 economic benefit and any rule that the development office
101 promulgates pursuant to section two, article two, chapter five-b
102 of this code: *Provided*, That no reservation may be in an
103 amount in excess of fifty percent of this portion of the state
104 allocation: *Provided, however*, That all requests for reserva-
105 tions of funds from projects described in this subsection shall
106 be submitted to the development office on or before the first
107 day of November of each calendar year: *Provided further*, That
108 on the fifteenth day of November of each calendar year the
109 uncommitted portion of this part of the state allocation shall
110 revert to and become part of the state allocation portion
111 described in subsection (g) of this section.

112 (d) No reservation may be made for any project until the
113 governmental body seeking the reservation submits a notice of
114 reservation of funds as provided in subsection (e) of this
115 section. The governmental body shall first adopt an inducement
116 resolution approving the prospective issuance of bonds and
117 setting forth the maximum amount of bonds to be issued. Each
118 governmental body seeking a reservation of funds following the
119 adoption of the inducement resolution shall submit a notice of
120 inducement signed by its clerk, secretary or recorder or other
121 appropriate official to the development office. The notice shall
122 include information required by the development office
123 pursuant to any rule of the development office. Notwithstand-
124 ing the foregoing, when a governmental body proposes to issue
125 bonds for the purpose of: (i) Constructing, acquiring or equip-
126 ping a project described in subdivision (3) or (4), subsection (b)
127 of this section; or (ii) constructing an energy producing project
128 which relies, in whole or in part, upon coal waste as fuel, to the
129 extent the project qualifies as a solid waste facility under
130 Section 142(a)(6) of the United States Internal Revenue Code
131 of 1986, the project may be awarded a reservation of funds
132 from the state allocation available for three years subsequent to
133 the year in which the notice of reservation of funds is submit-
134 ted, at the discretion of the executive director of the develop-
135 ment office: *Provided*, That no discretionary reservation may be
136 made for any single project described in this subsection in an
137 amount in excess of thirty-five percent of the state allocation
138 available for the year subsequent to the year in which the
139 request is made.

140 (e) Currently with or following the submission of its notice
141 of inducement, the governmental body at any time considered
142 expedient by it may submit its notice of reservation of funds
143 which shall include the following information:

144 (1) The date of the notice of reservation of funds;

145 (2) The identity of the governmental body issuing the
146 bonds;

147 (3) The date of inducement and the prospective date of
148 issuance;

149 (4) The name of the entity for which the bonds are to be
150 issued;

151 (5) The amount of the bond issue or, if the amount of the
152 bond issue for which a reservation of funds has been made has
153 been increased, the amount of the increase;

154 (6) The type of issue; and

155 (7) A description of the project for which the bonds are to
156 be issued.

157 (f) The development office shall accept the notice of
158 reservation of funds no earlier than the first calendar workday
159 of the year for which a reservation of funds is sought: *Provided,*
160 That a notice of reservation of funds with respect to a project
161 described in subdivision (4), subsection (b) of this section or an
162 energy producing project that is eligible for a reservation of
163 funds for a year subsequent to the year in which the notice of
164 reservation of funds is submitted may contain an application for
165 funds from a subsequent year's state allocation. Upon receipt
166 of the notice of reservation of funds, the development office
167 shall immediately note upon the face of the notice the date and
168 time of reception.

169 (g) If the bond issue for which a reservation has been made
170 has not been finally closed within one hundred twenty days of
171 the date of the reservation to be made by the committee, or the
172 thirty-first of December following the date of reservation if
173 sooner and a statement of bond closure which has been exe-
174 cuted by the clerk, secretary, recorder or other appropriate

175 official of the governmental body reserving the bond issue has
176 not been received by the development office within that time,
177 then the reservation shall expire and be considered to have been
178 forfeited and the funds reserved shall be released and revert to
179 the portion of the state allocation from which the funds were
180 originally reserved and shall then be made available for other
181 qualified issues in accordance with this section and the Internal
182 Revenue Code: *Provided*, That as to any reservation for a
183 nonexempt project or any reservation for a project described in
184 subdivision (4), subsection (b) of this section that is forfeited on
185 or after the first day of November in any calendar year, the
186 reservation shall revert to the state allocation for allocation by
187 the industrial revenue bond allocation review committee:
188 *Provided, however*, That as to any notice of reservation of funds
189 received by the development office during the month of
190 December in any calendar year with respect to any project
191 qualifying as an elective carry forward pursuant to Section
192 146(f)(5) of the Internal Revenue Code, the notice of reserva-
193 tion of funds and the reservation to which the notice relates may
194 not expire or be subject to forfeiture: *Provided further*, That
195 any unused state ceiling as of the thirty-first day of December
196 in any year not otherwise subject to a carry forward pursuant to
197 Section 146(f) of the Internal Revenue Code shall be allocated
198 to the West Virginia housing development fund which shall be
199 considered to have elected to carry forward the unused state
200 ceiling for the purpose of issuing qualified mortgage bonds,
201 qualified mortgage credit certificates or bonds for qualified
202 residential rental projects, each as defined in the Internal
203 Revenue Code. All requests for subsequent reservation of
204 funds upon loss of a reservation pursuant to this section shall be
205 treated in the same manner as a new notice of reservation of
206 funds in accordance with subsections (d) and (e) of this section.

207 (h) Once a reservation of funds has been made for a project
208 described in subdivision (4), subsection (b) of this section,
209 notwithstanding the language of subsection (g) of this section,

210 the reservation shall remain fully available with respect to the
211 project until the first day of October in the year from which the
212 reservation was made at which time, if the bond issue has not
213 been finally closed, the reservation shall expire and be consid-
214 ered forfeited and the funds reserved are released as provided
215 in said subsection.

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 24. WASTE TIRE REMEDIATION.

§17-24-4. Division of highways to administer funds for waste tire remediation; rules authorized; duties of commissioner.

1 (a) The division of highways shall administer all funds
2 made available to the division for remediation of waste tire
3 piles and for the proper disposal of waste tires removed from
4 waste tire piles. The commissioner of the division of highways
5 may: (i) Propose for legislative promulgation in accordance
6 with article three, chapter twenty-nine-a of this code emergency
7 and legislative rules necessary to implement the provisions of
8 this article; and (ii) administer all funds appropriated by the
9 Legislature to carry out the requirements of this article and any
10 other funds from whatever source, including, but not limited to,
11 federal, state or private grants.

12 (b) The commissioner also has the following powers:

13 (1) To apply and carry out the provisions of this article and
14 the rules promulgated under this article.

15 (2) To investigate, from time to time, the operation and
16 effect of this article and of the rules promulgated under this
17 article and to report his or her findings and recommendations to
18 the Legislature and the governor.

19 (c) The provisions of articles two-a and four of this chapter
20 and the policy, rules, practices and procedures under those
21 articles shall be followed by the commissioner in carrying out
22 the purposes of this article.

23 (d) On or before the first day of June, two thousand one, the
24 commissioner shall determine the location, approximate size
25 and potential risk to the public of all waste tire piles in the state
26 and establish, in descending order, a waste tire remediation list.

27 (e) The commissioner may contract with the department of
28 health and human resources or the division of corrections, or
29 both, to remediate or assist in remediation of waste tire piles
30 throughout the state. Use of available department of health and
31 human resources and the division of corrections work programs
32 shall be given priority status in the contract process so long as
33 such programs prove a cost-effective method of remediating
34 waste tire piles.

35 (f) Waste tire remediation shall be stopped and the division
36 of environmental protection notified upon the discovery of any
37 potentially hazardous material at a remediation site. The
38 division of environmental protection shall respond to the
39 notification in accordance with the provisions of article
40 eighteen, chapter twenty-two of this code.

41 (g) The commissioner may establish a tire disposal program
42 within the division to provide for a cost effective and efficient
43 method to accept passenger car and light truck waste tires at
44 such division of highways county headquarters as have suffi-
45 cient space for temporary storage of waste tires and personnel
46 to accept and handle waste tires. The commissioner may pay a
47 fee for each tire an individual West Virginia resident or West
48 Virginia business brings to the division. The commissioner
49 may establish a limit on the number of tires an individual or
50 business may be paid for during any calendar month. The

51 commissioner may in his or her discretion authorize commer-
52 cial businesses to participate in the collection program:
53 *Provided*, That no person or business who has a waste tire pile
54 subject to remediation under this article may participate in this
55 program.

56 (h) The commissioner may pledge not more than two and
57 one-half million dollars annually of the moneys appropriated,
58 deposited or accrued in the A. James Manchin fund created by
59 section six of this article, to the payment of debt service,
60 including the funding of reasonable reserves, on bonds issued
61 by the water development authority pursuant to section seven-
62 teen-a, article fifteen-a, chapter thirty-one of this code to
63 finance infrastructure projects relating to waste tire processing
64 facilities located in this state: *Provided*, That a waste tire
65 processing facility shall be determined by the solid waste
66 management board, established pursuant to the provisions of
67 article three, chapter twenty-two-c of this code, to meet all
68 applicable federal and state environmental laws and rules and
69 regulations and to aid the state in efforts to promote and
70 encourage recycling and use of constituent component parts of
71 waste tires in an environmentally sound manner: *Provided*,
72 *however*, That the waste tire processing facility shall have a
73 capital cost of not less than three hundred million dollars and
74 the West Virginia development office shall determine that the
75 waste tire processing facility is a viable economic development
76 project of benefit to the state's economy.

CHAPTER 18. EDUCATION.

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-1. School building authority; powers.

1 (a) The school building authority consists of eleven
2 members, including the governor or designee; the state superin-
3 tendent of schools, ex officio; three members of the state board

4 of education, elected by the state board; and six citizens of the
5 state, appointed by the governor, by and with the advice and
6 consent of the Senate, who are knowledgeable in matters
7 relevant to the issues addressed by the authority, one of whom
8 is representative of the interests of the construction trades.

9 (b) Citizen members are appointed for three-year terms,
10 which are staggered in accordance with the initial appointments
11 under prior enactment of this section. State board of education
12 members are elected for three-year terms and may not be
13 elected to serve additional consecutive terms or portions
14 thereof.

15 (c) The governor or designee serves as chair. The authority
16 shall annually elect one of its public members as vice chair and
17 shall appoint a secretary, who need not be a member of the
18 authority and who shall keep records of its proceedings.

19 (d) The governor appoints an executive director of the
20 authority, with the advice and consent of the Senate, who serves
21 at the governor's will and pleasure. The director is responsible
22 for managing and administering the daily functions of the
23 authority and for performing all other functions necessary to the
24 effective operation of the authority.

25 (e) The governor may remove any appointed member for
26 incompetency, neglect of duty, moral turpitude or malfeasance
27 in office. If the governor removes a member, the governor shall
28 fill the vacancy for the remainder of the unexpired term in the
29 same manner as the original appointment.

30 (f) The school building authority shall meet at least
31 quarterly and the citizen members shall be reimbursed for
32 reasonable and necessary expenses actually incurred in the
33 performance of their official duties in a manner consistent with
34 guidelines of the travel management office of the department of
35 administration from funds appropriated or otherwise made

36 available for such purpose upon submission of an itemized
37 statement.

38 (g) The acts performed by the members of the state board
39 of education in their capacity as members of the school building
40 authority are solely the acts of the authority.

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.

§18B-3D-1. Legislative findings and intent.

§18B-3D-2. Workforce development initiative program created; program adminis-
tration.

§18B-3D-3. Mission of the workforce development initiative program.

§18B-3D-4. Grant application procedures.

§18B-3D-5. Legislative rules.

§18B-3D-1. Legislative findings and intent.

1 (a) The Legislature finds that a recent statewide study of the
2 workforce training needs of employers throughout the state
3 provided a clear message from the business community:

4 (1) The needs of employers are rapidly changing and
5 training providers must be more responsive or the state econ-
6 omy will suffer;

7 (2) Information specific to West Virginia, once again
8 emphasizes the critical link between education and economic
9 development that empowering youth and adults with the
10 knowledge and skills they need to succeed in the competitive
11 work world also results in a workforce which enables busi-
12 nesses and communities to prosper;

13 (3) Although employers are generally satisfied with the
14 quality of the West Virginia workforce and the study provides
15 additional support that the measures adopted in the Jobs
16 Through Education Act will bring continued improvement,

17 workforce needs are not static, critical skill shortages currently
18 exist, and the establishment of a workforce development system
19 that responds more quickly to the evolving skill requirements
20 of employers is needed.

21 (b) The Legislature further finds that a study of community
22 and technical education in West Virginia performed by the
23 national center for higher education management systems called
24 attention to problems in providing needed workforce education
25 and found that there is a need to:

26 (1) Jump-start development of community and technical
27 college and post-secondary workforce development initiatives;

28 (2) Provide incentives for existing public post-secondary
29 providers to respond jointly to both short and long-term needs
30 of employers and other clients;

31 (3) Provide funding for explicit incentives for partnerships
32 between employers and public post-secondary institutions to
33 develop comprehensive community and technical college and
34 workforce development services; and

35 (4) Allocate funds competitively on the basis of proposals
36 submitted by providers.

37 (c) It is further the intent of the Legislature that the granting
38 of funds under this article will promote the development of
39 comprehensive community and technical colleges as set forth
40 in article three-c of this chapter.

41 (d) It is the intent of the Legislature through the grant of
42 funds under this article to provide limited seed money to
43 address some of the specific areas where improvement is
44 needed, including:

45 (1) Improving employer awareness and access to services
46 available through the state's education institutions;

47 (2) Providing designated professionals and resources to
48 support workforce education through the state's education
49 institutions;

50 (3) Assisting with the modernization and procurement of
51 equipment needed for workforce training programs: *Provided,*
52 That any equipment purchased or upgraded with grant funds
53 awarded under the provisions of this article may not be sold,
54 disposed of or used for purposes other than those specified in
55 the grant without prior approval of the development office;

56 (4) Increasing the capacity of the state's education institu-
57 tions to respond rapidly to employer needs for workforce
58 education and training on an on-going basis through the
59 development of a client-focused, visible point of contact for
60 program development and delivery, service referral and needs
61 assessment, such as a workforce development center; and

62 (5) Maximizing the use of available resources for
63 workforce education and training through partnerships with
64 public vocational, technical and adult education centers and
65 private training providers.

66 (e) It is further the intent of the Legislature that consider-
67 ation and partnering opportunities be given to small businesses
68 on an equal basis with larger businesses for the purposes of this
69 article and that the seed money will assist providers in becom-
70 ing self-sustaining through partnerships with business and
71 industry which will include cost-sharing initiatives and fees
72 charged for the use of services.

73 (f) The Legislature intends that grants of funds made under
74 the provisions of this article will be competitive among
75 applicants who meet all of the criteria established in this article
76 and such other criteria as may be specified by the development
77 office. Subject to the availability of funds, more than one
78 competition may be held during the same fiscal year and the

79 dollar range of awards granted in successive competitions shall
80 be prorated based on the number of months remaining in the
81 fiscal year. Subject to annual review and justification, it is the
82 intent of the Legislature to renew grant awards made under this
83 article each year for not more than five years following the
84 initial grant award.

**§18B-3D-2. Workforce development initiative program created;
program administration.**

1 (a) For the purposes of this article, “ development office”
2 means the West Virginia development office provided in article
3 two, chapter five-b of this code.

4 (b) There is under the development office a workforce
5 development initiative program to administer and oversee
6 grants to community and technical colleges to achieve the
7 purposes of this article in accordance with legislative intent.
8 The primary responsibility of the development office as it
9 relates to the workforce development initiative program is to
10 administer the state fund for community and technical college
11 and workforce development including setting criteria for grant
12 applications, receiving applications for grants, making determi-
13 nations on distribution of funds, and evaluating the performance
14 of workforce development initiatives.

15 (c) The executive director of the development office shall
16 review and approve the expenditure of all grant funds, including
17 development of application criteria, the review and selection of
18 applicants for funding and the annual review and justification
19 of applicants for grant renewal.

20 (1) To aid in decisionmaking, the executive director of the
21 development office appoints an advisory committee consisting
22 of the chancellor of the West Virginia council for community
23 and technical college education; the secretary of education and
24 the arts or designee; the assistant state superintendent for

25 technical and adult education; the chair of the West Virginia
26 council for community and technical college education; and the
27 chair of the West Virginia workforce investment council. The
28 advisory committee shall review all applications for workforce
29 development initiative grants and make a report including
30 recommendations for distributing grant funds to the executive
31 director of the development office. The advisory committee
32 also shall make recommendations on methods to share among
33 the community and technical colleges any curricula developed
34 as a result of a workforce development initiative grant.

35 (2) When determining which grant proposals will be
36 funded, the executive director of the development office shall
37 give special consideration to proposals by community and
38 technical colleges that involve businesses with fewer than fifty
39 employees.

40 (3) The executive director of the development office shall
41 weigh each proposal to avoid awarding grants which will have
42 the ultimate effect of providing unfair advantage to employers
43 new to the state who will be in direct competition with estab-
44 lished local businesses.

45 (d) The executive director of the development office may
46 allocate a reasonable amount, not to exceed five percent up to
47 a maximum of fifty thousand dollars of the funds available for
48 grants on an annual basis, for general program administration.

49 (e) The executive director of the development office shall
50 report to the legislative oversight commission on workforce
51 investment for economic development on the status of the
52 workforce development initiative program annually by the first
53 day of December.

54 (f) Moneys appropriated or otherwise available for the
55 workforce development initiative program shall be allocated by
56 line item to an appropriate account. Any moneys remaining in

57 the fund at the close of a fiscal year are carried forward for use
58 in the next fiscal year.

59 (g) Nothing in this article requires a specific level of
60 appropriation by the Legislature.

§18B-3D-3. Mission of the workforce development initiative program.

1 (a) The statewide mission of the workforce development
2 initiative program is to develop a strategy to strengthen the
3 quality of the state's workforce by linking the existing post-
4 secondary education capacity to the needs of business, industry
5 and other employers. Available funding will be used to provide
6 explicit incentives for partnerships between employers and
7 community and technical colleges to develop comprehensive
8 workforce development services. Funds will be granted on the
9 basis of proposals developed according to criteria established
10 by the development office.

11 (b) The mission of any community and technical college
12 accepting a workforce development initiative grant is to:

13 (1) Become client-focused and develop programs that meet
14 documented employer needs;

15 (2) Involve and collaborate with employers in the develop-
16 ment of programs;

17 (3) Develop customized training programs that provide for
18 the changing needs of employers and that are offered at flexible
19 times and locations to accommodate employer scheduling;

20 (4) Develop partnerships with other public and private
21 providers, including small business development centers and
22 vocational, technical and adult education centers, and with
23 business and labor, to fulfill the workforce development needs
24 of the service area;

25 (5) Establish cooperative arrangements with the public
26 school system for the seamless progression of students through
27 programs of study that begin at the secondary level and
28 conclude at the community and technical college level, particu-
29 larly with respect to career and technical education certificates,
30 associate of applied science and selected associate of science
31 degree programs for students seeking immediate employment,
32 individual entrepreneurship skills, occupational development,
33 skill enhancement and career mobility.

34 (6) Assist in the on-going assessment of the workforce
35 development needs of the service area; and

36 (7) Serve as a visible point of contact and referral for
37 services to meet the workforce development needs of the
38 service area.

§18B-3D-4. Grant application procedures.

1 (a) In order to participate in the workforce development
2 initiative grant program, a community and technical college
3 must meet the following conditions:

4 (1) Participate in a community and technical college
5 consortia as required by article three-c of this chapter. Consor-
6 tia representatives shall participate in the development of and
7 approve applications for funding grants under the provisions of
8 this article and shall approve the workforce development
9 initiative budget;

10 (2) Develop a plan to achieve measurable improvements in
11 the quality of the workforce within its service area over a
12 five-year period. The plan must be developed in partnership
13 with employers, local vocational schools and other workforce
14 education providers;

15 (3) Establish a special revolving fund under the jurisdiction
16 of the community and technical college consortia dedicated
17 solely to workforce development initiatives for the purposes
18 provided in this article. Any fees or revenues generated from
19 workforce development initiatives funded by a competitive
20 grant shall be deposited into this fund.

21 (b) To be eligible to receive a workforce development
22 initiative grant, a community and technical college must
23 provide at least the following information in its application:

24 (1) Identification of the specific business or business sector
25 training needs that will be met if a workforce development
26 initiative grant is received;

27 (2) A commitment from the private sector to provide a
28 match of one dollar, cash and in-kind, for each dollar of state
29 grant money received except in cases where the community and
30 technical college can demonstrate in the grant application that
31 it would be a hardship for the business being served to provide
32 such a match. In those cases only, the match required may be
33 reduced to one private dollar, cash and in-kind, for every three
34 dollars of state grant money provided. In the case of awards for
35 the modernization of procurement of equipment, the develop-
36 ment office may establish a separate match requirement of up
37 to one dollar, cash and in-kind, for each dollar of state grant
38 money received;

39 (3) An agreement to share with other community and
40 technical colleges any curricula developed using funds from a
41 workforce development initiative grant;

42 (4) A specific plan showing how the community and
43 technical college will collaborate with local post-secondary
44 vocational institutions to maximize the use of existing facilities,
45 personnel and equipment;

46 (5) An acknowledgment that acceptance of a grant under
47 the provisions of this article commits the community and
48 technical college and its consortia committee to such terms,
49 conditions and deliverables as is specified by the development
50 office in the request for applications, including, but not limited
51 to, the measures by which the performance of the workforce
52 development initiative will be evaluated.

53 (c) Applications submitted by community and technical
54 colleges may be awarded funds for programs which meet the
55 requirements of this article that are operated on a collaborative
56 basis at facilities under the jurisdiction of the public schools
57 and utilized by both secondary and post-secondary students.

§18B-3D-5. Legislative rules.

1 The executive director of the development office shall
2 propose a legislative rule pursuant to article three-a, chapter
3 twenty-nine-a of this code to implement the provisions of this
4 article and shall file the rule with the legislative oversight
5 commission on education accountability no later than the first
6 day of September, two thousand five.

7 Any rule in effect as of the effective date of the amendment
8 and reenactment of this section in the year two thousand five
9 will remain in effect until amended, modified, repealed or
10 replaced.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

**§22C-1-4. Water development authority; water development
board; organization of authority and board;
appointment of board members; their term of**

office, compensation and expenses; director of authority; compensation.

1 (a) The water development authority is continued. The
2 authority is a governmental instrumentality of the state and a
3 body corporate. The exercise by the authority of the powers
4 conferred by this article and the carrying out of its purposes and
5 duties are essential governmental functions and for a public
6 purpose.

7 (b) The authority is controlled, managed and operated by a
8 seven-member board known as the water development board.
9 The governor or designee, the secretary of the department of
10 environmental protection or designee and the commissioner of
11 the bureau for public health or designee are members ex officio
12 of the board. Four members are appointed by the governor, by
13 and with the advice and consent of the Senate, for six-year
14 terms, which are staggered in accordance with the initial
15 appointments under prior enactment of this section. In the
16 event of a vacancy, appointments are filled in the same manner
17 as the original appointment for the remainder of the unexpired
18 term. A member continues to serve until the appointment and
19 qualification of the successor. More than two appointed board
20 members may not at any one time belong to the same political
21 party. Appointed board members may be reappointed to serve
22 additional terms.

23 (c) All members of the board shall be citizens of the state.
24 Each appointed member of the board, before entering upon his
25 or her duties, shall comply with the requirements of article one,
26 chapter six of this code and give bond in the sum of twenty-five
27 thousand dollars in the manner provided in article two of said
28 chapter. The governor may remove any board member for
29 cause as provided in article six of said chapter.

30 (d) The governor or designee serves as chair. The board
31 annually elects one of its appointed members as vice chair and

32 appoints a secretary-treasurer, who need not be a member of the
33 board. Four members of the board is a quorum and the affirma-
34 tive vote of four members is necessary for any action taken by
35 vote of the board. A vacancy in the membership of the board
36 does not impair the rights of a quorum by such vote to exercise
37 all the rights and perform all the duties of the board and the
38 authority. The person appointed as secretary-treasurer, includ-
39 ing a board member if so appointed, shall give bond in the sum
40 of fifty thousand dollars in the manner provided in article two,
41 chapter six of this code.

42 (e) The governor or designee, the secretary of the depart-
43 ment of environmental protection and the commissioner of the
44 bureau for public health do not receive compensation for
45 serving as board members. Each appointed member receives an
46 annual salary of twelve thousand dollars, payable in monthly
47 installments. Each of the seven board members is reimbursed
48 for all reasonable and necessary expenses actually incurred in
49 the performance of duties as a member of the board in a manner
50 consistent with guidelines of the travel management office of
51 the department of administration. All expenses incurred by the
52 board are payable solely from funds of the authority or from
53 funds appropriated for that purpose by the Legislature. Liabil-
54 ity or obligation is not incurred by the authority beyond the
55 extent to which moneys are available from funds of the author-
56 ity or from such appropriations.

57 (f) There is a director of the authority appointed by the
58 governor, with the advice and consent of the Senate, who serves
59 at the governor's will and pleasure. The director is responsible
60 for managing and administering the daily functions of the
61 authority and for performing other functions necessary to the
62 effective operation of the authority. The compensation of the
63 director is fixed annually by the board.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

Article

8. **Blennerhassett Island Historical State Park Commission.**
 22. **State Lottery Act.**

**ARTICLE 8. BLENNERHASSETT ISLAND HISTORICAL STATE PARK
 COMMISSION.**

**§29-8-2. Blennerhassett Island historical state park commission
 established; members; terms; meeting; quorum;
 compensation; expenses.**

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
 7 hereinafter provided. The commission is composed of ten
 8 members who must be citizens and residents of this state,
 9 appointed by the governor for terms of four years, by and with
 10 the advice and consent of the Senate: *Provided*, That the terms
 11 of all members previously appointed to the Blennerhassett
 12 Island historical state park commission prior to any amendment
 13 and reenactment of this section shall continue for the periods
 14 originally specified and no member serving as of the effective
 15 date of the amendment and reenactment need be reappointed.

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

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

26 (c) The commission shall elect a chairman from among its
27 members on the second Monday in September of each year.

28 (d) All members are eligible for reappointment once by the
29 governor. A member shall, unless sooner removed, continue to
30 serve until his or her term expires and his or her successor has
31 been appointed and has qualified. A vacancy caused by the
32 death, resignation or removal of a member prior to the expira-
33 tion of his or her term shall be filled only for the remainder of
34 term.

35 (e) For the purpose of carrying out its powers, duties and
36 responsibilities under this article, six members of the commis-
37 sion constitute a quorum for the transaction of business. Each
38 member is entitled to one vote. The commission shall meet at
39 a time and place designated by the chairman at least four times
40 each fiscal year. Additional meetings may be held when called
41 by the chairman or when requested by five members of the
42 commission or by the governor. All meetings shall comply
43 with the provisions of article nine-a, chapter six of this code.
44 Each member shall be reimbursed for all reasonable and
45 necessary expenses actually incurred in the performance of his
46 or her duties under this article.

47 (f) The commission shall advise the division of natural
48 resources in all matters relating to the development, establish-
49 ment and maintenance of the Blennerhassett Island historical
50 state park.

51 (g) All employee positions in the former Blennerhassett
52 Island historical state park commission transferred to the
53 division of commerce by a previous amendment and
54 reenactment of this section are continued in the classified
55 service of the civil service system pursuant to article six of this
56 chapter. Any person included in the classified service by the
57 provisions of this section who is employed in any of these

58 positions as of the effective date of any amendment and
59 reenactment of this section shall not be required to take and
60 pass qualifying or competitive examinations upon or as a
61 condition to being added to the classified service: *Provided,*
62 That no person included in the classified service by the provi-
63 sions of this section who is employed in any of these positions
64 as of the effective date of any amendment and reenactment of
65 this section, be thereafter severed, removed or terminated from
66 such employment prior to his or her entry into the classified
67 service except for cause as if the person had been in the
68 classified service when severed, removed or terminated.

69 (h) Notwithstanding any provision of this code to the
70 contrary, the division of natural resources is vested with
71 exclusive regulatory authority over watercraft transport of
72 visitors to the Blennerhassett Island portion of the
73 Blennerhassett Island historical state park and the watercraft
74 transport of these visitors is not subject to the provisions of
75 article eighteen, chapter seventeen of this code.

76 (i) Notwithstanding the provisions of section fifty-eight,
77 article two, chapter twenty of this code, the natural resources
78 commission shall promulgate rules pursuant to the provisions
79 of section seventeen, article one, chapter twenty and section
80 three, article one, chapter twenty-nine-a of this code to permit
81 and regulate the hunting of white-tailed deer at Blennerhassett
82 Island historical state park.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18a. State excess lottery revenue fund.

1 (a) There is continued a special revenue fund within the
2 state lottery fund in the state treasury which is designated and
3 known as the "state excess lottery revenue fund". The fund
4 consists of all appropriations to the fund and all interest earned
5 from investment of the fund and any gifts, grants or contribu-

6 tions received by the fund. All revenues received under the
7 provisions of sections ten-b and ten-c, article twenty-two-a of
8 this chapter and under article twenty-two-b of this chapter,
9 except the amounts due the commission under section
10 29-22B-1408(a)(1) of this chapter, shall be deposited in the
11 state treasury and placed into the “state excess lottery revenue
12 fund”. The revenue shall be disbursed in the manner provided
13 in this section for the purposes stated in this section and shall
14 not be treated by the auditor and the state treasurer as part of the
15 general revenue of the state.

16 (b) For the fiscal year beginning the first day of July, two
17 thousand two, the commission shall deposit: (1) Sixty-five
18 million dollars into the subaccount of the state excess lottery
19 revenue fund hereby created in the state treasury to be known
20 as the “general purpose account” to be expended pursuant to
21 appropriation of the Legislature; (2) ten million dollars into the
22 education improvement fund for appropriation by the Legisla-
23 ture to the “promise scholarship fund” created in section seven,
24 article seven, chapter eighteen-c of this code; (3) nineteen
25 million dollars into the economic development project fund
26 created in subsection (d) of this section for the issuance of
27 revenue bonds and to be spent in accordance with the provi-
28 sions of said subsection; (4) twenty million dollars into the
29 school building debt service fund created in section six, article
30 nine-d, chapter eighteen of this code for the issuance of revenue
31 bonds; (5) forty million dollars into the West Virginia infra-
32 structure fund created in section nine, article fifteen-a, chapter
33 thirty-one of this code to be spent in accordance with the
34 provisions of said article; (6) ten million dollars into the higher
35 education improvement fund for higher education; and (7) five
36 million dollars into the state park improvement fund for park
37 improvements. For the fiscal year beginning the first day of
38 July, two thousand three, the commission shall deposit: (1)
39 Sixty-five million dollars into the general purpose account to be
40 expended pursuant to appropriation of the Legislature; (2)

41 seventeen million dollars into the education improvement fund
42 for appropriation by the Legislature to the “promise scholarship
43 fund” created in section seven, article seven, chapter eighteen-c
44 of this code; (3) nineteen million dollars into the economic
45 development project fund created in subsection (d) of this
46 section for the issuance of revenue bonds and to be spent in
47 accordance with the provisions of said subsection; (4) twenty
48 million dollars into the school building debt service fund
49 created in section six, article nine-d, chapter eighteen of this
50 code for the issuance of revenue bonds; (5) forty million dollars
51 into the West Virginia infrastructure fund created in section
52 nine, article fifteen-a, chapter thirty-one of this code to be spent
53 in accordance with the provisions of said article; (6) ten million
54 dollars into the higher education improvement fund for higher
55 education; and (7) five million dollars into the state park
56 improvement fund for park improvements.

57 (c) For the fiscal year beginning the first day of July, two
58 thousand four, and subsequent fiscal years, the commission
59 shall deposit: (1) Sixty-five million dollars into the general
60 purpose account to be expended pursuant to appropriation of the
61 Legislature; (2) twenty-seven million dollars into the education
62 improvement fund for appropriation by the Legislature to the
63 “promise scholarship fund” created in section seven, article
64 seven, chapter eighteen-c of this code; (3) nineteen million
65 dollars into the economic development project fund created in
66 subsection (d) of this section for the issuance of revenue bonds
67 and to be spent in accordance with the provisions of said
68 subsection; (4) nineteen million dollars into the school building
69 debt service fund created in section six, article nine-d, chapter
70 eighteen of this code for the issuance of revenue bonds; (5)
71 forty million dollars into the West Virginia infrastructure fund
72 created in section nine, article fifteen-a, chapter thirty-one of
73 this code to be spent in accordance with the provisions of said
74 article; (6) ten million dollars into the higher education im-
75 provement fund for higher education; and (7) five million

76 dollars into the state park improvement fund for park improve-
77 ments. No portion of the distributions made as provided in this
78 subsection and subsection (b) of this section, except distribu-
79 tions made in connection with bonds issued under subsection
80 (d) of this section, may be used to pay debt service on bonded
81 indebtedness until after the Legislature expressly authorizes
82 issuance of the bonds and payment of debt service on the bonds
83 through statutory enactment or the adoption of a concurrent
84 resolution by both houses of the Legislature. Until subsequent
85 legislative enactment or adoption of a resolution that expressly
86 authorizes issuance of the bonds and payment of debt service on
87 the bonds with funds distributed under this subsection and
88 subsection (b) of this section, except distributions made in
89 connection with bonds issued under subsection (d) of this
90 section, the distributions may be used only to fund capital
91 improvements that are not financed by bonds and only pursuant
92 to appropriation of the Legislature.

93 (d) The Legislature finds and declares that in order to
94 attract new business, commerce and industry to this state, to
95 retain existing business and industry providing the citizens of
96 this state with economic security and to advance the business
97 prosperity of this state and the economic welfare of the citizens
98 of this state, it is necessary to provide public financial support
99 for constructing, equipping, improving and maintaining
100 economic development projects, capital improvement projects
101 and infrastructure which promote economic development in this
102 state.

103 (1) The West Virginia economic development authority
104 created and provided for in article fifteen, chapter thirty-one of
105 this code shall, by resolution, in accordance with the provisions
106 of this article and article fifteen, chapter thirty-one of this code,
107 and upon direction of the governor, issue revenue bonds of the
108 economic development authority in no more than two series to
109 pay for all or a portion of the cost of constructing, equipping,

110 improving or maintaining projects under this section or to
111 refund the bonds at the discretion of the authority. Any revenue
112 bonds issued on or after the first day of July, two thousand two,
113 which are secured by state excess lottery revenue proceeds shall
114 mature at a time or times not exceeding thirty years from their
115 respective dates. The principal of, and the interest and redemp-
116 tion premium, if any, on, the bonds shall be payable solely from
117 the special fund provided in this section for the payment.

118 (2) There is continued in the state treasury a special revenue
119 fund named the “economic development project fund” into
120 which shall be deposited on and after the first day of July, two
121 thousand two, the amounts to be deposited in said fund as
122 specified in subsections (b) and (c) of this section. The
123 economic development project fund shall consist of all such
124 moneys, all appropriations to the fund, all interest earned from
125 investment of the fund and any gifts, grants or contributions
126 received by the fund. All amounts deposited in the fund shall
127 be pledged to the repayment of the principal, interest and
128 redemption premium, if any, on any revenue bonds or refunding
129 revenue bonds authorized by this section, including any and all
130 commercially customary and reasonable costs and expenses
131 which may be incurred in connection with the issuance,
132 refunding, redemption or defeasance thereof. The West
133 Virginia economic development authority may further provide
134 in the resolution and in the trust agreement for priorities on the
135 revenues paid into the economic development project fund as
136 may be necessary for the protection of the prior rights of the
137 holders of bonds issued at different times under the provisions
138 of this section. The bonds issued pursuant to this subsection
139 shall be separate from all other bonds which may be or have
140 been issued from time to time under the provisions of this
141 article.

142 (3) After the West Virginia economic development author-
143 ity has issued bonds authorized by this section and after the

144 requirements of all funds have been satisfied, including any
145 coverage and reserve funds established in connection with the
146 bonds issued pursuant to this subsection, any balance remaining
147 in the economic development project fund may be used for the
148 redemption of any of the outstanding bonds issued under this
149 subsection which, by their terms, are then redeemable or for the
150 purchase of the outstanding bonds at the market price, but not
151 to exceed the price, if any, at which redeemable, and all bonds
152 redeemed or purchased shall be immediately canceled and shall
153 not again be issued.

154 (4) Bonds issued under this subsection shall state on their
155 face that the bonds do not constitute a debt of the state of West
156 Virginia; that payment of the bonds, interest and charges
157 thereon cannot become an obligation of the state of West
158 Virginia; and that the bondholders' remedies are limited in all
159 respects to the "special revenue fund" established in this
160 subsection for the liquidation of the bonds.

161 (5) The West Virginia economic development authority
162 shall expend the bond proceeds from the revenue bond issues
163 authorized and directed by this section for such projects as may
164 be certified under the provision of this subsection: *Provided*,
165 That the bond proceeds shall be expended in accordance with
166 the requirements and provisions of article five-a, chapter
167 twenty-one of this code and either article twenty-two or
168 twenty-two-a, chapter five of this code, as the case may be:
169 *Provided, however*, That if such bond proceeds are expended
170 pursuant to article twenty-two-a, chapter five of this code and
171 if the design-build board created under said article determines
172 that the execution of a design-build contract in connection with
173 a project is appropriate pursuant to the criteria set forth in said
174 article and that a competitive bidding process was used in
175 selecting the design builder and awarding such contract, such
176 determination shall be conclusive for all purposes and shall be
177 deemed to satisfy all the requirements of said article.

178 (6) For the purpose of certifying the projects that will
179 receive funds from the bond proceeds, a committee is hereby
180 established and comprised of the governor, or his or her
181 designee, the secretary of the department of tax and revenue,
182 the executive director of the West Virginia development office
183 and six persons appointed by the governor: *Provided*, That at
184 least one citizen member must be from each of the state's three
185 congressional districts. The committee shall meet as often as
186 necessary and make certifications from bond proceeds in
187 accordance with this subsection. The committee shall meet
188 within thirty days of the effective date of this section.

189 (7) Applications for grants submitted on or before the first
190 day of July, two thousand two, shall be considered refiled with
191 the committee. Within ten days from the effective date of this
192 section as amended in the year two thousand three, the lead
193 applicant shall file with the committee any amendments to the
194 original application that may be necessary to properly reflect
195 changes in facts and circumstances since the application was
196 originally filed with the committee.

197 (8) When determining whether or not to certify a project,
198 the committee shall take into consideration the following:

199 (A) The ability of the project to leverage other sources of
200 funding;

201 (B) Whether funding for the amount requested in the grant
202 application is or reasonably should be available from commer-
203 cial sources;

204 (C) The ability of the project to create or retain jobs,
205 considering the number of jobs, the type of jobs, whether
206 benefits are or will be paid, the type of benefits involved and
207 the compensation reasonably anticipated to be paid persons
208 filling new jobs or the compensation currently paid to persons
209 whose jobs would be retained;

210 (D) Whether the project will promote economic develop-
211 ment in the region and the type of economic development that
212 will be promoted;

213 (E) The type of capital investments to be made with bond
214 proceeds and the useful life of the capital investments; and

215 (F) Whether the project is in the best interest of the public.

216 (9) No grant may be awarded to an individual or other
217 private person or entity. Grants may be awarded only to an
218 agency, instrumentality or political subdivision of this state or
219 to an agency or instrumentality of a political subdivision of this
220 state. The project of an individual or private person or entity
221 may be certified to receive a low-interest loan paid from bond
222 proceeds. The terms and conditions of the loan, including, but
223 not limited to, the rate of interest to be paid and the period of
224 the repayment, shall be determined by the economic develop-
225 ment authority after considering all applicable facts and
226 circumstances.

227 (10) Prior to making each certification, the committee shall
228 conduct at least one public hearing, which may be held outside
229 of Kanawha County. Notice of the time, place, date and
230 purpose of the hearing shall be published in at least one
231 newspaper in each of the three congressional districts at least
232 fourteen days prior to the date of the public hearing.

233 (11) The committee may not certify a project unless the
234 committee finds that the project is in the public interest and the
235 grant will be used for a public purpose. For purposes of this
236 subsection, projects in the public interest and for a public
237 purpose include, but are not limited to:

238 (A) Sports arenas, fields parks, stadiums and other sports
239 and sports-related facilities;

- 240 (B) Health clinics and other health facilities;
- 241 (C) Traditional infrastructure, such as water and wastewater
242 treatment facilities, pumping facilities and transmission lines;
- 243 (D) State-of-the-art telecommunications infrastructure;
- 244 (E) Biotechnical incubators, development centers and
245 facilities;
- 246 (F) Industrial parks, including construction of roads, sewer,
247 water, lighting and other facilities;
- 248 (G) Improvements at state parks, such as construction,
249 expansion or extensive renovation of lodges, cabins, conference
250 facilities and restaurants;
- 251 (H) Railroad bridges, switches and track extension or spurs
252 on public or private land necessary to retain existing businesses
253 or attract new businesses;
- 254 (I) Recreational facilities, such as amphitheaters, walking
255 and hiking trails, bike trails, picnic facilities, restrooms, boat
256 docking and fishing piers, basketball and tennis courts, and
257 baseball, football and soccer fields;
- 258 (J) State-owned buildings that are registered on the national
259 register of historic places;
- 260 (K) Retail facilities, including related service, parking and
261 transportation facilities, appropriate lighting, landscaping and
262 security systems to revitalize decaying downtown areas; and
- 263 (L) Other facilities that promote or enhance economic
264 development, educational opportunities or tourism opportuni-
265 ties thereby promoting the general welfare of this state and its
266 residents.

267 (12) Prior to the issuance of bonds under this subsection,
268 the committee shall certify to the economic development
269 authority a list of those certified projects that will receive funds
270 from the proceeds of the bonds. Once certified, the list may not
271 thereafter be altered or amended other than by legislative
272 enactment.

273 (13) If any proceeds from sale of bonds remain after paying
274 costs and making grants and loans as provided in this subsection,
275 the surplus may be deposited in an account created in the
276 state treasury to be known as the “economic development
277 project bridge loan fund” to be administered by the economic
278 development authority created in article fifteen, chapter
279 thirty-one of this code. Expenditures from the fund are not
280 authorized from collections but are to be made only in accordance
281 with appropriation by the Legislature and in accordance
282 with the provisions of article three, chapter twelve of this code
283 and upon fulfillment of the provisions of article two, chapter
284 five-a of this code. Loan repayment amounts, including the
285 portion attributable to interest shall be paid into the fund
286 created in this subdivision.

287 (e) If the commission receives revenues in an amount that
288 is not sufficient to fully comply with the requirements of
289 subsections (b), (c) and (h) of this section, the commission shall
290 first make the distribution to the economic development project
291 fund; second, make the distribution or distributions to the other
292 funds from which debt service is to be paid; third, make the
293 distribution to the education improvement fund for appropriation
294 by the Legislature to the promise scholarship fund; and
295 fourth, make the distribution to the general purpose account:
296 *Provided*, That, subject to the provisions of this subsection, to
297 the extent such revenues are not pledged in support of revenue
298 bonds which are or may be issued from time to time under this
299 section, the revenues shall be distributed on a pro rata basis.

300 (f) For the fiscal year beginning on the first day of July, two
301 thousand two, and each fiscal year thereafter, the commission
302 shall, after meeting the requirements of subsections (b), (c) and
303 (h) of this section and after transferring to the state lottery fund
304 created under section eighteen of this article an amount equal
305 to any transfer from the state lottery fund to the excess lottery
306 fund pursuant to subsection (f), section eighteen of this article,
307 deposit fifty percent of the amount by which annual gross
308 revenue deposited in the state excess lottery revenue fund
309 exceeds two hundred twenty-five million dollars in a fiscal year
310 in a separate account in the state lottery fund to be available for
311 appropriation by the Legislature.

312 (g) When bonds are issued for projects under subsection (d)
313 of this section or for the school building authority, infrastruc-
314 ture, higher education or park improvement purposes described
315 in this section that are secured by profits from lotteries depos-
316 ited in the state excess lottery revenue fund, the lottery director
317 shall allocate first to the economic development project fund an
318 amount equal to one tenth of the projected annual principal,
319 interest and coverage requirements on any and all revenue
320 bonds issued, or to be issued, on or after the first day of July,
321 two thousand two, as certified to the lottery director; and
322 second, to the fund or funds from which debt service is paid on
323 bonds issued under this section for the school building author-
324 ity, infrastructure, higher education and park improvements an
325 amount equal to one tenth of the projected annual principal,
326 interest and coverage requirements on any and all revenue
327 bonds issued, or to be issued, on or after the first day of April,
328 two thousand two, as certified to the lottery director. In the
329 event there are insufficient funds available in any month to
330 transfer the amounts required pursuant to this subsection, the
331 deficiency shall be added to the amount transferred in the next
332 succeeding month in which revenues are available to transfer
333 the deficiency.

334 (h) In fiscal year two thousand four and thereafter, prior to
335 the distributions provided in subsection (c) of this section, the
336 lottery commission shall deposit into the general revenue fund
337 amounts necessary to provide reimbursement for the refundable
338 credit allowable under section twenty-one, article twenty-one,
339 chapter eleven of this code.

340 (i) (1) The Legislature considers the following as priorities
341 in the expenditure of any surplus revenue funds:

342 (A) Providing salary and/or increment increases for
343 professional educators and public employees;

344 (B) Providing adequate funding for the public employees
345 insurance agency; and

346 (C) Providing funding to help address the shortage of
347 qualified teachers and substitutes in areas of need, both in
348 number of teachers and in subject matter areas.

349 (2) The provisions of this subsection may not be construed
350 by any court to require any appropriation or any specific
351 appropriation or level of funding for the purposes set forth in
352 this subsection.

353 (j) The Legislature further directs the governor to focus
354 resources on the creation of a prescription drug program for
355 senior citizens by pursuing a medicaid waiver to offer prescrip-
356 tion drug services to senior citizens; by investigating the
357 establishment of purchasing agreements with other entities to
358 reduce costs; by providing discount prices or rebate programs
359 for seniors; by coordinating programs offered by pharmaceuti-
360 cal manufacturers that provide reduced cost or free drugs; by
361 coordinating a collaborative effort among all state agencies to
362 ensure the most efficient and cost effective program possible
363 for the senior citizens of this state; and by working closely with
364 the state's congressional delegation to ensure that a national

365 program is implemented. The Legislature further directs that
 366 the governor report his progress back to the joint committee on
 367 government and finance on an annual basis beginning in
 368 November of the year two thousand one until a comprehensive
 369 program has been fully implemented.

CHAPTER 31. CORPORATIONS.

Article

- 15A. West Virginia Infrastructure and Jobs Development Council.
- 18. West Virginia Housing Development Fund.

ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.

§31-15A-11. Reservation of funds for projects and infrastructure projects.

§31-15A-3. West Virginia infrastructure and jobs development council continued; members of council; staff of council.

1 (a) The West Virginia infrastructure and jobs development
 2 council is hereby continued. The council is a governmental
 3 instrumentality of the state. The exercise by the council of the
 4 powers conferred by this article and the carrying out of its
 5 purpose and duties shall be considered and held to be, and are
 6 hereby determined to be, essential governmental functions and
 7 for a public purpose.

8 (b) The council shall consist of eleven members, including
 9 the governor or designee, the executive director of the housing
 10 development fund or his or her designee, the director of the
 11 division of environmental protection or his or her designee, the
 12 director of the economic development authority or his or her
 13 designee, the director of the water development authority or his
 14 or her designee, the director of the division of health or his or
 15 her designee, the chairman of the public service commission or

16 his or her designee, and four members representing the general
17 public: *Provided*, That there shall be at least one member
18 representing the general public from each congressional district:
19 *Provided, however*, That after the expiration of the term of
20 office of the members first appointed as representatives of the
21 general public, no more than one member representing the
22 general public may be a resident of the same county. The
23 governor shall appoint the public members of the council who
24 shall serve three-year staggered terms. The commissioner of
25 the division of highways, the executive director of the state rail
26 authority, two members of the West Virginia Senate, two
27 members of the West Virginia House of Delegates, the chancel-
28 lor of the higher education policy commission and the chancel-
29 lor of the West Virginia council for community and technical
30 college education serve as advisory members of the council.
31 The governor shall appoint the legislative members of the
32 council: *Provided further*, That no more than three of the
33 legislative members may be of the same political party. The
34 governor shall appoint the representatives of the governing
35 boards from a list of three names submitted by each governing
36 board. The advisory members shall be *ex officio*, nonvoting
37 members of the council.

38 (c) The governor or designee shall serve as chairman and
39 the council shall annually appoint a vice chairperson and shall
40 appoint a secretary, who need not be a member of the council
41 and who shall keep records of its proceedings. Six members of
42 the council shall constitute a quorum and the affirmative vote
43 of at least the majority of those members present shall be
44 necessary for any action taken by vote of the council. A
45 vacancy in the membership of the council does not impair the
46 rights of a quorum by such vote to exercise all the rights and
47 perform all the duties of the council.

48 (d) A member of the council who serves by virtue of his or
49 her office does not receive compensation or reimbursement of

50 expenses for serving as a member. The public members are
51 reimbursed for actual expenses incurred in the service of the
52 council in a manner consistent with guidelines of the travel
53 management office of the department of administration.

54 (e) The council meets at least monthly to review projects
55 and infrastructure projects requesting funding assistance and
56 otherwise to conduct its business and may meet more frequently
57 if necessary. Notwithstanding any other provision of this article
58 to the contrary, the economic development authority is not
59 subject to council review with regard to any action taken
60 pursuant to the authority established in article fifteen, chapter
61 thirty-one of this code. The governor's civil contingent fund is
62 not subject to council review with regard to projects or infra-
63 structure projects funded through the governor's civil contin-
64 gent fund.

65 (f) The water development authority shall provide office
66 space for the council and each governmental agency repre-
67 sented on the council shall provide staff support for the council
68 in the manner determined appropriate by the council.

69 (g) The council shall invite to each meeting one or more
70 representatives of the United States department of agriculture,
71 rural economic community development, the United States
72 economic development agency and the United States army
73 corps of engineers or any successors thereto. The council shall
74 invite such other appropriate parties as is necessary to effectu-
75 ate the purposes of this article.

§31-15A-11. Reservation of funds for projects and infrastructure projects.

1 Eighty percent of the funds deposited in the West Virginia
2 infrastructure fund shall be dedicated for the purpose of
3 providing funding for the cost of projects as defined in subsec-
4 tion (n), section two of this article. Twenty percent of the funds

5 deposited in the West Virginia infrastructure fund shall be
6 dedicated for the purpose of providing funding for costs of
7 infrastructure projects as defined in subsection (l), section two
8 of this article. Project sponsors of infrastructure projects shall
9 follow the application process as established by this article:
10 *Provided*, That notwithstanding any provision of this article to
11 the contrary, all applications for any infrastructure project shall
12 be submitted to the executive director of the West Virginia
13 development office for review, recommendation and approval
14 regarding infrastructure project funding.

ARTICLE 18. WEST VIRGINIA HOUSING DEVELOPMENT FUND.

§31-18-4. Composition; board of directors; appointment, term, etc., of private members; chairman and vice chairman; quorum.

§31-18-5. Management and control of housing development fund vested in board; officers; liability.

§31-18-4. Composition; board of directors; appointment, term, etc., of private members; chairman and vice chairman; quorum.

1 (a) There is continued as a governmental instrumentality of
2 the state of West Virginia, a public body corporate to be known
3 as the West Virginia housing development fund.

4 (b) The housing development fund is created and established
5 to serve a public corporate purpose and to act for the public
6 benefit and as a governmental instrumentality of the state of
7 West Virginia, to act on behalf of the state and its people in
8 improving and otherwise promoting their health, welfare and
9 prosperity.

10 (c) The housing development fund shall be governed by a
11 board of directors, consisting of eleven members, four of whom
12 shall be the governor, the attorney general, the commissioner of
13 agriculture, and the state treasurer, or their designated represen-
14 tatives as public directors, and seven of whom shall be chosen

15 from the general public residing in the state, as private direc-
16 tors. No more than four of the private directors shall be from
17 the same political party.

18 (d) Upon organization of the housing development fund, the
19 governor shall appoint, by and with the advice and consent of
20 the Senate, the seven private directors to take office and to
21 exercise all powers thereof immediately, with two each
22 appointed for terms of two years and three years, and with three
23 each appointed for terms of four years, respectively, as the
24 governor shall designate; at the expiration of said terms and for
25 all succeeding terms, the governor shall appoint a successor to
26 the office of private director for a term of four years in each
27 case.

28 (e) A vacancy in the office of a private director is filled by
29 appointment by the governor for the remainder of the unexpired
30 term.

31 (f) The governor may remove any private director for reason
32 of incompetency, neglect of duty, gross immorality, or malfea-
33 sance in office and appoint a director to fill the vacancy as
34 provided in other cases of vacancy.

35 (g) The governor or designee serves as chair. The board of
36 directors shall annually elect one of its public members as vice
37 chair and appoint a secretary to keep records of its proceedings,
38 who need not be a member of the board.

39 (h) Six members of the board of directors constitutes a
40 quorum. A vacancy in the membership of the board does not
41 impair the duties of the board of directors.

42 (i) Action may not be taken by the board of directors except
43 upon the affirmative vote of at least six of the directors.

44 (j) The directors, including the chair, vice chair and trea-
45 surer, and the secretary of the board are not compensated for

46 their services but receive reasonable and necessary expenses
47 actually incurred in discharging their duties under this article in
48 a manner consistent with guidelines of the travel management
49 office of the department of administration.

**§31-18-5. Management and control of housing development fund
vested in board; officers; liability.**

1 (a) The management and control of the housing development
2 fund shall be vested solely in the board of directors in accor-
3 dance with the provisions of this article.

4 (b) The chairman shall be the chief executive officer of the
5 housing development fund, and, in his or her absence, the vice
6 chairman shall act as chief executive officer.

7 (c) The governor appoints an executive director of the
8 housing development fund, with the advice and consent of the
9 Senate, who serves at the governor's will and pleasure. The
10 director is responsible for managing and administering the daily
11 functions of the housing development fund and for performing
12 other functions necessary to the effective operation of the
13 housing development fund. The executive director's compensa-
14 tion is fixed annually by the board of directors.

15 (d) The board of directors of the housing development fund
16 shall annually elect from its membership a treasurer and shall
17 annually elect a secretary, who need not be a member of the
18 board, to keep a record of the proceedings of the housing
19 development fund.

20 (e) The treasurer of the housing development fund shall be
21 custodian of all funds of the housing development fund and
22 shall be bonded in such amount as the other members of the
23 board of directors may designate.

24 (f) The directors and officers of the West Virginia housing
25 development fund shall not be liable personally, either jointly

26 or severally, for any debt or obligation created by the West
27 Virginia housing development fund.

CHAPTER 4

**(S. B. 1004 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed January 29, 2005; in effect from passage.]

[Approved by the Governor on February 16, 2005.]

AN ACT to amend and reenact §4-11A-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-9-2 of said code; to amend and reenact §11-10-3 of said code; to amend said code by adding thereto a new article, designated §11-13V-1, §11-13V-2, §11-13V-3, §11-13V-4, §11-13V-5, §11-13V-6, §11-13V-7, §11-13V-8, §11-13V-9, §11-13V-10, §11-13V-11, §11-13V-12, §11-13V-13, §11-13V-14, §11-13V-15, §11-13V-16 and §11-13V-17; to amend said code by adding thereto a new section, designated §11-21-96; to amend and reenact §23-1-1, §23-1-1a, §23-1-1b, §23-1-1c, §23-1-1e, §23-1-11, §23-1-13, §23-1-14, §23-1-15, §23-1-17 and §23-1-19 of said code; to amend said code by adding thereto a new section, designated §23-1-1g; to amend and reenact §23-2-1, §23-2-1d, §23-2-2, §23-2-3, §23-2-4, §23-2-5, §23-2-5a and §23-2-9 of said code; to amend and reenact §23-2A-1 of said code; to amend said code by adding thereto a new article, designated §23-2C-1, §23-2C-2, §23-2C-3, §23-2C-4, §23-2C-5, §23-2C-6, §23-2C-7, §23-2C-8, §23-2C-9, §23-2C-10, §23-2C-11, §23-2C-12, §23-2C-13, §23-2C-14, §23-2C-15, §23-2C-16, §23-2C-17, §23-2C-18, §23-2C-19, §23-2C-20, §23-2C-21, §23-2C-22 and §23-2C-23; to amend said code by adding thereto a new article, designated §23-2D-1,

§23-2D-2, §23-2D-3, §23-2D-4, §23-2D-5, §23-2D-5a, §23-2D-6, §23-2D-7, §23-2D-8, §23-2D-9 and §23-2D-10; to amend and reenact §23-3-1 and §23-3-4 of said code; to amend and reenact §23-4-1b, §23-4-1c, §23-4-1d, §23-4-1e, §23-4-3, §23-4-3b, §23-4-4, §23-4-6, §23-4-6a, §23-4-6b, §23-4-7, §23-4-7a, §23-4-7b, §23-4-8, §23-4-8a, §23-4-8b, §23-4-8c, §23-4-9, §23-4-10, §23-4-11, §23-4-12, §23-4-14, §23-4-15, §23-4-15a, §23-4-15b, §23-4-16, §23-4-16a, §23-4-17, §23-4-20, §23-4-24 and §23-4-25 of said code; to amend and reenact §23-4A-1 and §23-4A-4 of said code; to amend said code by adding thereto a new section, designated §23-4A-9; to amend said code by adding thereto a new section, designated §23-4B-9; to amend and reenact §23-4C-5 of said code; to amend said code by adding thereto a new section, designated §23-4C-6; to amend and reenact §23-5-1, §23-5-2, §23-5-3, §23-5-4, §23-5-5, §23-5-7, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12 and §23-5-15 of said code; to amend and reenact §29-22A-10 and §29-22A-10b of said code; to amend and reenact §33-1-2 and §33-1-10 of said code; to amend and reenact §33-2-10 and §33-2-20 of said code; to amend and reenact §33-41-2, §33-41-8 and §33-41-11 of said code; and to amend and reenact §61-3-24e, §61-3-24f, §61-3-24g and §61-3-24h of said code, all relating to workers' compensation generally; reducing the unfunded liability of the workers' compensation fund; providing existing and new revenue sources therefor, including new and existing taxes; providing for dissolution of workers' compensation commission; converting state agency to employer-owned mutual insurance company; providing for private carriers to offer workers' compensation insurance; providing for employees of the commission to be exempt from provisions of civil service coverage; providing for transfer of fraud investigation and prosecution unit and assets necessary for its operation; providing for transfer of certain workers' compensation commission functions, rights, responsibilities, employees and assets to the insurance commissioner and the industrial council; providing certain civil remedies to commission, mutual company and private carriers; providing for exemption from required

coverage for certain employers who cover their employees under Federal Longshore and Harbor Workers' Compensation Act; providing for payment periods to be other than quarterly; providing authority to enjoin employers from engaging in business when in default; requiring self-insured employers to obtain insurance for catastrophic risks; providing for transfer of authority over certain funds to the insurance commissioner; providing for statutory subrogation of medical and indemnity benefits; providing for expedited appeals to the office of judges; authorizing negotiation for subrogation claims; providing for capital and surplus requirements of employers' mutual insurance company; providing for election of a board of directors of employers' mutual insurance company; providing for establishment of claims index to assist insurers; providing for establishment and administration of certain funds and accounts in state treasury; providing for adverse risk assignment plan; providing, upon meeting of certain criteria, for issuance of proclamation by the governor; providing for preferential placement of any employee laid off after transfer of functions; providing certain retraining and other benefits; providing for novation of policies to new employers mutual insurance company; providing for requirements of a basic policy of workers' compensation insurance; providing for setting of industrial insurance rates; providing for collection of premiums; providing for transfer of occupational pneumoconiosis board; providing for limitation of liability for insurers providing workers' compensation insurance and third-party administrators; providing for transfer of rules to be applicable to the industrial insurance market; providing for transfer of certain assets to new mutual insurance company; providing for termination of interdisciplinary examining board and health care advisory panel; providing for selection of occupational pneumoconiosis board members by governor; providing for transfer of authority over occupational pneumoconiosis board; providing for negotiation of final settlement in workers' compensation claims; providing terms of employment for chief administrative law judge; making technical corrections throughout; providing

internal effective dates; providing for civil administrative and criminal penalties; and making conforming changes throughout.

Be it enacted by the Legislature of West Virginia:

That §4-11A-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-9-2 of said code be amended and reenacted; that §11-10-3 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §11-13V-1, §11-13V-2, §11-13V-3, §11-13V-4, §11-13V-5, §11-13V-6, §11-13V-7, §11-13V-8, §11-13V-9, §11-13V-10, §11-13V-11, §11-13V-12, §11-13V-13, §11-13V-14, §11-13V-15, §11-13V-16 and §11-13V-17; that said code be amended and reenacted by adding thereto a new section, designated §11-21-96; that §23-1-1, §23-1-1a, §23-1-1b, §23-1-1c, §23-1-1e, §23-1-11, §23-1-13, §23-1-14, §23-1-15, §23-1-17 and §23-1-19 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §23-1-1g; that §23-2-1, §23-2-1d, §23-2-2, §23-2-3, §23-2-4, §23-2-5, §23-2-5a and §23-2-9 of said code be amended and reenacted; that §23-2A-1 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §23-2C-1, §23-2C-2, §23-2C-3, §23-2C-4, §23-2C-5, §23-2C-6, §23-2C-7, §23-2C-8, §23-2C-9, §23-2C-10, §23-2C-11, §23-2C-12, §23-2C-13, §23-2C-14, §23-2C-15, §23-2C-16, §23-2C-17, §23-2C-18, §23-2C-19, §23-2C-20, §23-2C-21, §23-2C-22 and §23-2C-23; that said code be amended by adding thereto a new article, designated §23-2D-1, §23-2D-2, §23-2D-3, §23-2D-4, §23-2D-5, §23-2D-5a, §23-2D-6, §23-2D-7, §23-2D-8, §23-2D-9 and §23-2D-10; that §23-3-1 and §23-3-4 of said code be amended and reenacted; that §23-4-1b, §23-4-1c, §23-4-1d, §23-4-1e, §23-4-3, §23-4-3b, §23-4-4, §23-4-6, §23-4-6a, §23-4-6b, §23-4-7, §23-4-7a, §23-4-7b, §23-4-8, §23-4-8a, §23-4-8b, §23-4-8c, §23-4-9, §23-4-10, §23-4-11, §23-4-12, §23-4-14, §23-4-15, §23-4-15a, §23-4-15b, §23-4-16, §23-4-16a, §23-4-17, §23-4-20, §23-4-24 and §23-4-25 of said code be amended and reenacted; that §23-4A-1 and §23-4A-4 of said code be amended and reenacted; that said code be

amended by adding thereto a new section, designated §23-4A-9; that said code be amended by adding thereto a new section, designated §23-4B-9; that §23-4C-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §23-4C-6; that §23-5-1, §23-5-2, §23-5-3, §23-5-4, §23-5-5, §23-5-7, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12 and §23-5-15 of said code be amended and reenacted; that §29-22A-10 and §29-22A-10b of said code be amended and reenacted; that §33-1-2 and §33-1-10 of said code be amended and reenacted; that §33-2-10 and §33-2-20 of said code be amended and reenacted; that §33-41-2, §33-41-8 and §33-41-11 of said code be amended and reenacted; and that §61-3-24e, §61-3-24f, §61-3-24g and §61-3-24h of said code be amended and reenacted, all to read as follows:

Chapter

- 4. The Legislature.**
- 11. Taxation.**
- 23. Workers' Compensation.**
- 29. Miscellaneous Boards and Officers.**
- 33. Insurance.**
- 61. Crimes and Their Punishment.**

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11A. LEGISLATIVE APPROPRIATION OF TOBACCO SETTLEMENT MONEYS.

§4-11A-2. Receipt of settlement funds and required deposit in West Virginia tobacco settlement medical trust fund until the first day of June, two thousand five, then to workers' compensation deficit reduction fund.

- 1 (a) The Legislature finds and declares that certain dedicated
- 2 revenues should be preserved in trust for the purpose of
- 3 stabilizing the state's health related programs and delivery
- 4 systems. It further finds and declares that these dedicated
- 5 revenues should be preserved in trust for the purpose of

6 educating the public about the health risks associated with
7 tobacco usage and establishing a program designed to reduce
8 and stop the use of tobacco by the citizens of this state and in
9 particular by teenagers.

10 (b) There is hereby created a special account in the state
11 treasury, designated the "West Virginia Tobacco Settlement
12 Medical Trust Fund", which shall be an interest-bearing
13 account and may be invested in the manner permitted by section
14 nine, article six, chapter twelve of this code, with the interest
15 income a proper credit to the fund. Unless contrary to federal
16 law, fifty percent of all revenues received pursuant to the
17 master settlement agreement shall be deposited in this fund.
18 Funds paid into the account may also be derived from the
19 following sources:

20 (1) All interest or return on investment accruing to the fund;

21 (2) Any gifts, grants, bequests, transfers or donations which
22 may be received from any governmental entity or unit or any
23 person, firm, foundation or corporation;

24 (3) Any appropriations by the Legislature which may be
25 made for this purpose; and

26 (4) Any funds or accrued interest remaining in the board of
27 risk and insurance management physicians' mutual insurance
28 company account created pursuant to section seven, article
29 twenty-f, chapter thirty-three of this code on or after the first
30 day of July, two thousand four.

31 (c) The moneys from the principal in the trust fund may not
32 be expended for any purpose, except that on the first day of
33 April, two thousand three, the treasurer shall transfer to the
34 board of risk and insurance management physicians' mutual
35 insurance company account created by section seven, article
36 twenty-f, chapter thirty-three of this code, twenty-four million

37 dollars from the West Virginia tobacco settlement medical trust
38 fund for use as the initial capital and surplus of the physicians'
39 mutual insurance company created pursuant to said article. The
40 remaining moneys in the trust fund resulting from interest
41 earned on the moneys in the fund and the return on investments
42 of the moneys in the fund shall be available only upon appropri-
43 ation by the Legislature as part of the state budget and ex-
44 pended in accordance with the provisions of section three of
45 this article.

46 (d) Notwithstanding the preceding subsections to the
47 contrary, the first thirty million dollars of all revenues received
48 after the thirtieth day of June, two thousand five, pursuant to
49 section IX(c)(1) of the tobacco master settlement agreement
50 shall in the fiscal year beginning the first day of July, two
51 thousand five, and each fiscal year thereafter, be deposited in
52 the workers' compensation debt reduction fund established in
53 the state treasury in section five, article two-d, chapter twenty-
54 three of this code. Receipts in excess of thirty million dollars
55 shall be deposited as provided in section three of this article.

56 (e) Notwithstanding anything in this code to the contrary,
57 strategic compensation payments received pursuant to section
58 IX(c)(2) of the tobacco master settlement agreement, beginning
59 in two thousand eight, shall be deposited in their entirety in the
60 workers' compensation debt reduction fund.

CHAPTER 11. TAXATION.

Article

9. Crimes and Penalties.
10. West Virginia Tax Procedure and Administration Act.
- 13V. Workers' Compensation Debt Reduction Act.
21. Personal Income Tax.

ARTICLE 9. CRIMES AND PENALTIES.

§11-9-2. Application of this article.

1 (a) The provisions of this article apply to the following
2 taxes imposed by this chapter:

3 (1) Inheritance and transfer taxes and estate taxes imposed
4 by article eleven of this chapter;

5 (2) Business registration tax imposed by article twelve of
6 this chapter;

7 (3) Minimum severance tax on coal imposed by article
8 twelve-b of this chapter;

9 (4) Corporate license tax imposed by article twelve-c of this
10 chapter;

11 (5) Business and occupation tax imposed by article thirteen
12 of this chapter;

13 (6) Severance and business privilege taxes imposed by
14 article thirteen-a of this chapter;

15 (7) Additional severance taxes imposed by article thirteen-v
16 of this chapter;

17 (8) Telecommunications tax imposed by article thirteen-b
18 of this chapter;

19 (9) Gasoline and special fuels excise tax imposed by article
20 fourteen of this chapter;

21 (10) Motor fuels excise tax imposed by article fourteen-c of
22 this chapter;

23 (11) Motor carrier road tax imposed by article fourteen-a of
24 this chapter;

25 (12) Interstate fuel tax agreement authorized by article
26 fourteen-b of this chapter;

27 (13) Consumers sales and service tax imposed by article
28 fifteen of this chapter;

29 (14) Use tax imposed by article fifteen-a of this chapter;

30 (15) Tobacco products excise taxes imposed by article
31 seventeen of this chapter;

32 (16) Soft drinks tax imposed by article nineteen of this
33 chapter;

34 (17) Personal income tax imposed by article twenty-one of
35 this chapter;

36 (18) Business franchise tax imposed by article twenty-three
37 of this chapter;

38 (19) Corporation net income tax imposed by article
39 twenty-four of this chapter; and

40 (20) Health care provider taxes imposed by article
41 twenty-seven of this chapter.

42 (b) The provisions of this article also apply to the West
43 Virginia tax procedure and administration act in article ten of
44 this chapter and to any other articles of this chapter when
45 application is expressly provided by the Legislature.

46 (c) The provisions of this article also apply to municipal
47 sales and use taxes imposed pursuant to article thirteen-c,
48 chapter eight of this code; the charitable bingo fee imposed by
49 sections six and six-a, article twenty, chapter forty-seven of this
50 code; the charitable raffle fee imposed by section seven, article
51 twenty-one of said chapter; and the charitable raffle boards and
52 games fees imposed by section three, article twenty-three of
53 said chapter.

54 (d) Each and every provision of this article applies to the
55 articles of this chapter listed in subsections (a), (b) and (c) of
56 this section, with like effect, as if the provisions of this article
57 were applicable only to the tax and were set forth in extenso in
58 this article.

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-3. Application of this article.

1 (a) The provisions of this article apply to inheritance and
2 transfer taxes, estate tax and interstate compromise and
3 arbitration of inheritance and death taxes, business registration
4 tax, minimum severance tax on coal, corporate license tax,
5 business and occupation tax, severance tax, additional sever-
6 ance taxes, telecommunications tax, interstate fuel tax, consum-
7 ers sales and service tax, use tax, tobacco products excise taxes,
8 soft drinks tax, personal income tax, business franchise tax,
9 corporation net income tax, gasoline and special fuels excise
10 tax, motor fuels excise tax, motor carrier road tax, health care
11 provider taxes and tax relief for elderly homeowners and renters
12 administered by the state tax commissioner. This article shall
13 not apply to ad valorem taxes on real and personal property or
14 any other tax not listed in this section, except that in the case of
15 ad valorem taxes on real and personal property, when any
16 return, claim, statement or other document is required to be
17 filed, or any payment is required to be made within a prescribed
18 period or before a prescribed date, and the applicable law
19 requires delivery to the office of the sheriff of a county of this
20 state, the methods prescribed in section five-f of this article for
21 timely filing and payment to the tax commissioner or state tax
22 department are the same methods utilized for timely filing and
23 payment with the sheriff.

24 (b) The provisions of this article apply to beer barrel tax
25 levied by article sixteen of this chapter; and to wine liter tax
26 levied by section four, article eight, chapter sixty of this code.

27 (c) The provisions of this article apply to any other article
28 of this chapter when the application is expressly provided by
29 the Legislature.

30 (d) The provisions of this article apply to municipal sales
31 and use taxes imposed under article thirteen-c, chapter eight of
32 this code and collected by the tax commissioner.

ARTICLE 13V. WORKERS' COMPENSATION DEBT REDUCTION ACT.

- §11-13V-1. Short title.
- §11-13V-2. Legislative intent and findings.
- §11-13V-3. Definitions.
- §11-13V-4. Imposition of tax.
- §11-13V-5. Accounting periods and methods of accounting.
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- §11-13V-10. Place for filing returns or other documents.
- §11-13V-11. Time and place for paying tax shown on returns.
- §11-13V-12. Signing of returns and other documents.
- §11-13V-13. Bond of taxpayer may be required.
- §11-13V-14. Collection of tax; agreement for processor to pay tax due from severor.
- §11-13V-15. Records.
- §11-13V-16. General procedure and administration.
- §11-13V-17. Crimes and penalties.

§11-13V-1. Short title.

1 This article may be cited as the “Workers’ Compensation
2 Debt Reduction Act of 2005”. No inference, implication or
3 presumption of legislative construction shall be drawn or made
4 by reason of the location or grouping of any particular section
5 or provision or portion of this article and no legal effect shall be
6 given to any descriptive matter of headings relating to any part,
7 section, subsection, subdivision or paragraph of this article.

§11-13V-2. Legislative intent and findings.

1 (a) *Legislative intent.* — It is the intent of the Legislature in
2 enacting this article to impose new, additional privilege taxes
3 on severing or producing natural resources in this state and for
4 the net proceeds from collection of the new taxes to be dedi-
5 cated to paying down the unfunded liability in the workers'
6 compensation fund, or paying debt service on bonds sold to
7 raise funds to pay down the unfunded liability in the workers'
8 compensation fund, or for any combination of these two
9 purposes.

10 (b) *Findings.* — The Legislature finds and declares that:

11 (1) The unfunded liability in the state workers' compensa-
12 tion program exceeds three billion dollars;

13 (2) Until a fiscally responsible plan for paying this un-
14 funded liability is provided by the Legislature, the condition of
15 the workers' compensation fund will continue to negatively
16 affect economic development in this state;

17 (3) Until a fiscally responsible plan for paying this un-
18 funded liability is provided by the Legislature, the Legislature
19 will not be able to privatize workers' compensation;

20 (4) Until a fiscally responsible plan for paying this un-
21 funded liability is provided, the Legislature will need to
22 annually appropriate dollars from the general revenue fund of
23 the state to pay down this unfunded liability and to cover the
24 annual shortfall between funds available to pay workers'
25 compensation benefits to injured workers and premiums
26 collected by the workers' compensation fund from employers;

27 (5) In accordance with the constitution of this state and
28 decisions of the West Virginia supreme court of appeals, the
29 Legislature may enact a new tax and dedicate the net collections
30 of the tax to pay down this unfunded liability or to pay debt

31 service on bonds sold by the state to raise funds to pay down
32 this unfunded liability.

§11-13V-3. Definitions.

1 All definitions set forth in articles twelve-d and thirteen-a
2 of this chapter apply to those defined terms that also appear in
3 this article, if applicable.

§11-13V-4. Imposition of tax.

1 (a) *Imposition of additional tax on privilege of severing*
2 *coal.* — Upon every person exercising the privilege of engaging
3 within this state in severing, extracting, reducing to possession
4 or producing coal for sale, profit or commercial use, there is
5 hereby imposed an additional annual severance tax for exercis-
6 ing the privilege after the thirtieth day of November, two
7 thousand five. The tax shall be fifty-six cents per ton and the
8 measure of the tax is tons of clean coal severed or produced in
9 this state by the taxpayer after the thirtieth day of November,
10 two thousand five, for sale, profit or commercial use during the
11 taxable year. When the person mining the coal sells raw coal,
12 the measure of tax shall be ton of clean coal determined in
13 accordance with rules promulgated by the tax commissioner as
14 provided in article three, chapter twenty-nine-a of this code. If
15 this rule is filed for public comment before the first day of July,
16 two thousand five, the rule may be promulgated as an emer-
17 gency legislative rule. This tax shall be in addition to all taxes
18 imposed with respect to the severance and production of coal in
19 this state including, but not limited to, the taxes imposed by
20 articles twelve-d and thirteen-a of this chapter and the taxes
21 imposed by sections eleven and thirty-two, article three, chapter
22 twenty-two of this code, if applicable.

23 (b) *Imposition of additional tax on privilege of severing*
24 *natural gas.* — For the privilege of engaging or continuing
25 within this state in the business of severing natural gas for sale,

26 profit or commercial use, there is hereby levied and shall be
27 collected from every person exercising this privilege an
28 additional annual privilege tax. The rate of this additional tax
29 shall be four and seven-tenths cents per mcf of natural gas and
30 the measure of the tax is natural gas produced after the thirtieth
31 day of November, two thousand five, determined at the point
32 where the production privilege ends for purposes of the tax
33 imposed by section three-a, article thirteen-a of this chapter,
34 and with respect to which the tax imposed by section three-a of
35 said article thirteen-a is paid. The additional tax imposed by
36 this subsection shall be collected with respect to natural gas
37 produced after the thirtieth day of November, two thousand
38 five.

39 (c) *Imposition of additional tax on privilege of severing*
40 *timber.* — For the privilege of engaging or continuing within
41 this state in the business of severing timber for sale, profit or
42 commercial use, there is hereby levied and shall be collected
43 from every person exercising this privilege an additional annual
44 privilege tax equal to two and seventy-eight hundredths percent
45 of the gross value of the timber produced, determined at the
46 point where the production privilege ends for purposes of the
47 tax imposed by section three-b, article thirteen-a of this chapter
48 and upon which the tax imposed by section three-b of said
49 article thirteen-a is paid. The additional tax imposed by this
50 subsection shall be collected with respect to timber produced
51 after the thirtieth day of November, two thousand five.

52 (d) *No pyramiding of tax burden.* — Each ton of coal and
53 each mcf of natural gas severed in this state after the effective
54 date of the taxes imposed by this section shall be included in the
55 measure of a tax imposed by this section only one time.

56 (e) *Effect on utility rates.* — The public service commission
57 shall, upon the application of any public utility that, as of the
58 effective date of the taxes imposed by this section, is not

59 currently making periodic adjustments to its approved rates and
60 charges to reflect changes in its fuel costs because the mecha-
61 nism historically used to make such periodic adjustments is
62 suspended by an order of the commission, allow such utility to
63 defer, for future recovery from its customers, any increase in its
64 costs attributable to the taxes imposed by this section upon:
65 coal and natural gas severed in this state and utilized in the
66 production of electricity generated or produced in this state and
67 sold to customers in this state; coal and natural gas severed in
68 this state and utilized in the production of electricity not
69 generated or produced in this state that is sold to customers in
70 this state; and natural gas severed in this state that is sold to
71 customers in this state.

72 (f) *Dedication of new taxes.* — The net amount of all
73 monies received by the tax commissioner from collection of the
74 taxes imposed by this section, including any interest, additions
75 to tax, or penalties collected with respect to these taxes pursuant
76 to article ten, chapter eleven of this code, shall be deposited in
77 the workers' compensation debt reduction fund created in
78 article two-d, chapter twenty-three of this code. As used in this
79 section, "net amount of all taxes received by the tax commis-
80 sioner" means the gross amount received by the tax commis-
81 sioner less the amount of any refunds paid for overpayment of
82 the taxes imposed by this article, including the amount of any
83 interest on the overpayment amount due the taxpayer under the
84 provisions of section fourteen, article ten of this chapter.

85 (g) *Sunset expiration date of taxes.* — The new taxes
86 imposed by this section shall expire and not be imposed with
87 respect to privileges exercised on and after the first day of the
88 month following the month in which the governor certifies to
89 the Legislature that: (1) The revenue bonds issued pursuant to
90 article two-d, chapter twenty-three of this code, have been
91 retired, or payment of the debt service provided for; and (2) that
92 an independent certified actuary has determined that the

93 unfunded liability of the old fund, as defined in chapter twenty-
94 three of this code, has been paid or provided for in its entirety.
95 Expiration of the taxes imposed in this section as provided in
96 this subsection shall not relieve any person from payment of
97 any tax imposed with respect to privileges exercised before the
98 expiration date.

§11-13V-5. Accounting periods and methods of accounting.

1 (a) *General rule.* — For purposes of the taxes imposed by
2 this article, a taxpayer's taxable year shall be the same as the
3 taxpayer's taxable year for federal income tax purposes. If
4 taxpayer has no taxable year for federal income tax purposes,
5 then the calendar year shall be taxpayer's taxable year under
6 this article.

7 (b) *Change of taxable year.* — If a taxpayer's taxable year
8 is changed for federal income tax purposes, taxpayer's taxable
9 year for purposes of this article is similarly changed. The
10 taxpayer shall provide a copy of the authorization for the
11 change from the internal revenue service, with taxpayer's
12 annual return for the taxable year filed under this article.

13 (c) *Methods of accounting same as federal.* —

14 (1) *Same as federal.* — A taxpayer's method of accounting
15 under this article shall be the same as the taxpayer's method of
16 accounting for federal income tax purposes. In the absence of
17 any method of accounting for federal income tax purposes, the
18 accrual method of accounting shall be used, unless the tax
19 commissioner, in writing, consents to the use of another
20 method. Accrual basis taxpayers may deduct bad debts only in
21 the year to which they relate.

22 (2) *Change of accounting methods.* — If a taxpayer's
23 method of accounting is changed for federal income tax
24 purposes, the taxpayer's method of accounting for purposes of

25 this article is similarly changed. The taxpayer shall provide a
26 copy of the authorization for the change from the internal
27 revenue service with its annual return for the taxable year filed
28 under this article.

29 (d) *Adjustments.* — In computing a taxpayer's liability for
30 tax for any taxable year under a method of accounting different
31 from the method under which the taxpayer's liability for tax
32 under this article for the previous year was computed, there
33 shall be taken into account those adjustments which are
34 determined, under rules promulgated by the tax commissioner
35 in accordance with article three, chapter twenty-nine-a of this
36 code, to be necessary solely by reason of the change in order to
37 prevent amounts from being duplicated or omitted.

§11-13V-6. Time for filing annual returns and other documents.

1 On or before the expiration of one month after the end of
2 the taxable year, every taxpayer subject to a tax imposed by this
3 article shall make and file an annual return for the entire taxable
4 year showing all information the tax commissioner requires and
5 computing the amount of taxes due under this article for the
6 taxable year. Returns made on the basis of a calendar year shall
7 be filed on or before the thirty-first day of January following
8 the close of the calendar year. Returns made on the basis of a
9 fiscal year shall be filed on or before the last day of the first
10 month following the close of the fiscal year.

**§11-13V-7. Periodic installment payments of taxes imposed by
this article; exceptions.**

1 (a) *General rule.* — Except as provided in subsection (b) of
2 this section, taxes levied by this article are due and payable in
3 periodic installments as follows:

4 (1) *Tax of fifty dollars or less per month.* — If a person's
5 aggregate annual tax liability under this article and article

6 thirteen-a of this chapter is reasonably expected to be fifty
7 dollars or less per month, no installment payments of tax are
8 required under this section during that taxable year.

9 (2) *Tax of more than one thousand dollars per month.* —
10 For taxpayers whose aggregate estimated tax liability under this
11 article and article thirteen-a of this chapter exceeds one
12 thousand dollars per month, the tax is due and payable in
13 monthly installments on or before the last day of the month
14 following the month in which the tax accrued: *Provided*, That
15 the installment payment otherwise due under this subdivision
16 on or before the thirtieth day of June each year shall be remitted
17 to the tax commissioner on or before the fifteenth day of June
18 each year. When this subdivision applies, the taxpayer shall, on
19 or before the due date specified in this subdivision, make out an
20 estimate of the tax for which the taxpayer is liable for the
21 preceding month, sign the estimate and mail it together with a
22 remittance, in the form prescribed by the tax commissioner, of
23 the amount of tax due to the office of the tax commissioner:
24 *Provided, however*, That the installment payment otherwise due
25 under this paragraph on or before the thirtieth day of June each
26 year shall be remitted to the tax commissioner on or before the
27 fifteenth day of June.

28 (3) *Tax of one thousand dollars per month or less.* — For
29 taxpayers whose estimated tax liability under this article is one
30 thousand dollars per month or less, the tax is due and payable
31 in quarterly installments on or before the last day of the month
32 following the quarter in which the tax accrued. When this
33 subdivision applies, the taxpayer shall, on or before the last day
34 of the fourth, seventh and tenth months of the taxable year,
35 make out an estimate of the tax for which the taxpayer is liable
36 for the preceding quarter, sign the same and mail it together
37 with a remittance, in the form prescribed by the tax commis-
38 sioner, of the amount of tax due to the office of the tax commis-
39 sioner.

40 (b) *Exception.* — Notwithstanding the provisions of
41 subsection (a) of this section, the tax commissioner, if he or she
42 considers it necessary to ensure payment of the tax, may require
43 the return and payment under this section for periods of shorter
44 duration than those prescribed in subsection (a) of this section.

45 (c) *Remittance by electronic funds transfer.* — When the
46 taxpayer's annual aggregate liability for tax under this article
47 and article thirteen-a of this chapter exceeds fifty thousand
48 dollars for the prior tax year, payments of estimated tax
49 required by this article and article thirteen-a during the then
50 current tax year shall be by electronic funds transfer, in
51 accordance with rules of the tax commissioner and rules of the
52 state treasurer, except as otherwise permitted by the tax
53 commissioner.

§11-13V-8. Extension of time for filing returns.

1 The tax commissioner may, upon written request received
2 on or prior to the due date of the annual return or any periodic
3 estimate, grant a reasonable extension of time for filing any
4 return or other document required by this article, upon such
5 terms as he or she may by rule prescribe, or by contract require,
6 if good cause satisfactory to the tax commissioner is provided
7 by the taxpayer.

§11-13V-9. Extension of time for paying tax.

1 (a) *Amount determined on return.* — The tax commissioner
2 may extend the time for payment of the amount of the tax
3 shown, or required to be shown, on any return required by this
4 article (or any periodic installment payments), for a reasonable
5 period not to exceed six months from the date fixed for pay-
6 ment thereof.

7 (b) *Amount determined as deficiency.* — Under rules
8 prescribed by the tax commissioner in accordance with the

9 provisions of article three, chapter twenty-nine-a of this code,
10 the commissioner may extend the time for the payment of the
11 amount determined as a deficiency of the taxes imposed by this
12 article for a period not to exceed eighteen months from the date
13 fixed for payment of the deficiency. In exceptional cases, a
14 further period of time not to exceed twelve months may be
15 granted. An extension under this subsection may be granted
16 only where it is shown to the satisfaction of the tax commis-
17 sioner that payment of a deficiency upon the date fixed for the
18 payment thereof will result in undue hardship to the taxpayer.

19 (c) *No extension for certain deficiencies.* — No extension
20 may be granted under this section for any deficiency if the
21 deficiency is due to negligence, to intentional disregard of rules
22 and regulations, or to fraud with intent to evade tax.

§11-13V-10. Place for filing returns or other documents.

1 Tax returns, statements or other documents, or copies
2 thereof, required by this article, or rules promulgated by the
3 commissioner, shall be filed with the tax commissioner by
4 delivery, in person or by mail, to his or her office in Charleston,
5 West Virginia: *Provided*, That the tax commissioner may, by
6 rules, prescribe the place and other means of delivery for filing
7 such returns, statements, or other documents, or copies thereof.

§11-13V-11. Time and place for paying tax shown on returns.

1 (a) *General rule.* — The person required to make the
2 annual return required by this article shall, without assessment
3 or notice and demand from the tax commissioner, pay the tax
4 at the time and place fixed for filing the return (determined
5 without regard to any extension of time for filing the return).

6 (b) *Date fixed for payment of tax.* — The date fixed for
7 payment of the taxes imposed by this article shall be deemed to
8 be a reference to the last day fixed for the payment (determined
9 without regard to any extension of time for paying the tax).

10 (c) *Terms of extension.* — Any extension of time for
11 payment of tax under this section may be granted upon such
12 terms as the tax commissioner may, by rule prescribe, or by
13 contract require.

§11-13V-12. Signing of returns and other documents.

1 (a) *General.* — Any return, statement or other document
2 required to be made under the provisions of this article shall be
3 signed in accordance with instructions or regulations prescribed
4 by the tax commissioner.

5 (b) *Signing of corporation returns.* — The return of a
6 corporation shall be signed by the president, vice president,
7 treasurer, assistant treasurer, chief accounting officer or any
8 other officer duly authorized so to act. In the case of a return
9 made for a corporation by a fiduciary, the fiduciary shall sign
10 the return. The fact that an individual's name is signed on the
11 return shall be prima facie evidence that such individual is
12 authorized to sign the return on behalf of the corporation.

13 (c) *Signing of partnership returns.* — The return of a
14 partnership shall be signed by any one of the partners. The fact
15 that a partner's name is signed on the return shall be prima facie
16 evidence that such partner is authorized to sign the return on
17 behalf of the partnership.

18 (d) *Signing of limited liability company returns.* — The
19 return of a limited liability company shall be signed by any one
20 of its authorized members. The fact that a member's name is
21 signed on the return shall be prima facie evidence that the
22 member is authorized to sign the return on behalf of the limited
23 liability company.

24 (e) *Signature presumed authentic.* — The fact that an
25 individual's name is signed to a return, statement or other
26 document shall be prima facie evidence for all purposes that the

27 return, statement or other document was actually signed by him
28 or her.

29 (f) *Verification of returns.* — Except as otherwise provided
30 by the tax commissioner, any return, declaration or other
31 document required to be made under this article shall contain or
32 be verified by a written declaration that it is made under the
33 penalties of perjury.

§11-13V-13. Bond of taxpayer may be required.

1 (a) Whenever it is deemed necessary to ensure compliance
2 with this article, the tax commissioner may require any tax-
3 payer to post a cash or corporate surety bond.

4 (b) The amount of the bond shall be fixed by the tax
5 commissioner but, except as provided in subsection (c) of this
6 section, shall not be greater than three times the average
7 quarterly liability of taxpayers filing returns for quarterly
8 periods, five times the average monthly liability of taxpayers
9 required to file returns for monthly periods, or two times the
10 average periodic liability of taxpayers permitted or required to
11 file returns for other than monthly or quarterly periods.

12 (c) Notwithstanding the provisions of subsection (b) of this
13 section, no bond required under this section shall be less than
14 five hundred dollars.

15 (d) The amount of the bond may be increased or decreased
16 by the tax commissioner at any time subject to the limitations
17 provided in this section.

18 (e) The tax commissioner may bring an action for a
19 restraining order or a temporary or permanent injunction to
20 restrain or enjoin the operation of a taxpayer's business until
21 the bond is posted and any delinquent tax, including applicable
22 interest and additions to tax has been paid. This action may be

23 brought in the circuit court of Kanawha County or in the circuit
24 court of any county having jurisdiction over the taxpayer.

**§11-13V-14. Collection of tax; agreement for processor to pay tax
due from severor.**

1 (a) *General.* — In the case of natural resources, other than
2 natural gas, where the tax commissioner finds that it would
3 facilitate and expedite the collection of the taxes imposed by
4 this article, the tax commissioner may authorize the taxpayer
5 processing the natural resource to report and pay the tax which
6 would be due from the taxpayer severing the natural resources.
7 The agreement shall be in the form prescribed by or acceptable
8 to the tax commissioner.

9 (1) The agreement must be signed:

10 (A) By the owner, if the taxpayer is a natural person;

11 (B) In the case of a partnership, limited liability company
12 or association, by a partner or member;

13 (C) In the case of a corporation, by an executive officer or
14 some person specifically authorized by the corporation to sign
15 the agreement.

16 (2) The agreement may be terminated by any party to the
17 agreement upon giving thirty days' written notice to the other
18 parties to the agreement: *Provided*, That the tax commissioner
19 may terminate the agreement immediately upon written notice
20 to the other parties when either the taxpayer processing the
21 natural resource or the taxpayer severing the natural resource
22 fails to comply with the terms of the agreement.

23 (b) *Natural gas.* —

24 (1) In the case of natural gas, except for those cases:

25 (A) Where the person severing (or both severing and
26 processing) the natural gas will sell the gas to the ultimate
27 consumer; or

28 (B) Where the tax commissioner determines that the
29 collection of taxes due under this article would be accomplished
30 in a more efficient and effective manner through the severor, or
31 severor and processor, remitting the taxes, the first person to
32 purchase the natural gas after it has been severed, or in the
33 event that the natural gas has been severed and processed before
34 the first sale, the first person to purchase natural gas after it has
35 been severed and processed, shall be liable for the collection of
36 the taxes imposed by this article. That person shall collect the
37 taxes imposed from the person severing (or severing and
38 processing) the natural gas, and that person shall remit the taxes
39 to the tax commissioner;

40 (C) In those cases where the person severing (or severing
41 and processing) the natural gas sells the gas to the ultimate
42 consumer, the person so severing (or severing and processing)
43 the natural gas shall be liable for the taxes imposed by this
44 article;

45 (D) In those cases where the tax commissioner determines
46 that the collection of the taxes due under this article from the
47 person severing the natural gas, or severing and processing the
48 natural gas would be accomplished in a more efficient and
49 effective manner through the severor (or severor and processor)
50 remitting the taxes, the tax commissioner shall set out his or her
51 determination in writing, stating his or her reasons for so
52 finding, and so advise the severor (or severor and processor) at
53 least fifteen days in advance of the first reporting period for
54 which the commissioner's determination is effective.

55 (2) On or before the last day of the month following each
56 taxable calendar month, the person first purchasing natural gas,

57 as described in subdivision (1) of this subsection, shall report
58 purchases of natural gas during the taxable month, showing the
59 quantities of gas purchased, the price paid, the date of purchase,
60 and any other information considered necessary by the tax
61 commissioner for the administration of the tax imposed by this
62 article, and shall pay the amount of tax due, on forms pre-
63 scribed by the tax commissioner.

64 (3) On or before the last day of the month following each
65 taxable calendar month, each person severing (or severing and
66 processing) natural gas, shall report the sales of natural gas,
67 showing the name and address of the person to whom sold, the
68 quantity of gas sold, the date of sale and the sales price on
69 forms prescribed by the tax commissioner.

§11-13V-15. Records.

1 (a) *General.* — Every person liable for reporting or paying
2 tax under this article shall keep records, receipts, invoices and
3 other pertinent papers in the form required by the tax commis-
4 sioner.

5 (b) *Period of retention.* — Every taxpayer shall keep the
6 records for a tax year for a period of not less than three years
7 after the annual return is filed under this article, unless the tax
8 commissioner, in writing, authorizes their earlier destruction.
9 An extension of time for making an assessment automatically
10 extends the time period for keeping the records for all years
11 subject to audit covered in the agreement for extension of time.

12 (c) *Special rule for purchasers of standing timber or of*
13 *logs.* — In addition to the records required by subsection (a) of
14 this section, every person purchasing standing timber, logs or
15 wood products sawn or chipped in conjunction with a timber
16 harvesting operation in this state shall obtain from the person
17 from whom the standing timber, logs or wood products sawn or
18 chipped in conjunction with a timbering harvest operation are

19 purchased a true copy of the seller's then current business
20 registration certificate issued under article twelve of this
21 chapter or a copy of federal form 1099 for the year of the
22 purchase. When the seller is a person not required by this
23 chapter to have a business registration certificate, the purchaser
24 shall obtain an affidavit from the seller:

25 (1) Stating that the seller does not have a business registra-
26 tion certificate and that the seller is not required by this chapter
27 to have a business registration certificate;

28 (2) Listing the seller's social security number or federal
29 employer identification number; and

30 (3) Listing the seller's current mailing address. The tax
31 commissioner may develop a form for this affidavit.

§11-13V-16. General procedure and administration.

1 Each and every provision of the "West Virginia Tax
2 Procedure and Administration Act" set forth in article ten of
3 this chapter applies to the taxes imposed by this article, except
4 as otherwise expressly provided in this article, with like effect
5 as if that act were applicable only to the taxes imposed by this
6 article and were set forth in extenso in this article.

§11-13V-17. Crimes and penalties.

1 Each and every provision of the "West Virginia Tax Crimes
2 and Penalties Act" set forth in article nine of this chapter
3 applies to the taxes imposed by this article with like effect as if
4 that act were applicable only to the taxes imposed by this article
5 and were set forth in extenso in this article.

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-96. Dedication of personal income tax proceeds.

1 (a) There is hereby dedicated an annual amount of forty-
2 five million dollars from annual collections of the tax imposed
3 by this article for payment of the unfunded liability of the
4 current workers compensation fund. No portion of this amount
5 may be pledged for payment of debt service on revenue bonds
6 issued pursuant to article two-d, chapter twenty-three of this
7 code.

8 (b) Notwithstanding any other provision of this code to the
9 contrary, beginning in January of two thousand six, forty-five
10 million dollars from collections of the tax imposed by this
11 article shall be deposited each calendar year to the credit of the
12 old fund created in article two-c, chapter twenty-three of this
13 code, in accordance with the following schedule. Each calendar
14 month, except for July, August and September each year, five
15 million dollars shall be transferred, on or before the twenty-
16 eighth day of the month, to the workers' compensation debt
17 reduction fund created in article two-d, chapter twenty-three of
18 this code.

19 (c) *Expiration.* — The transfers required by this section
20 shall continue to be made until the governor certifies to the
21 Legislature that an independent actuary study determined that
22 the unfunded liability of the old fund, as defined in chapter
23 twenty-three of this code, has been paid or provided for in its
24 entirety. No transfer pursuant to this section shall be made
25 thereafter.

CHAPTER 23. WORKERS' COMPENSATION.

Article

1. General Administrative Provisions.
2. Employers and Employees Subject to Chapter; Extraterritorial Coverage.
 - 2A. Subrogation.
 - 2C. Employers' Mutual Insurance Company.
 - 2D. Workers' Compensation Debt Reduction Bonds.
3. Workers' Compensation Fund.

4. **Disability and Death Benefits.**
- 4A. **Disabled Workers' Relief Fund.**
- 4B. **Coal-Workers' Pneumoconiosis Fund.**
- 4C. **Employees Excess Compensation Fund.**
5. **Review.**

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

- §23-1-1. Workers' compensation commission created; findings.
- §23-1-1a. Workers' compensation board of managers; appointment; composition; qualifications; terms; chairperson; meetings and quorum; compensation and travel expenses; powers and duties.
- §23-1-1b. Executive director; qualifications; oath; seal; removal; powers and duties.
- §23-1-1c. Payment withholding; interception; penalty.
- §23-1-1e. Transfer of assets and contracts; ability to acquire, own, lease and otherwise manage property.
- §23-1-1g. Legislative intent to create a quasi-public entity.
- §23-1-11. Depositions; investigations.
- §23-1-13. Rules of procedure and evidence; persons authorized to appear in proceedings; withholding of psychiatric and psychological reports and providing summaries thereof.
- §23-1-14. Forms.
- §23-1-15. Procedure before commission.
- §23-1-17. Annual report by the insurance commissioner and occupational pneumoconiosis board.
- §23-1-19. Civil remedies.

§23-1-1. Workers' compensation commission created; findings.

1 (a) The Legislature finds that a deficit exists in the workers'
2 compensation fund of such critical proportions that it consti-
3 tutes an imminent threat to the immediate and long-term
4 solvency of the fund and constitutes a substantial deterrent to
5 the economic development of this state. The Legislature further
6 finds that addressing the workers' compensation crisis requires
7 the efforts of all persons and entities involved and resolution of
8 the crisis is in the best interest of the public. Modification to
9 the rate system, alteration of the benefit structure, improvement
10 of current management practices and changes in perception
11 must be merged into a unified effort to make the workers'
12 compensation system viable and solvent through the

13 mutualization of the system and the opening of the market to
14 private workers' compensation insurance carriers. It was and
15 remains the intent of the Legislature that the amendments to
16 this chapter enacted in the year two thousand three be applied
17 from the date upon which the enactment was made effective by
18 the Legislature. The Legislature finds that an emergency exists
19 as a result of the combined effect of this deficit, other state
20 budgetary deficits and liabilities and other grave social and
21 economic circumstances currently confronting the state and that
22 unless the changes provided by the enactment of the amend-
23 ments to this chapter, as well as other legislation designed to
24 address the problem are made effective immediately, the fiscal
25 stability of this state will suffer irreparable harm. Accordingly,
26 the Legislature finds that the need of the citizens of this state
27 for the protection of the state treasury and the solvency of the
28 workers' compensation funds requires the limitations on any
29 expectations that may have arisen from prior enactments of this
30 chapter.

31 (b) It is the further intent of the Legislature that this chapter
32 be interpreted so as to assure the quick and efficient delivery of
33 indemnity and medical benefits to injured workers at a reason-
34 able cost to the employers who are subject to the provisions of
35 this chapter. It is the specific intent of the Legislature that
36 workers' compensation cases shall be decided on their merits
37 and that a rule of "liberal construction" based on any "reme-
38 dial" basis of workers' compensation legislation shall not affect
39 the weighing of evidence in resolving such cases. The workers'
40 compensation system in this state is based on a mutual renunci-
41 ation of common law rights and defenses by employers and
42 employees alike. Employees' rights to sue for damages over
43 and above medical and health care benefits and wage loss
44 benefits are to a certain degree limited by the provisions of this
45 chapter and employers' rights to raise common law defenses
46 such as lack of negligence, contributory negligence on the part
47 of the employee, and others, are curtailed as well. Accordingly,

48 the Legislature hereby declares that any remedial component of
49 the workers' compensation laws is not to cause the workers'
50 compensation laws to receive liberal construction that alters in
51 any way the proper weighing of evidence as required by section
52 one-g, article four of this chapter.

53 (c) The "workers' compensation division of the bureau of
54 employment programs" is, on or after the first day of October,
55 two thousand three, reestablished, reconstituted and continued
56 as the workers' compensation commission, an agency of the
57 state. The purpose of the commission is to ensure the fair,
58 efficient and financially stable administration of the workers'
59 compensation system of the state of West Virginia. The powers
60 and duties heretofore imposed upon the workers' compensation
61 division and the commissioner of the bureau of employment
62 programs as they relate to workers' compensation are hereby
63 transferred to and imposed upon the workers' compensation
64 commission and its executive director in the manner prescribed
65 by this chapter.

66 (d) It is the intent of the Legislature that the transfer of the
67 administration of the workers' compensation system of this
68 state from the workers' compensation division under the
69 commissioner of the bureau of employment programs to the
70 workers' compensation commission under its executive director
71 and the workers' compensation board of managers is to become
72 effective the first day of October, two thousand three. Any
73 provisions of the enactment of Enrolled Senate Bill No. 2013 in
74 the year two thousand three relating to the transfer of the
75 administration of the workers' compensation system of this
76 state that conflict with the intent of the Legislature as described
77 in this subsection shall, to that extent, become operative on the
78 first day of October, two thousand three, and until that date,
79 prior enactments of this code in effect on the effective date of
80 Enrolled Senate Bill No. 2013 relating to the administration of
81 the workers' compensation system of this state, whether

82 amended and reenacted or repealed by the passage of Enrolled
83 Senate Bill No. 2013, have full force and effect. All provisions
84 of the enactment of Enrolled Senate Bill No. 2013 in the year
85 two thousand three relating to matters other than the transfer of
86 the administration of the workers' compensation system of this
87 state shall become operative on the effective date of that
88 enactment, unless otherwise specifically provided in that
89 enactment.

§23-1-1a. Workers' compensation board of managers; appointment; composition; qualifications; terms; chairperson; meetings and quorum; compensation and travel expenses; powers and duties.

1 (a) On the first day of October, two thousand three, the
2 compensation programs performance council heretofore
3 established in article three, chapter twenty-one-a of this code is
4 hereby abolished and there is hereby created the "workers'
5 compensation board of managers", which may also be referred
6 to as "the board of managers" or "the board".

7 (b) (1) The board shall consist of eleven voting members as
8 follows:

9 (A) The governor or his or her designee;

10 (B) The chief executive officer of the West Virginia
11 investment management board; if required to attend more than
12 one meeting per month, he or she may send a designee to the
13 additional meetings;

14 (C) The executive director of the West Virginia develop-
15 ment office; if required to attend more than one meeting per
16 month, he or she may send a designee to the additional meet-
17 ings; and

18 (D) Eight members appointed by the governor with the
19 advice and consent of the Senate who meet the requirements
20 and qualifications prescribed in subsections (c) and (d) of this
21 section: *Provided*, That the members serving on the compensa-
22 tion programs performance council heretofore established in
23 article three, chapter twenty-one-a of this code on the effective
24 date of the enactment of this section in two thousand three are
25 hereby appointed as members of the board of managers subject
26 to the provisions of subdivision (1), subsection (c) of this
27 section.

28 (2) Two members of the West Virginia Senate and two
29 members of the West Virginia House of Delegates shall serve
30 as advisory members of the board and are not voting members.
31 The governor shall appoint the legislative members to the
32 board. No more than three of the legislative members may be
33 of the same political party.

34 (c) (1) The initial eight appointed voting members of the
35 board of managers shall consist of the members appointed
36 under the provisions of paragraph (D), subdivision (1), subsec-
37 tion (a) of this section and the remaining members appointed
38 pursuant to the provisions of subsection (d) of this section. The
39 term of each of the initial appointed members shall expire on
40 the thirty-first day of December, two thousand five.

41 (2) Effective the first day of January, two thousand six, if
42 the commission continues, eight members shall be appointed by
43 the governor with the advice and consent of the Senate for
44 terms that begin the first day of January, two thousand six, and
45 expire as follows:

46 Two members shall be appointed for a term ending the
47 thirtieth day of June, two thousand seven;

48 Three members shall be appointed for a term ending the
49 thirtieth day of June, two thousand eight; and

50 Three members shall be appointed for a term ending the
51 thirtieth day of June, two thousand nine.

52 (3) Except for appointments to fill vacancies, each subse-
53 quent appointment shall be for a term ending the thirtieth day
54 of June of the fourth year following the year the preceding term
55 expired. In the event a vacancy occurs, it shall be filled by
56 appointment for the unexpired term. A member whose term has
57 expired shall continue in office until a successor has been duly
58 appointed and qualified. No member of the board may be
59 removed from office by the governor except for official
60 misconduct, incompetency, neglect of duty or gross immorality.

61 (4) No appointed member may be a candidate for or hold
62 elected office. Members may be reappointed for no more than
63 two full terms.

64 (d) Except for those initially appointed under the provisions
65 of paragraph (D), subdivision (1), subsection (b) of this section,
66 each of the appointed voting members of the board shall be
67 appointed based upon his or her demonstrated knowledge and
68 experience to effectively accomplish the purposes of this
69 chapter. They shall meet the minimum qualifications as
70 follows:

71 (1) Each shall hold a baccalaureate degree from an accred-
72 ited college or university: *Provided*, That no more than three of
73 the appointed voting members may serve without a baccalaure-
74 ate degree from an accredited college or university if the
75 member has a minimum of fifteen years' experience in his or
76 her field of expertise as required in subdivision (2) of this
77 subsection;

78 (2) Each shall have a minimum of ten years' experience in
79 his or her field of expertise. The governor shall consider the
80 following guidelines when determining whether potential
81 candidates meet the qualifications of this subsection: Expertise

82 in insurance claims management; expertise in insurance
83 underwriting; expertise in the financial management of pen-
84 sions or insurance plans; expertise as a trustee of pension or
85 trust funds of more than two hundred beneficiaries or three
86 hundred million dollars; expertise in workers' compensation
87 management; expertise in loss prevention and rehabilitation;
88 expertise in occupational medicine demonstrated by licensure
89 as a medical doctor in West Virginia and experience, board
90 certification or university affiliation; or expertise in similar
91 areas of endeavor;

92 (3) At least one shall be a certified public accountant with
93 financial management or pension or insurance audit expertise;
94 at least one shall be an attorney with financial management
95 experience; and one shall be an academician holding an
96 advanced degree from an accredited college or university in
97 business, finance, insurance or economics.

98 (e) Each member of the board shall have a fiduciary
99 responsibility to the commission and all workers' compensation
100 funds and shall assure the proper administration of the funds in
101 a fiscally responsible manner.

102 (f) The board shall elect one member to serve as chairper-
103 son. The chairperson shall serve for a one-year term and may
104 serve more than one consecutive term. The board shall hold
105 meetings at the request of the chairperson or at the request of at
106 least three of the members of the board, but no less frequently
107 than once every three months. The chairperson shall determine
108 the date and time of each meeting. Six members of the board
109 constitute a quorum for the conduct of the business of the
110 board. No vacancy in the membership of the board shall impair
111 the right of a quorum to exercise all the rights and perform all
112 the duties of the board. No action shall be taken by the board
113 except upon the affirmative vote of six members of the board.

114 (g) Notwithstanding any provision of article seven, chapter
115 six of this code to the contrary, the board shall establish the
116 salary of the executive director. The board shall establish a set
117 of performance measurements to evaluate the performance of
118 the executive director in fulfilling his or her duties as prescribed
119 in this chapter and shall annually rate the executive director's
120 performance according to the established measurements and
121 may adjust his or her annual salary in accordance with that
122 performance rating.

123 (h) (1) Each voting appointed member of the board shall
124 receive compensation of not more than three hundred fifty
125 dollars per day for each day during which he or she is required
126 to and does attend a meeting of the board.

127 (2) Each voting appointed member of the board is entitled
128 to be reimbursed for actual and necessary expenses incurred for
129 each day or portion thereof engaged in the discharge of official
130 duties in a manner consistent with guidelines of the travel
131 management office of the department of administration.

132 (i) Each member of the board shall be provided appropriate
133 liability insurance, including, but not limited to, errors and
134 omissions coverage, without additional premium, by the state
135 board of risk and insurance management established pursuant
136 to article twelve, chapter twenty-nine of this code.

137 (j) The board of managers shall:

138 (1) Review and approve, reject or modify recommendations
139 from the executive director for the development of overall
140 policy for the administration of this chapter;

141 (2) In consultation with the executive director, propose
142 legislation and establish operating guidelines and policies
143 designed to ensure the effective administration and financial

144 viability of the workers' compensation system of West
145 Virginia;

146 (3) Review and approve, reject or modify rules that are
147 proposed by the executive director for operation of the workers'
148 compensation system before the rules are filed with the
149 secretary of state. The rules adopted by the board are not
150 subject to sections nine through sixteen, inclusive, article three,
151 chapter twenty-nine-a of this code. The board shall follow the
152 remaining provisions of said chapter for giving notice to the
153 public of its actions and for holding hearings and receiving
154 public comments on the rules;

155 (4) In accordance with the laws, rules and regulations of
156 West Virginia and the United States government, establish and
157 monitor performance standards and measurements to ensure the
158 timeliness and accuracy of activities performed under the
159 workers' compensation laws and rules;

160 (5) Review and approve, reject or modify all classifications
161 of occupations or industries, premium rates and taxes, adminis-
162 trative charges, rules and systems of rating, rating plans, rate
163 revisions, deficit management and deficit reduction assessments
164 and merit rating for employers covered by this chapter. The
165 executive director shall provide all information required for the
166 board's review;

167 (6) In conjunction with the executive director initiate,
168 oversee and review all independent financial and actuarial
169 reviews of the commission. The board shall employ an internal
170 auditor for the purpose of examining internal compliance with
171 the provisions of this chapter. The internal auditor shall be
172 employed directly by the board. The internal auditor shall
173 submit copies of all reports prepared by the internal auditor for
174 the board to the joint committee on government and finance
175 within five days of submitting or making the report to the
176 board, by filing the report with the legislative librarian;

177 (7) Approve the allocation of sufficient administrative
178 resources and funding to efficiently operate the workers'
179 compensation system of West Virginia. To assure efficient
180 operation, the board shall direct the development of a plan for
181 the collections performed under section five-a, article two of
182 this chapter. The plan for collections shall maximize ratio of
183 dollars potentially realized by the collection proceeding to the
184 dollars invested in collection activity;

185 (8) Review and approve, reject or modify the budget
186 prepared by the executive director for the operation of the
187 commission. The budget shall include estimates of the costs
188 and necessary expenditures of the commission in the discharge
189 of all duties imposed by this chapter as well as the cost of
190 providing offices, furniture, equipment and supplies to all
191 commission officers and employees;

192 (9) In consultation with the executive director, approve the
193 designation of health care providers to make decisions for the
194 commission regarding appropriateness of medical services;

195 (10) Require the workers' compensation commission to
196 develop, maintain and use an effective program of return-to-
197 work services for employers and workers;

198 (11) Require the workers' compensation commission to
199 develop, maintain and use thorough and efficient claims
200 management procedures and processes and fund management
201 in accordance with the generally accepted practices of the
202 workers' compensation insurance industry;

203 (12) Consider such other matters regarding the workers'
204 compensation system as the governor, executive director or any
205 member of the board may desire;

206 (13) Review and approve, reject or modify standards
207 recommended by the executive director to be considered by the

208 commission in making decisions on all levels of disability
209 awards. The standards should be established as an effective
210 means to make prompt, appropriate decisions relating to
211 medical care and methods to assist employees to return to work
212 as quickly as possible;

213 (14) Appoint, if necessary, a temporary executive director;

214 (15) Employ sufficient professional and clerical staff to
215 carry out the duties of the board. Employees of the board shall
216 serve at the will and pleasure of the board. The board's
217 employees are exempt from the salary schedule or pay plan
218 adopted by the division of personnel;

219 (16) Study the feasibility of, provide a plan for and provide
220 a proposal for a request for proposals from the private sector for
221 privatizing the workers' compensation system of this state,
222 including, but not limited to, a plan for privatizing the adminis-
223 tration of the workers' compensation system of this state and a
224 plan for allowing employers to obtain private insurance to
225 insure their obligations under the workers' compensation
226 system of this state; study the effect, if any, of attorneys fees on
227 the cost of administering the workers' compensation system;
228 study the extent to which fraud or abuse on the part of employ-
229 ees, providers and others have an effect on the cost of adminis-
230 tering the workers' compensation system; study the extent, if
231 any, that the rates and amounts of disability awards exceed the
232 rates and amounts of such awards in other states; study the
233 comparative desirability of alternative permanent disability
234 administration in those other states, and alternative deficit
235 management strategies, including nontraditional funding; study
236 the feasibility of authorizing a plan of multiple rate classifica-
237 tions by individual employers for employers who have different
238 or seasonally diverse job classifications and duties: *Provided,*
239 That no such plan may be implemented until adopted by the
240 Legislature; and, in consultation with the director of the

241 division of personnel, study the feasibility of establishing a
242 work incentive program to place unemployed qualified recipi-
243 ents of workers' compensation benefits in state or local
244 government employment. On or before the first day of January,
245 two thousand six, the commission shall report the findings and
246 conclusions of each study, the plans and proposals, and any
247 recommendations the commission may have as a result of the
248 study to the joint committee on government and finance; and

249 (17) Complete all duties set forth in article two-c of this
250 chapter.

251 (k) The board of managers shall continue to exist pursuant
252 to this article until the commission is terminated pursuant to the
253 provisions of this chapter.

**§23-1-1b. Executive director; qualifications; oath; seal; removal;
powers and duties.**

1 (a) The executive director shall be hired by the board of
2 managers for a term not to exceed five years and may be
3 retained based on overall performance for additional terms:
4 *Provided*, That the executive director of the division of work-
5 ers' compensation on the date of the enactment of this section
6 in the year two thousand three shall serve as the initial execu-
7 tive director of the commission and shall receive the same
8 salary and benefits as received as the executive director of the
9 division of workers' compensation through and until the board
10 of managers establishes his or her salary and benefits as the
11 executive director of the commission. The position of execu-
12 tive director shall be full-time employment. Except for the
13 initial executive director, candidates for the position of execu-
14 tive director shall have a minimum of a bachelor of arts or
15 science degree from an accredited four-year college or univer-
16 sity in one or more of the following disciplines: Finance;
17 economics; insurance administration; law; public administra-

18 tion; accounting; or business administration. Candidates for the
19 position of executive director will be considered based on their
20 demonstrated education, knowledge and a minimum of ten
21 years' experience in the areas of workers' compensation,
22 insurance company management, administrative and manage-
23 ment experience with an organization comparable in size to the
24 workers' compensation commission or any relevant experience
25 which demonstrates an ability to effectively accomplish the
26 purposes of this chapter.

27 (b) The executive director shall not be a candidate for or
28 hold any other public office or trust, nor shall he or she be a
29 member of a political committee. If he or she becomes a
30 candidate for a public office or becomes a member of a political
31 committee, his or her office as executive director shall be
32 immediately vacated.

33 (c) The executive director, before entering upon the duties
34 of his or her office, shall take and subscribe to the oath pre-
35 scribed by section five, article IV of the state constitution. The
36 oath shall be filed with the secretary of state.

37 (d) The executive director shall have an official seal for the
38 authentication of orders and proceedings, upon which seal shall
39 be engraved the words "West Virginia Workers' Compensation
40 Commission" and any other design prescribed by the board of
41 managers. The courts in this state shall take judicial notice of
42 the seal of the commission and in all cases copies of orders,
43 proceedings or records in the office of the West Virginia
44 workers' compensation commission are equal to the original in
45 evidence.

46 (e) The executive director shall not be a member of the
47 board of managers.

48 (f) The executive director shall serve until the expiration of
49 his or her term, resignation or until removed by a two-thirds

50 vote of the full board of managers. The board of managers and
51 the executive director may, by agreement, terminate the term of
52 employment at any time.

53 (g) The executive director shall have overall management
54 responsibility and administrative control and supervision within
55 the workers' compensation commission and has the power and
56 duty to:

57 (1) Establish, with the approval of the board of managers,
58 the overall administrative policy of the commission for the
59 purposes of this chapter;

60 (2) Employ, direct and supervise all employees required in
61 the connection with the performance of the duties assigned to
62 the commission by this chapter and fix the compensation of the
63 employees in accordance with the provisions of article six,
64 chapter twenty-nine of this code: *Provided*, That the executive
65 director shall identify which members of the staff of the
66 workers' compensation commission shall be exempted from the
67 salary schedules or pay plan adopted by the state personnel
68 board and further identify such staff members by job classifica-
69 tion or designation, together with the salary or salary ranges for
70 each such job classification or designation and shall file this
71 information with the director of the division of personnel no
72 later than the thirty-first day of December, two thousand three,
73 and thereafter as changes are made or at least annually: *Pro-*
74 *vided, however*, That, effective the first day of July, two
75 thousand six, if the commission has not been terminated or
76 otherwise discontinued, all employees of the commission shall
77 be exempt and otherwise not under the jurisdiction of the
78 provisions of the statutes, rules and regulations of the classified
79 service set forth in article six, chapter twenty-nine of this code
80 and article six-a of said chapter and are afforded no protections,
81 rights or access to procedures set forth in said provision. All
82 commission employees shall be employees at will unless his or

83 her employment status is altered by an express, written employ-
84 ment contract executed on behalf of the commission and the
85 employee. The commission and its employees shall be exempt
86 and otherwise not under the jurisdiction of the state personnel
87 board, the department of personnel, or any other successor
88 agency, and their statutes, rules and regulations;

89 (3) Reorganize the work of the commission, its divisions,
90 sections and offices to the extent necessary to achieve the most
91 efficient performance of its functions. All persons employed by
92 the workers' compensation division in positions that were
93 formerly supervised and directed by the commissioner of the
94 bureau of employment programs under chapter twenty-one-a of
95 this code are hereby assigned and transferred in their respective
96 classifications to the workers' compensation commission
97 effective the first day of October, two thousand three. Further,
98 the executive director may select persons that are employed by
99 the bureau of employment programs on the effective date of the
100 enactment of this section in the year two thousand three to be
101 assigned and transferred to the workers' compensation commis-
102 sion in their respective classifications, such assignment and
103 transfer to take effect no later than the thirty-first day of
104 December, two thousand three. Employees in the classified
105 service who have gained permanent status as of the effective
106 date of this article will not be subject to further qualifying
107 examination in their respective classifications by reason of any
108 transfer required by the provisions of this subdivision. Due to
109 the emergency currently existing at the commission and the
110 urgent need to develop fast, efficient claims processing,
111 management and administration, the executive director is
112 hereby granted authority to reorganize internal functions and
113 operations and to delegate, assign, transfer, combine, establish,
114 eliminate and consolidate responsibilities and duties to and
115 among the positions transferred under the authority of this
116 subdivision. The division of personnel shall cooperate fully by
117 assisting in all personnel activities necessary to expedite all

118 changes for the commission. The executive director is hereby
119 granted authority to reorganize internal functions and opera-
120 tions and to delegate, assign, transfer, combine, establish,
121 eliminate and consolidate responsibilities and duties to and
122 among the positions transferred under the authority of this
123 subdivision. The division of personnel shall cooperate fully by
124 assisting in all personnel activities necessary to expedite all
125 changes for the commission and shall otherwise continue to
126 provide all necessary administrative support to the commission
127 in connection with the commission's personnel needs until the
128 company established in article two-c of this chapter becomes
129 operational. Nothing contained in this subdivision shall be
130 construed to either abridge the rights of employees within the
131 classified service of the state to the procedures and protections
132 set forth in article six, chapter twenty-nine of this code or to
133 preclude the reclassification or reallocation of positions in
134 accordance with procedures set forth in said article;

135 (4) Exempt no more than twenty-five of any of the newly
136 created positions from the classified service of the state, the
137 employees of which positions shall serve at the will and
138 pleasure of the executive director. The executive director shall
139 report all exemptions made under this subdivision to the
140 director of the division of personnel no later than the first day
141 of January, two thousand four, and thereafter as the executive
142 director determines to be necessary;

143 (5) With the advice and approval of the board of managers,
144 propose operating guidelines and policies to standardize
145 administration, expedite commission business and promote the
146 efficiency of the services provided by the commission;

147 (6) Prepare and submit to the board of managers informa-
148 tion the board requires for classifications of occupations or
149 industries; the basis for premium rates, taxes, surcharges and
150 assessment for administrative charges, for assessments related

151 to loss experience, for assessments of prospective risk exposure,
152 for assessments of deficit management and deficit reduction
153 costs incurred, for other deficit management and deficit
154 reduction assessments, for rules and systems of rating, rate
155 revisions and merit rating for employers covered by this
156 chapter; and information regarding the extent, degree and
157 amount of subsidization between the classifications. The
158 executive director shall obtain, prepare and submit any other
159 information the board of managers requires for the prompt and
160 efficient discharge of its duties;

161 (7) Keep accurate and complete accounts and records
162 necessary to the collection, administration and distribution of
163 the workers' compensation funds;

164 (8) Sign and execute in the name of the state, by "The
165 Workers' Compensation Commission", any contract or agree-
166 ment;

167 (9) Make recommendations and an annual report to the
168 governor concerning the condition, operation and functioning
169 of the commission;

170 (10) Invoke any legal or special remedy for the enforcement
171 of orders or the provisions of this chapter;

172 (11) Prepare and submit for approval to the board of
173 managers a budget for each fiscal year, including estimates of
174 the costs and necessary expenditures of the commission in the
175 discharge of all duties imposed by this chapter as well as the
176 costs of furnishing office space to the officers and employees
177 of the commission;

178 (12) Ensure that all employees of the commission follow
179 the orders, operating guidelines and policies of the commission
180 as they relate to the commission's overall policymaking,
181 management and adjudicatory duties under this chapter;

182 (13) Delegate all powers and duties vested in the executive
183 director to his or her appointees and employees; but the
184 executive director is responsible for their acts;

185 (14) Provide at commission expense a program of continu-
186 ing professional, technical and specialized instruction for the
187 personnel of the commission. The executive director shall
188 consult with and report at least annually to the legislative
189 oversight commission on workforce investment for economic
190 development to obtain the most appropriate training using all
191 available resources;

192 (15) (A) Contract or employ counsel to perform all legal
193 services for the commission including, but not limited to,
194 representing the executive director, board of managers and
195 commission in any administrative proceeding and in any state
196 or federal court. Additionally, the commission may, but shall
197 not be required to, call upon the attorney general for legal
198 assistance and representation as provided by law. The attorney
199 general shall not approve or exercise authority over in-house
200 counsel or contract counsel hired pursuant to this section;

201 (B) In addition to the authority granted by this section to the
202 executive director and notwithstanding any provision to the
203 contrary elsewhere in this code, use any attorney regularly
204 employed by the commission or the office of the attorney
205 general to represent the commission, the executive director or
206 the board of managers in any matter arising from the perfor-
207 mance of its duties or the execution of its powers under this
208 chapter. In addition, the executive director, with the approval
209 of the board of managers, may retain counsel for any purpose
210 in the administration of this chapter relating to the collection of
211 any amounts due from employers to the commission: *Provided*,
212 That the allocation of resources for the purpose of any collec-
213 tions shall be pursuant to the plan developed by the board of
214 managers. The board of managers shall solicit proposals from

215 counsel who are interested in representing the commission
216 under the terms of this subdivision. Thereafter, the board of
217 managers shall select any attorneys it determines necessary to
218 pursue the collection objectives of this subdivision:

219 (i) Payment to retained counsel may either be hourly or by
220 other fixed fee, or as determined by the court or administrative
221 law judge as provided in this section. A contingency fee
222 payable from the amount recovered by judgment or settlement
223 for the commission is only permitted, to the extent not prohib-
224 ited by federal law, when the assets of a defendant or respon-
225 dent are depleted so that a full recovery plus attorneys' fees is
226 not possible;

227 (ii) In the event that any collections action, other than a
228 collections action against a claimant, initiated either by retained
229 counsel or other counsel on behalf of the commission results in
230 a judgment or settlement in favor of the commission, the court
231 or, if there was no judicial component to the action, the
232 administrative law judge, shall determine the amount of
233 attorneys' fees that shall be paid by the defendants or respon-
234 dents to the retained or other counsel representing the commis-
235 sion. If the court is to determine the amount of attorneys' fees,
236 it shall include in its determination the amount of fee that
237 should be paid for the representation of the commission in
238 pursuing the administrative component, if any, of the action.
239 The amount so paid shall be fixed by the court or the adminis-
240 trative law judge in an amount no less than twenty percent of its
241 recovery. Any additional amount of attorneys' fees shall be
242 determined by use of the following factors:

243 (I) The counsel's normal hourly rate or, if the counsel is an
244 employee of the commission or is an employee of the office of
245 the attorney general, an hourly rate the court or the administra-
246 tive law judge determines to be customary based upon the
247 attorney's experience and skill level;

248 (II) The number of hours actually expended on the action;

249 (III) The complexity of the issues involved in the action;

250 (IV) The degree of risk involved in the case with regard to
251 the probability of success or failure;

252 (V) The overhead costs incurred by counsel with regard to
253 the use of paralegals and other office staff, experts and investi-
254 gators; and

255 (VI) The public purpose served or public objective achieved
256 by the attorney in obtaining the judgment or settlement on
257 behalf of the commission;

258 (iii) Notwithstanding the provisions of paragraph (B) of this
259 subdivision, if the commission and the defendants or respon-
260 dents to any administrative or judicial action settle the action,
261 the parties may negotiate a separate settlement of attorneys'
262 fees to be paid by the defendants or respondents above and
263 beyond the amount recovered by the commission. In the event
264 that a settlement of attorneys' fees is made, it must be submit-
265 ted to the court or administrative law judge for approval;

266 (iv) Any attorney regularly employed by the commission or
267 by the office of the attorney general may not receive any
268 remuneration for his or her services other than the attorney's
269 regular salary. Any attorneys' fees awarded for an employed
270 attorney are payable to the commission;

271 (16) Propose rules for promulgation by the board of
272 managers under which agencies of this state shall revoke or
273 refuse to grant, issue or renew any contract, license, permit,
274 certificate or other authority to conduct a trade, profession or
275 business to or with any employing unit whose account is in
276 default with the commission with regard to the administration
277 of this chapter. The term "agency" includes any unit of state

278 government such as officers, agencies, divisions, departments,
279 boards, commissions, authorities or public corporations. An
280 employing unit is not in default if it has entered into a repay-
281 ment agreement with the commission and remains in compli-
282 ance with its obligations under the repayment agreements;

283 (A) The rules shall provide that, before granting, issuing or
284 renewing any contract, license, permit, certificate or other
285 authority to conduct a trade, profession or business to or with
286 any employing unit, the designated agencies shall review a list
287 or lists provided by the commission of employers that are in
288 default. If the employing unit's name is not on the list, the
289 agency, unless it has actual knowledge that the employing unit
290 is in default with the commission, may grant, issue or renew the
291 contract, license, permit, certificate or other authority to
292 conduct a trade, profession or business. The list may be
293 provided to the agency in the form of a computerized database
294 or databases that the agency can access. Any objections to the
295 refusal to issue or renew shall be reviewed under the appropri-
296 ate provisions of this chapter. The prohibition against granting,
297 issuing or renewing any contract, license, permit, certificate or
298 other authority under this subdivision shall remain in full force
299 and effect as promulgated under section six, article two, chapter
300 twenty-one-a of this code until the rules required by this
301 subsection are promulgated and in effect;

302 (B) The rules shall also provide a procedure allowing any
303 agency or interested person, after being covered under the rules
304 for at least one year, to petition the commission to be exempt
305 from the provisions of the rules;

306 (17) Deposit to the credit of the appropriate special revenue
307 account or fund, notwithstanding any other provision of this
308 code and to the extent allowed by federal law, all amounts of
309 delinquent payments or overpayments, interest and penalties
310 thereon and attorneys' fees and costs collected under the

311 provisions of this chapter. The amounts collected shall not be
312 treated by the auditor or treasurer as part of the general revenue
313 of the state;

314 (18) Recommend for approval of the board of managers
315 rules for the administration of claims management by self-
316 insured employers and third-party administrators including
317 regulation and sanctions for the rejection of claims and for
318 maintaining claim records and ensuring access to all claim
319 records by interested claimants, claimant representatives, the
320 commission and the office of judges;

321 (19) Recommend for approval of the board of managers,
322 rules to eliminate the ability of an employer to avoid an
323 experience modification factor by virtue of a reorganization of
324 a business;

325 (20) Submit for approval of the board of managers rules
326 setting forth procedures for auditing and investigating employ-
327 ers, including employer premium audits and including auditing
328 and investigating programs of self-insured employers and third-
329 party administrators, employees, health care providers and
330 medical and vocational rehabilitation service providers;

331 (21) Regularly audit and monitor programs established by
332 self-insured or third-party administrators under this chapter to
333 ensure compliance with the commission's rules and the law;

334 (22) Facilitate the transfer of the fraud investigation and
335 prosecution unit, along with the assets necessary to support the
336 functions being performed, to the insurance commissioner.
337 This transfer shall be to be completed by the first day of July,
338 two thousand five. This unit has the responsibility and author-
339 ity for investigating and controlling fraud of the workers'
340 compensation system of the state of West Virginia. The fraud
341 unit shall be under the supervision of an inspector general, who
342 shall be appointed by the insurance commissioner. Nothing in

343 this section shall preclude the commission or, when applicable,
344 the company created in article two-c of this chapter and other
345 private carriers, from independently investigating and control-
346 ling abuse and exercising the powers granted to the commission
347 to address and eliminate abuse under this chapter. The execu-
348 tive director may select persons that are assigned to the fraud
349 and abuse unit on the effective date of the enactment of this
350 section to be assigned and remain employees of the workers'
351 compensation commission. The commission shall determine its
352 fiscal year two thousand six budget for the fraud investigation
353 and prosecution unit and shall make advanced quarterly
354 payments to the insurance commissioner during fiscal year two
355 thousand six for the actual operational expenses incurred as a
356 direct result of this transfer: *Provided*, That the payments and
357 expenses shall be reconciled prior to the final fiscal year
358 transfer and any unexpended amount shall be deducted from the
359 final quarter's payment. This reimbursement methodology
360 shall repeat for fiscal year two thousand seven. Any amounts
361 transferred under this section to the insurance commissioner
362 shall be appropriated by the Legislature. The commission's
363 inspector general shall serve as the initial inspector general for
364 the insurance commissioner;

365 (A) The inspector general shall, with the consent and advice
366 of the executive director, employ all personnel as necessary for
367 the institution, development and finalization of procedures and
368 investigations which serve to ensure that only necessary and
369 proper workers' compensation benefits and expenses are paid
370 to or on behalf of injured employees and to insure employers
371 subscribe to and pay the proper premium to the West Virginia
372 workers' compensation commission. Qualification, compensa-
373 tion and personnel practice relating to the employees of the
374 fraud and abuse unit, including that of the position of inspector
375 general, shall be governed by the provisions of the statutes and
376 rules of the classified service pursuant to article six, chapter
377 twenty-nine of this code. The inspector general shall supervise

378 all personnel, which collectively shall be referred to in this
379 chapter as the fraud and abuse unit;

380 (B) The fraud and abuse unit shall have the following
381 powers and duties:

382 (i) The fraud and abuse unit shall propose for promulgation
383 by the board of managers rules for determining the existence of
384 fraud and abuse as it relates to the workers' compensation
385 system in West Virginia;

386 (ii) The fraud and abuse unit will be responsible for the
387 initiation, development, review and proposal for promulgation
388 by the board of managers of rules regarding the existence of
389 fraud and abuse as it relates to the workers' compensation
390 system in West Virginia;

391 (iii) The fraud and abuse unit will take action to identify
392 and prevent and discourage any and all fraud and abuse;

393 (iv) The fraud and abuse unit, in cases of criminal fraud,
394 has the authority to review and prosecute those cases for
395 violations of sections twenty-four-e, twenty-four-f, twenty-four-
396 g and twenty-four-h, article three, chapter sixty-one of this
397 code, as well as any other criminal statutes that may be applica-
398 ble. In addition the fraud and abuse unit not only has the
399 authority to prosecute and refer cases involving criminal fraud
400 to appropriate state authorities for prosecution, but it also has
401 the authority, and is encouraged, to cooperate with the appropri-
402 ate federal authorities for review and possible prosecution, by
403 either state or federal agencies, of cases involving criminal
404 fraud concerning the workers' compensation system in West
405 Virginia;

406 (v) The fraud and abuse unit, in cases which do not meet
407 the definition of criminal fraud, but would meet a reasonable
408 person's definition of an abuse of the workers' compensation

409 system, shall take the appropriate action to discourage and
410 prevent such abuse. Furthermore, the fraud and abuse unit shall
411 assist the commission to develop evidence of fraud or abuse
412 which can be used pursuant to the provisions of this chapter to
413 suspend, and where appropriate, terminate, a claimant's
414 benefits. In addition, evidence developed pursuant to these
415 provisions can be used in hearings before the office of judges
416 on protests to commission decisions terminating, or not
417 terminating, temporary total disability benefits; and

418 (vi) The fraud and abuse unit, is expressly authorized to
419 initiate investigations and participate in the development of, and
420 if necessary, the prosecution of any health care provider,
421 including a provider of rehabilitation services, alleged to have
422 violated the provisions of section three-c, article four of this
423 chapter;

424 (C) Specific personnel, designated by the inspector general,
425 shall be permitted to operate vehicles owned or leased for the
426 state displaying Class A registration plates;

427 (D) Notwithstanding any provision of this code to the
428 contrary, specific personnel designated by the inspector general
429 may carry handguns in the course of their official duties after
430 meeting specialized qualifications established by the governor's
431 committee on crime, delinquency and correction, which
432 qualifications shall include the successful completion of
433 handgun training provided to law-enforcement officers by the
434 West Virginia state police: *Provided*, That nothing in this
435 subsection shall be construed to include the personnel so
436 designated by the inspector general to carry handguns within
437 the meaning of the term law-enforcement official as defined in
438 section one, article twenty-nine, chapter thirty of this code;

439 (E) The fraud and abuse unit is not subject to any require-
440 ment of article nine-a, chapter six of this code and the investi-

441 gations conducted by the fraud and abuse unit and the materials
442 placed in the files of the unit as a result of any such investiga-
443 tion are exempt from public disclosure under the provisions of
444 chapter twenty-nine-b of this code;

445 (F) In the event that a final judicial decision adjudges that
446 the statewide prosecutorial powers vested by this subdivision in
447 the fraud and abuse unit may only be exercised by a public
448 official other than an employee of the fraud and abuse unit, then
449 to that extent the provisions of this subdivision vesting state-
450 wide prosecutorial power shall thenceforth be of no force and
451 effect, the remaining provisions of this subdivision shall
452 continue in full force and effect and prosecutions hereunder
453 may only be exercised by the prosecuting attorneys of this state
454 and their assistants or special assistant prosecuting attorneys
455 appointed as provided by law;

456 (23) Enter into interagency agreements to assist in exchange-
457 ing information and fulfilling the default provisions of this
458 chapter;

459 (24) Notwithstanding any provision of this code to the
460 contrary, the executive director, under emergency authorization:

461 (A) May expend up to fifty thousand dollars for purchases
462 of and may contract for goods and services without securing
463 competitive bids. This emergency spending authority expires
464 on the first day of July, two thousand five; and

465 (B) May expend such sums as the executive director
466 determines are necessary for professional services, contracts for
467 the purchase of an automated claims administration system and
468 associated computer hardware and software in the administra-
469 tion of claims for benefits made under provisions of this chapter
470 and contracts for technical services and related services
471 necessary to develop, implement and maintain the system and
472 associated computer hardware and software. The provisions of

473 article three, chapter five-a of this code relating to the purchas-
474 ing division of the department administration shall not apply to
475 these contracts. The director shall award the contract or
476 contracts on a competitive basis. This emergency spending
477 authority expires on the thirty-first day of December, two
478 thousand six;

479 (25) Establish an employer violator system to identify
480 individuals and employers who are in default or are delinquent
481 on any premium, assessment, surcharge, tax or penalty owed to
482 the commission. The employer violator system shall prohibit
483 violators who own, control or have a ten percent or more
484 ownership interest, or other ownership interest as may be
485 defined by the commission, in any company from obtaining or
486 maintaining any license, certificate or permit issued by the state
487 until the violator has paid all moneys owed to the commission
488 or has entered into and remains in compliance with a repayment
489 agreement;

490 (26) Propose the designation of health care providers to
491 make decisions for the commission regarding appropriateness
492 of medical services;

493 (27) Study the correlation between premium tax merit
494 rating for employers and the safety performance of employers.
495 This study shall be completed prior to the first day of July, two
496 thousand four, and the results thereof provided to the board of
497 managers;

498 (28) Upon termination of the commission, accomplish the
499 transfer to the insurance commissioner established in article
500 two-c of this chapter, the insurance commissioner, and any
501 other applicable state agency or department, of the functions
502 necessary for the regulation of the workers' compensation
503 insurance industry, including, but not limited to, the following
504 commission functions: rate-making, self-insurance, office of

505 judges and board of review. The executive director may select
506 persons that are assigned to these functions on the effective date
507 of the enactment of this section to be assigned and become
508 employees of the company as established in article two-c of this
509 chapter. The executive director may, in consultation with the
510 insurance commissioner, select persons that are assigned to the
511 insurance commissioner. The commission shall determine its
512 fiscal year two thousand six budget for each of these functions,
513 reduce the budget amount attributable to self-insured employers
514 for these functions and shall make advanced quarterly payments
515 to the insurance commissioner during fiscal year two thousand
516 six for the actual operational expenses incurred as a direct result
517 of this transfer. The amount shall include the funds necessary
518 to operate the industrial council and the insurance commis-
519 sioner shall be administratively responsible for the industrial
520 council's budget: *Provided*, That the payments and expenses
521 shall be reconciled prior to the final fiscal year transfer and any
522 unexpended amount shall be deducted from the final quarter's
523 payment. This reimbursement methodology shall repeat for
524 fiscal year two thousand and seven. Any amounts transferred
525 under this section to the insurance commissioner shall be
526 appropriated by the Legislature. For the final calendar quarter
527 of two thousand five and the first and second calendar quarters
528 of the year two thousand six, all self-insured employers shall
529 remit to the insurance commissioner on a quarterly basis the
530 administrative component of their fiscal year two thousand six
531 rate. For the fiscal year beginning the first day of July, two
532 thousand six, self-insured employers shall remit an administra-
533 tive charge to the insurance commissioner in an amount
534 determined by the commissioner. All self-insured employer
535 advance deposits shall transfer from the commission to the
536 insurance commissioner upon termination of the commission;
537 and

538 (29) Perform all duties set forth in article two-c of this
539 chapter.

§23-1-1c. Payment withholding; interception; penalty.

1 (a) All state, county, district and municipal officers and
2 agents making contracts on behalf of the state of West Virginia
3 or any political subdivision thereof shall withhold payment in
4 the final settlement of contracts until the receipt of a certificate
5 from the commission or the company created in article two-c of
6 this chapter to the effect that all payments, interest and penalties
7 thereon accrued against the contractor under this chapter as of
8 the termination of the commission have been paid or that
9 provisions satisfactory to the commission or company created
10 in article two-c of this chapter have been made for payment.
11 Any official violating this subsection is guilty of a misde-
12 meanor and, on conviction thereof, shall be fined not more than
13 one thousand dollars or confined in the county or regional jail
14 for not more than one year, or both fined and confined.

15 (b) Any agency of the state, for the limited purpose of
16 intercepting, pursuant to section five-a, article two of this
17 chapter, any payment by or through the state to an employer
18 who is in default in payment of contributions, premiums,
19 deposits, interest or penalties under the provisions of this
20 chapter, shall assist the commission or company created in
21 article two-c of this chapter in collecting the payment that is
22 due under subsection (a) of this section. For this purpose,
23 disclosure of joint delinquency and default lists of employers
24 with respect to unemployment compensation as provided in
25 section six-c, article one, chapter twenty-one-a of this code and
26 workers' compensation contributions, premiums, interest,
27 deposits or penalties is authorized. The commission and the
28 bureau of employment programs may enter into an interagency
29 agreement to effect the provisions of this section. The lists may
30 be in the form of a computerized database to be accessed by the
31 auditor, the department of tax and revenue, the department of
32 administration, the division of highways or other appropriate
33 state agency or officer.

§23-1-1e. Transfer of assets and contracts; ability to acquire, own, lease and otherwise manage property.

1 (a) With the establishment of the workers' compensation
2 commission, all assets and contracts, along with rights and
3 obligations thereunder, obtained or signed on behalf of the
4 workers' compensation division of the bureau of employment
5 programs in furtherance of the purposes of this chapter, are
6 hereby transferred and assigned to the workers' compensation
7 commission.

8 (b) From the termination of the commission through the
9 thirtieth day of June, two thousand eight, the company may
10 continue to contract and exchange data and information with
11 the office of information, services and communication, the
12 bureau of employment programs, the division of motor vehi-
13 cles, various child support enforcement agencies and other
14 similar state agencies and entities in a manner similar to the
15 commission to accomplish the intent of this chapter.

§23-1-1g. Legislative intent to create a quasi-public entity.

1 In recognition of the impact a state's workers' compensa-
2 tion premium levels may have on the state's ability to conduct
3 economic development and the resulting need to operate the
4 state's workers' compensation system in such a manner that
5 will enable the lowest premiums to be charged employers while
6 at the same time ensuring adequate benefit levels are provided
7 to injured workers, it is the intent of the Legislature that the
8 workers' compensation commission remain a commission of
9 the state as provided in article two, chapter five-f of this code
10 until the company created in article two-c of this chapter is
11 created and operational and the New Fund created in article
12 two-c of this chapter has been funded. Until the termination of
13 the commission and in order for the commission to be able to
14 capture the efficiencies associated with private sector opera-
15 tions, the workers' compensation commission is exempt from

16 the provisions of the following effective upon the date upon
17 which this enactment is made effective by the Legislature:

18 (a) Article three, chapter five-a, related to the department
19 of administration purchasing division; and

20 (b) Section eleven, article three, chapter twelve, relating to
21 appropriations, expenditures and deductions.

§23-1-11. Depositions; investigations.

1 (a) In an investigation into any matter arising under articles
2 one through five, inclusive, of this chapter, the commission may
3 cause depositions of witnesses residing within or without the
4 state to be taken in the manner prescribed by law for like
5 depositions in the circuit court, but the depositions shall be
6 upon reasonable notice to claimant and employer or other
7 affected persons or their respective attorneys. The commission
8 shall designate the person to represent it for the taking of the
9 deposition.

10 (b) The commission also has discretion to accept and
11 consider depositions taken within or without the state by either
12 the claimant or employer or other affected person, provided due
13 and reasonable notice of the taking of the depositions was given
14 to the other parties or their attorneys, if any: *Provided*, That the
15 commission, upon due notice to the parties, has authority to
16 refuse or permit the taking of depositions or to reject the
17 depositions after they are taken, if they were taken at a place or
18 under circumstances which imposed an undue burden or
19 hardship upon the other parties. The commission's discretion
20 to accept, refuse to approve or reject the depositions is binding
21 in the absence of abuse of the discretion.

22 (c) The powers and duties set forth in the section shall be
23 transferred from the workers' compensation commission to the
24 insurance commissioner upon termination of the commission.

§23-1-13. Rules of procedure and evidence; persons authorized to appear in proceedings; withholding of psychiatric and psychological reports and providing summaries thereof.

1 (a) The workers' compensation commission shall adopt
2 reasonable and proper rules of procedure, regulate and provide
3 for the kind and character of notices, and the service of the
4 notices, in cases of accident and injury to employees, the nature
5 and extent of the proofs and evidence, the method of taking and
6 furnishing of evidence to establish the rights to benefits or
7 compensation from the fund hereinafter provided for, or
8 directly from employers as hereinafter provided, as the case
9 may require, and the method of making investigations, physical
10 examinations and inspections and prescribe the time within
11 which adjudications and awards shall be made.

12 (b) At hearings and other proceedings before the commis-
13 sion or before the duly authorized representative of the commis-
14 sion, an employer who is a natural person may appear, and a
15 claimant may appear, only as follows:

16 (1) By an attorney duly licensed and admitted to the
17 practice of law in this state;

18 (2) By a nonresident attorney duly licensed and admitted to
19 practice before a court of record of general jurisdiction in
20 another state or country or in the District of Columbia who has
21 complied with the provisions of rule 8.0 - admission pro hac
22 vice, West Virginia supreme court rules for admission to the
23 practice of law, as amended;

24 (3) By a representative from a labor organization who has
25 been recognized by the commission as being qualified to
26 represent a claimant or who is an individual otherwise found to
27 be qualified by the commission to act as a representative. The
28 representative shall participate in the presentation of facts,

29 figures and factual conclusions as distinguished from the
30 presentation of legal conclusions in respect to the facts and
31 figures; or

32 (4) Pro se.

33 (c) At hearings and other proceedings before the commis-
34 sion or before the duly authorized representative of the commis-
35 sion, an employer who is not a natural person may appear only
36 as follows:

37 (1) By an attorney duly licensed and admitted to the
38 practice of law in this state;

39 (2) By a nonresident attorney duly licensed and admitted to
40 practice before a court of record of general jurisdiction in
41 another state or country or in the District of Columbia who has
42 complied with the provisions of rule 8.0 - admission pro hac
43 vice, West Virginia supreme court rules for admission to the
44 practice of law, as amended;

45 (3) By a member of the board of directors of a corporation
46 or by an officer of the corporation for purposes of representing
47 the interest of the corporation in the presentation of facts,
48 figures and factual conclusions as distinguished from the
49 presentation of legal conclusions in respect to the facts and
50 figures; or

51 (4) By a representative from an employer service company
52 who has been recognized by the commission as being qualified
53 to represent an employer or who is an individual otherwise
54 found to be qualified by the commission to act as a representa-
55 tive. The representative shall participate in the presentation of
56 facts, figures and factual conclusions as distinguished from the
57 presentation of legal conclusions in respect to the facts and
58 figures.

59 (d) The commission or its representative may require an
60 individual appearing on behalf of a natural person or corpora-
61 tion to produce satisfactory evidence that he or she is properly
62 qualified and authorized to appear pursuant to this section.

63 (e) Subsections (b), (c) and (d) of this section shall not be
64 construed as being applicable to proceedings before the office
65 of judges pursuant to the provisions of article five of this
66 chapter.

67 (f) At the direction of a treating or evaluating psychiatrist
68 or clinical doctoral-level psychologist, a psychiatric or psycho-
69 logical report concerning a claimant who is receiving treatment
70 or is being evaluated for psychiatric or psychological problems
71 may be withheld from the claimant. In that event, a summary
72 of the report shall be compiled by the reporting psychiatrist or
73 clinical doctoral-level psychologist. The summary shall be
74 provided to the claimant upon his or her request. Any represen-
75 tative or attorney of the claimant must agree to provide the
76 claimant with only the summary before the full report is
77 provided to the representative or attorney for his or her use in
78 preparing the claimant's case. The report shall only be with-
79 held from the claimant in those instances where the treating or
80 evaluating psychiatrist or clinical doctoral-level psychologist
81 certifies that exposure to the contents of the full report is likely
82 to cause serious harm to the claimant or is likely to cause the
83 claimant to pose a serious threat of harm to a third party.

84 (g) In any matter arising under articles one through five,
85 inclusive, of this chapter in which the commission is required
86 to give notice to a party, if a party is represented by an attorney
87 or other representative, then notice to the attorney or other
88 representative is sufficient notice to the party represented.

89 (h) The powers and duties set forth in the section shall be
90 transferred from the workers' compensation commission to the
91 insurance commissioner upon termination of the commission.

§23-1-14. Forms.

1 The commission shall prepare and furnish free of cost
2 forms (and provide in his or her rules for their distribution so
3 that they may be readily available) of applications for benefits
4 for compensation from the workers' compensation fund, or
5 directly from employers, as the case may be, notices to employ-
6 ers, proofs of injury or death, of medical attendance, of employ-
7 ment and wage earnings and any other forms considered proper
8 and advisable. It is the duty of employers to constantly keep on
9 hand a sufficient supply of the forms. The powers and duties
10 set forth in the section shall be transferred from the workers'
11 compensation commission to the insurance commissioner as of
12 the termination of the commission.

§23-1-15. Procedure before commission.

1 The commission, and the insurance commissioner effective
2 upon termination of the commission, are not bound by the usual
3 common-law or statutory rules of evidence, but shall adopt
4 formal rules of practice and procedure as herein provided, and
5 may make investigations in a manner that in his or her judg-
6 ment is best calculated to ascertain the substantial rights of the
7 parties and to carry out the provisions of this chapter.

§23-1-17. Annual report by the insurance commissioner and occupational pneumoconiosis board.

1 Annually, on or about the fifteenth day of September in
2 each year, the insurance commissioner and the occupational
3 pneumoconiosis board shall make a report as of the thirtieth day
4 of June addressed to the governor, which shall include a
5 statement of the causes of the injuries for which the awards
6 were made, an explanation of the diagnostic techniques used by
7 the occupational pneumoconiosis board and all examining
8 physicians to determine the presence of disease, the extent of
9 impairment attributable thereto, a description of the scientific

10 support for the diagnostic techniques and a summary of public
11 and private research relating to problems and prevention of
12 occupational diseases. The report shall include a detailed
13 statement of all disbursements, and the condition of the fund,
14 together with any specific recommendations for improvements
15 in the workers' compensation law and for more efficient and
16 responsive administration of the workers' compensation law,
17 which the executive director considers appropriate. Copies of
18 all annual reports shall be filed with the secretary of state and
19 shall be made available to the Legislature and to the public at
20 large.

§23-1-19. Civil remedies.

1 (a) Any person, firm, corporation or other entity which
2 willfully, by means of false statement or representation, or by
3 concealment of any material fact, or by other fraudulent
4 scheme, device or artifice on behalf of himself, itself or others,
5 obtains or attempts to obtain benefits, payments, allowances or
6 reduced premium costs or other charges, including workers'
7 compensation coverage under the programs of the workers'
8 compensation commission, the company, a private carrier or
9 self-insured employer, to which he or it is not entitled, or in a
10 greater amount than that to which he or it is entitled, shall be
11 liable to the workers' compensation commission, the company,
12 the private carrier or self-insured employer, in an amount equal
13 to three times the amount of such benefits, payments or
14 allowances to which he or it is not entitled and shall be liable
15 for the payment of reasonable attorney fees and all other fees
16 and costs of litigation.

17 (b) No criminal action or indictment need be brought
18 against any person, firm, corporation or other entity as a
19 condition for establishing civil liability hereunder.

20 (c) A civil action under this section may be prosecuted and
21 maintained on behalf of the workers' compensation commis-

22 sion, the insurance commissioner, the company, a private
23 carrier or self-insured employer by any attorney in contract with
24 or employed by the workers' compensation commission, the
25 insurance commissioner, the company, a private carrier or self-
26 insured employer to provide such representation.

27 (d) Venue for a civil action under this section shall be either
28 in the county in which the defendant resides or in Kanawha
29 County as selected by the commission or insurance commis-
30 sioner. Upon creation of the company pursuant to article two-c
31 of this chapter, venue for a civil action under this section for the
32 company, private carriers and self-insured employers shall be
33 either in the county in which the defendant resides or the county
34 in which the injured worker was employed, as selected by the
35 company, the private carrier or self-insured employer.

36 (e) The remedies and penalties provided in this section are
37 in addition to those remedies and penalties provided elsewhere
38 by law.

ARTICLE 2. EMPLOYERS AND EMPLOYEES SUBJECT TO CHAPTER; EXTRATERRITORIAL COVERAGE.

- §23-2-1. Employers subject to chapter; elections not to provide certain coverages; notices; filing of business registration certificates.
- §23-2-1d. Primary contractor liability; definitions; applications and exceptions; certificates of good standing; reimbursement and indemnification; termination of contracts; effective date; collections efforts.
- §23-2-2. Commission to be furnished information by employers, state tax commissioner and division of unemployment compensation; secrecy of information; examination of employers, etc.; violation a misdemeanor.
- §23-2-3. Report forms and other forms for use of employers.
- §23-2-4. Classification of industries; rate of premiums; authority to adopt various systems; accounts.
- §23-2-5. Application; payment of premium taxes; gross wages; payroll report; deposits; delinquency; default; reinstatement; payment of benefits; notice to employees; criminal provisions; penalties.
- §23-2-5a. Collection of premiums from defaulting employers; interest and penalties; civil remedies; creation and enforcement of lien against employer and purchaser; duty of secretary of state to register liens; distraint powers;

insolvency proceedings; secretary of state to withhold certificates of dissolution; injunctive relief; bond; attorney fees and costs.

§23-2-9. Election of employer or employers' group to be self-insured and to provide own system of compensation; exceptions; catastrophe coverage; self administration; rules; penalties; regulation of self-insurers.

§23-2-1. Employers subject to chapter; elections not to provide certain coverages; notices; filing of business registration certificates.

1 (a) The state of West Virginia and all governmental
2 agencies or departments created by it, including county boards
3 of education, political subdivisions of the state, any volunteer
4 fire department or company and other emergency service
5 organizations as defined by article five, chapter fifteen of this
6 code, and all persons, firms, associations and corporations
7 regularly employing another person or persons for the purpose
8 of carrying on any form of industry, service or business in this
9 state, are employers within the meaning of this chapter and are
10 required to subscribe to and pay premium taxes into the
11 workers' compensation fund for the protection of their employ-
12 ees and are subject to all requirements of this chapter and all
13 rules prescribed by the workers' compensation commission
14 with reference to rate, classification and premium payment:
15 *Provided*, That rates will be adjusted by the commission to
16 reflect the demand on the compensation fund by the covered
17 employer.

18 (b) The following employers are not required to subscribe
19 to the fund, but may elect to do so:

20 (1) Employers of employees in domestic services;

21 (2) Employers of five or fewer full-time employees in
22 agricultural service;

23 (3) Employers of employees while the employees are
24 employed without the state except in cases of temporary
25 employment without the state;

26 (4) Casual employers. An employer is a casual employer
27 when the number of his or her employees does not exceed three
28 and the period of employment is temporary, intermittent and
29 sporadic in nature and does not exceed ten calendar days in any
30 calendar quarter;

31 (5) Churches;

32 (6) Employers engaged in organized professional sports
33 activities, including employers of trainers and jockeys engaged
34 in thoroughbred horse racing; or

35 (7) Any volunteer rescue squad or volunteer police auxil-
36 iary unit organized under the auspices of a county commission,
37 municipality or other government entity or political subdivi-
38 sion; volunteer organizations created or sponsored by govern-
39 ment entities, political subdivisions; or area or regional emer-
40 gency medical services boards of directors in furtherance of the
41 purposes of the emergency medical services act of article four-
42 c, chapter sixteen of this code: *Provided*, That if any of the
43 employers described in this subdivision have paid employees,
44 to the extent of those paid employees, the employer shall
45 subscribe to and pay premium taxes into the workers' compen-
46 sation fund based upon the gross wages of the paid employees
47 but with regard to the volunteers, the coverage remains op-
48 tional.

49 (8) Any employer whose employees are eligible to receive
50 benefits under the federal Longshore and Harbor Workers'
51 Compensation Act, 33 U. S. C. §901, *et seq.*, but only for those
52 employees eligible for those benefits.

53 (c) Notwithstanding any other provision of this chapter to
54 the contrary, whenever there are churches in a circuit which
55 employ one individual clergyman and the payments to the
56 clergyman from the churches constitute his or her full salary,
57 such circuit or group of churches may elect to be considered a
58 single employer for the purpose of premium payment into the
59 workers' compensation fund.

60 (d) Employers who are not required to subscribe to the
61 workers' compensation fund may voluntarily choose to sub-
62 scribe to and pay premiums into the fund for the protection of
63 their employees and in that case are subject to all requirements
64 of this chapter and all rules and regulations prescribed by the
65 commission with reference to rates, classifications and pre-
66 mium payments and shall afford to them the protection of this
67 chapter, including section six of this article, but the failure of
68 the employers to choose to subscribe to and to pay premiums
69 into the fund shall not impose any liability upon them other
70 than any liability that would exist notwithstanding the provi-
71 sions of this chapter.

72 (e) Any foreign corporation employer whose employment
73 in this state is to be for a definite or limited period which could
74 not be considered "regularly employing" within the meaning of
75 this section may choose to pay into the workers' compensation
76 fund the premiums provided for in this section, and at the time
77 of making application to the workers' compensation commis-
78 sion, the employer shall furnish a statement under oath showing
79 the probable length of time the employment will continue in
80 this state, the character of the work, an estimate of the monthly
81 payroll and any other information which may be required by the
82 commission. At the time of making application the employer
83 shall deposit with the commission to the credit of the workers'
84 compensation fund the amount required by section five of this
85 article. That amount shall be returned to the employer if the
86 employer's application is rejected by the commission. Upon

87 notice to the employer of the acceptance of his or her applica-
88 tion by the commission, he or she is an employer within the
89 meaning of this chapter and subject to all of its provisions.

90 (f) Any foreign corporation employer choosing to comply
91 with the provisions of this chapter and to receive the benefits
92 under this chapter shall, at the time of making application to the
93 commission in addition to other requirements of this chapter,
94 furnish the commission with a certificate from the secretary of
95 state, where the certificate is necessary, showing that it has
96 complied with all the requirements necessary to enable it
97 legally to do business in this state and no application of a
98 foreign corporation employer shall be accepted by the commis-
99 sion until the certificate is filed.

100 (g) The following employers may elect not to provide
101 coverage to certain of their employees under the provisions of
102 this chapter:

103 (1) Any political subdivision of the state including county
104 commissions and municipalities, boards of education, or
105 emergency services organizations organized under the auspices
106 of a county commission may elect not to provide coverage to
107 any elected official. The election not to provide coverage does
108 not apply to individuals in appointed positions or to any other
109 employees of the political subdivision;

110 (2) If an employer is a partnership, sole proprietorship,
111 association or corporation, the employer may elect not to
112 include as an "employee" within this chapter, any member of
113 the partnership, the owner of the sole proprietorship or any
114 corporate officer or member of the board of directors of the
115 association or corporation. The officers of a corporation or an
116 association shall consist of a president, a vice president, a
117 secretary and a treasurer, each of whom is elected by the board
118 of directors at the time and in the manner prescribed by the

119 bylaws. Other officers and assistant officers that are considered
120 necessary may be elected or appointed by the board of directors
121 or chosen in any other manner prescribed by the bylaws and, if
122 elected, appointed or chosen, the employer may elect not to
123 include the officer or assistant officer as an "employee" within
124 the meaning of this chapter: *Provided*, That except for those
125 persons who are members of the board of directors or who are
126 the corporation's or association's president, vice president,
127 secretary and treasurer and who may be excluded by reason of
128 their positions from the benefits of this chapter even though
129 their duties, responsibilities, activities or actions may have a
130 dual capacity of work which is ordinarily performed by an
131 officer and also of work which is ordinarily performed by a
132 worker, an administrator or an employee who is not an officer,
133 no other officer or assistant officer who is elected or appointed
134 shall be excluded by election from coverage or be denied the
135 benefits of this chapter merely because he or she is an officer or
136 assistant officer if, as a matter of fact:

137 (A) He or she is engaged in a dual capacity of having the
138 duties and responsibilities for work ordinarily performed by an
139 officer and also having duties and work ordinarily performed by
140 a worker, administrator or employee who is not an officer;

141 (B) He or she is engaged ordinarily in performing the duties
142 of a worker, an administrator or an employee who is not an
143 officer and receives pay for performing the duties in the
144 capacity of an employee; or

145 (C) He or she is engaged in an employment palpably
146 separate and distinct from his or her official duties as an officer
147 of the association or corporation;

148 (3) If an employer is a limited liability company, the
149 employer may elect not to include as an "employee" within this
150 chapter a total of no more than four persons, each of whom are

151 acting in the capacity of manager, officer or member of the
152 company.

153 (h) In the event of election under subsection (g) of this
154 section, the employer shall serve upon the commission written
155 notice naming the positions not to be covered and shall not
156 include the "employee's" remuneration for premium purposes
157 in all future payroll reports, and the partner, proprietor or
158 corporate or executive officer is not considered an employee
159 within the meaning of this chapter after the notice has been
160 served. Notwithstanding the provisions of subsection (g),
161 section five of this article, if an employer is delinquent or in
162 default or has not subscribed to the fund even though it is
163 obligated to do so under the provisions of this article, any
164 partner, proprietor or corporate or executive officer shall not be
165 covered and shall not receive the benefits of this chapter.

166 (i) "Regularly employing" or "regular employment" means
167 employment by an employer which is not a casual employer
168 under this section.

169 (j) Upon the termination of the commission, the criteria
170 governing which employer shall or may subscribe to the
171 workers' compensation commission shall also govern which
172 employers shall or may purchase workers' compensation
173 insurance under article two-c of this chapter.

**§23-2-1d. Primary contractor liability; definitions; applications
and exceptions; certificates of good standing;
reimbursement and indemnification; termination of
contracts; effective date; collections efforts.**

1 (a) For the exclusive purposes of this section, the term
2 "employer" as defined in section one of this article includes any
3 primary contractor who regularly subcontracts with other
4 employers for the performance of any work arising from or as
5 a result of the primary contractor's own contract: *Provided,*

6 That a subcontractor does not include one providing goods
7 rather than services. For purposes of this subsection, extraction
8 of natural resources is a provision of services. In the event that
9 a subcontracting employer defaults on its obligations to make
10 payments to the commission, then the primary contractor is
11 liable for the payments. However, nothing contained in this
12 section shall extend or except to a primary contractor or
13 subcontractors the provisions of section six, six-a or eight of
14 this article. This section is applicable only with regard to
15 subcontractors with whom the primary contractor has a contract
16 for any work or services for a period longer than thirty days:
17 *Provided, however,* That this section is also applicable to
18 contracts for consecutive periods of work that total more than
19 thirty days. It is not applicable to the primary contractor with
20 regard to sub-subcontractors. However, a subcontractor for the
21 purposes of a contract with the primary contractor can itself
22 become a primary contractor with regard to other employers
23 with whom it subcontracts. It is the intent of the Legislature
24 that no contractor, whether a primary contractor, subcontractor
25 or sub-subcontractor, escape or avoid liability for any workers'
26 compensation premium, assessment or tax. The executive
27 director shall propose for promulgation a rule to effect this
28 purpose on or before the thirty-first day of December, two
29 thousand three.

30 (b) A primary contractor may avoid initial liability under
31 subsection (a) of this section if it obtains from the executive
32 director, prior to the initial performance of any work by the
33 subcontractor's employees, a certificate that the subcontractor
34 is in good standing with the workers' compensation fund.

35 (1) Failure to obtain the certificate of good standing prior
36 to the initial performance of any work by the subcontractor
37 results in the primary contractor being equally liable with the
38 subcontractor for all delinquent and defaulted premium taxes,
39 premium deposits, interest and other penalties arising during the

40 life of the contract or due to work performed in furtherance of
41 the contract: *Provided*, That the commission is entitled to
42 collect only once for the amount of premiums, premium
43 deposits and interest due to the default, but the commission may
44 impose other penalties on the primary contractor or on the
45 subcontractor, or both.

46 (2) In order to continue avoiding liability under this section,
47 the primary contractor shall request that the commission inform
48 the primary contractor of any subsequent default by the
49 subcontractor. In the event that the subcontractor does default,
50 the commission shall notify the primary contractor of the
51 default by placing a notice in the first-class United States mail,
52 postage prepaid, and addressed to the primary contractor at the
53 address furnished to the commission by the primary contractor.
54 The mailing is good and sufficient notice to the primary
55 contractor of the subcontractor's default. However, the primary
56 contractor is not liable under this section until the first day of
57 the calendar quarter following the calendar quarter in which the
58 notice is given and then the liability is only for that following
59 calendar quarter and thereafter and only if the subcontract has
60 not been terminated: *Provided*, That the commission is entitled
61 to collect only once for the amount of premiums, premium
62 deposits and interest due to the default, but the commission may
63 impose other penalties on the primary contractor or on the
64 subcontractor, or both.

65 (c) In any situation where a subcontractor defaults with
66 regard to its payment obligations under this chapter or fails to
67 provide a certificate of good standing as provided in this
68 section, the default or failure is good and sufficient cause for a
69 primary contractor to hold the subcontractor responsible and to
70 seek reimbursement or indemnification for any amounts paid on
71 behalf of the subcontractor to avoid or cure a workers' compen-
72 sation default, plus related costs, including reasonable attor-
73 neys' fees, and to terminate its subcontract with the subcontrac-

74 tor notwithstanding any provision to the contrary in the
75 contract.

76 (d) The provisions of this section are applicable only to
77 those contracts entered into or extended on or after the first day
78 of January, one thousand nine hundred ninety-four.

79 (e) The commission may take any action authorized by
80 section five-a of this article in furtherance of its efforts to
81 collect amounts due from the primary contractor under this
82 section.

83 (f) Effective upon termination of the commission, this
84 section shall be applicable only to unpaid premiums due the
85 commission or the old fund as provided in article two-c of this
86 chapter.

**§23-2-2. Commission to be furnished information by employers,
state tax commissioner and division of unemploy-
ment compensation; secrecy of information; exami-
nation of employers, etc.; violation a misdemeanor.**

1 (a) Every employer shall furnish the executive director,
2 upon request, all information required by him or her to carry out
3 the purposes of this chapter. Every employer shall have a
4 continuous and ongoing duty to maintain current information
5 about its activities, risks and rates on the books of the commis-
6 sion. The executive director, or any person employed by the
7 commission for that purpose, may examine under oath any
8 employer or officer, agent or employee of any employer.

9 (b) Notwithstanding the provisions of any other statute to
10 the contrary, specifically, but not exclusively, sections five and
11 five-b, article ten, chapter eleven of this code and section
12 eleven, article ten, chapter twenty-one-a of this code, the
13 executive director of the workers' compensation commission
14 may receive the following information:

15 (1) Upon written request to the state tax commissioner: The
16 names, addresses, places of business and other identifying
17 information of all businesses receiving a business franchise
18 registration certificate and the dates thereof; and the names and
19 social security numbers or other tax identification numbers of
20 the businesses and of the businesses' workers and employees,
21 if otherwise collected, and the quarterly or other applicable
22 reporting period and annual gross wages or other compensation
23 paid to the workers and employees of businesses reported
24 pursuant to the requirement of withholding of tax on income.

25 (2) Upon written application to the division of unemploy-
26 ment compensation: In addition to the information that may be
27 released to the workers' compensation commission for the
28 purposes of this chapter under the provisions of chapter twenty-
29 one-a of this code, the names, addresses and other identifying
30 information of all employing units filing reports and informa-
31 tion pursuant to section eleven, article ten, chapter twenty-one-a
32 of this code as well as information contained in those reports
33 regarding the number and names, addresses and social security
34 numbers of employees employed and the gross quarterly or
35 other applicable reporting period wages paid by each employing
36 unit to each identified employee.

37 (c) All information acquired by the workers' compensation
38 commission pursuant to subsection (b) of this section shall be
39 used only for auditing premium payments, assisting in a wage
40 determination, assisting in the determination of employment
41 status and registering businesses under the single point of
42 registration program as set forth in article twelve, chapter
43 eleven of this code. The workers' compensation commission,
44 upon receiving the business franchise registration certificate
45 information made available pursuant to subsection (b) of this
46 section, shall contact all businesses receiving a business
47 franchise registration certificate and provide all necessary forms
48 to register the business under the provisions of this article. Any

49 officer or employee of this state who uses the information
50 obtained under this section in any manner other than the one
51 stated in this section or elsewhere authorized in this code, or
52 who divulges or makes known in any manner any of the
53 information obtained under this section, is guilty of a misde-
54 meanor and, upon conviction thereof, shall be fined not more
55 than one thousand dollars or incarcerated in the county or
56 regional jail for not more than one year, or both together with
57 cost of prosecution.

58 (d) Reasonable costs of compilation and production of any
59 information made available pursuant to subsection (b) of this
60 section shall be charged to the workers' compensation commis-
61 sion.

62 (e) Information acquired by the commission pursuant to
63 subsection (b) of this section is not subject to disclosure under
64 the provisions of chapter twenty-nine-b of this code.

65 (f) The right to request, gather and maintain information set
66 forth in this section shall transfer to the insurance commis-
67 sioner and the industrial council upon termination of the
68 commission.

§23-2-3. Report forms and other forms for use of employers.

1 The commission, and effective upon termination of the
2 commission, the insurance commissioner, shall prepare and
3 furnish report forms for the use of employers subject to this
4 chapter. Every employer receiving from the commission any
5 form or forms with direction for completion and returning to
6 the commission shall return the form, within the period fixed by
7 the commission, completed as to answer fully and correctly all
8 pertinent questions in the form, and if unable to do so, shall
9 give good and sufficient reasons for the failure. Every em-
10 ployer subject to the provisions of this chapter shall make
11 application to the commission on the forms prescribed by the

12 commission for that purpose; and any employer who terminates
13 his or her business or for any other reason is no longer subject
14 to this chapter shall immediately notify the commission on
15 forms to be furnished by the commission for that purpose.

**§23-2-4. Classification of industries; rate of premiums; authority
to adopt various systems; accounts.**

1 (a) The executive director with approval of the board of
2 managers is authorized to establish by rule a system for
3 determining the classification and distribution into classes of
4 employers subject to this chapter, a system for determining
5 rates of premium taxes applicable to employers subject to this
6 chapter, a system of multiple policy options with criteria for
7 subscription and criteria for an annual employer's statement
8 providing both benefits liability information and rate determina-
9 tion information.

10 (1) In addition, the rule shall provide for, but not be limited
11 to:

12 (A) Rate adjustments by industry or individual employer,
13 including merit rate adjustments;

14 (B) Notification regarding rate adjustments prior to the
15 quarter in which the rate adjustments will be in effect;

16 (C) Chargeability of claims; and

17 (D) Any further matters that are necessary and consistent
18 with the goals of this chapter;

19 (2) The rule shall require the establishment of a program
20 under which the commissioner may grant discounts on premium
21 rates for employers who meet either of the following require-
22 ments:

23 (A) Have not incurred a compensable injury for one year or
24 more and who maintain an employee safety committee or
25 similar organization and make periodic safety inspections of the
26 workplace;

27 (B) Successfully complete a loss prevention program,
28 including establishment of a drug-free workplace, prescribed by
29 the commission's safety and loss control office and conducted
30 by the commission or by any other person approved by the
31 commission;

32 (3) The rule shall be consistent with the duty of the execu-
33 tive director and the board of managers to fix and maintain the
34 lowest possible rates of premium taxes consistent with the
35 maintenance of a solvent workers' compensation fund and the
36 reduction of any deficit that may exist in the fund and in
37 keeping with their fiduciary obligations to the fund;

38 (4) The rule shall be consistent with generally accepted
39 accounting principles;

40 (5) The rule shall be consistent with classification and
41 rate-making methodologies found in the insurance industry; and

42 (6) The rule shall be consistent with the principles of
43 promoting more effective workplace health and safety programs
44 as contained in article two-b of this chapter.

45 (b) In accordance with generally accepted accounting
46 principles, the workers' compensation commission shall keep
47 an accurate accounting of all money or moneys earned, due and
48 received by the workers' compensation fund and of the liability
49 incurred and disbursements made against the fund; and an
50 accurate account of all money or moneys earned, due and
51 received from each individual subscriber and of the liability
52 incurred and disbursements made against the same.

53 (c) Prospective rates set in accordance with the provisions
54 of this article shall at all times be financially sound in accor-
55 dance with generally accepted accounting principles and fully
56 fund the prospective claim obligations for the year in which the
57 rates were made. Rates, surcharges or assessments for deficit
58 management and deficit reduction purposes shall be fair and
59 equitable, financially sound in accordance with generally
60 accepted accounting principles and sufficient to meet the
61 payment obligations of the fund.

62 (d) Notwithstanding any provision of subsection (c) of this
63 section to the contrary, except for those increases made
64 effective for fiscal year two thousand four by action of the
65 compensation programs performance council heretofore
66 established in article three, chapter twenty-one-a of this code
67 taken prior to the effective date of the amendment and
68 reenactment of this section, base rates, assessments and
69 surcharges, except for individual employer merit rate adjust-
70 ments, shall not be increased during fiscal years two thousand
71 four and two thousand five: *Provided*, That the portion of the
72 rate increase attributable to claims management incentive
73 adjustments, as determined by the compensation programs
74 performance council for fiscal year two thousand four prior to
75 the effective date of the amendment and reenactment of this
76 section by the Legislature in the year two thousand three, shall
77 not be considered a part of the employer's premium taxes and
78 shall not be subject to collection by the commission.

79 (e) Claims management incentive adjustments, whether
80 imposed in a manner that would result in either a debit or a
81 credit to any employer's account, shall not be considered by the
82 board of managers in its future rate determinations.

**§23-2-5. Application; payment of premium taxes; gross wages;
payroll report; deposits; delinquency; default;**

reinstatement; payment of benefits; notice to employees; criminal provisions; penalties.

1 (a) For the purpose of creating a workers' compensation
2 fund, each employer who is required to subscribe to the fund or
3 who elects to subscribe to the fund shall pay premium taxes
4 calculated as a percentage of the employer's gross wages
5 payroll as defined by the commission at the rate determined by
6 the commission and then in effect plus any additional premium
7 taxes developed from rates, surcharges or assessments as
8 determined by the commission. At the time each employer
9 subscribes to the fund, the application required by the commis-
10 sion shall be filed and a premium deposit equal to the first
11 quarter's estimated premium tax payment shall be remitted.
12 The minimum quarterly or other reporting period premium to
13 be paid by any employer is twenty-five dollars.

14 (1) Thereafter, the premium taxes shall be paid quarterly or
15 at other payment intervals established by the commission on or
16 before the last day of the month following the end of the quarter
17 or designated payment interval and shall be the prescribed
18 percentage of the entire gross wages of all employees, from
19 which net payroll is calculated and paid, during the preceding
20 quarter or other designated payment interval. The commission
21 may require employers, in accordance with the provisions of
22 rules proposed by the executive director and promulgated by
23 the board of managers, to report gross wages and pay premium
24 taxes monthly or at other intervals.

25 (2) Every subscribing employer shall make a gross wages
26 payroll report to the commission for the preceding reporting
27 period. The report shall be on the form or forms prescribed by
28 the commission and shall contain all information required by
29 the commission.

30 (3) After subscribing to the fund, each employer shall remit
31 with each premium tax payment an amount calculated to be

32 sufficient to maintain a premium deposit equal to the premium
33 payment for the previous reporting period. The commission
34 may reduce the amount of the premium deposit required from
35 seasonal employers for those reporting periods during which
36 employment is significantly reduced. If the employer pays
37 premium tax on a basis other than quarterly, the commission
38 may require the deposit to be based upon some other time
39 period. The premium deposit shall be credited to the em-
40 ployer's account on the books of the commission and used to
41 pay premium taxes and any other sums due the fund when an
42 employer becomes delinquent or in default as provided in this
43 article.

44 (4) All premium taxes and premium deposits required by
45 this article to be paid shall be paid by the employers to the
46 commission, which shall maintain a record of all sums so
47 received. Any sum mailed to the commission is considered to
48 be received on the date the envelope transmitting it is post-
49 marked by the United States postal service. All sums received
50 by the commission shall be deposited in the state treasury to the
51 credit of the workers' compensation commission in the manner
52 now prescribed by law.

53 (5) The commission shall encourage employer efforts to
54 create and maintain safe workplaces, to encourage loss preven-
55 tion programs and to encourage employer-provided wellness
56 programs, through the normal operation of the experience rating
57 formula, seminars and other public presentations, the develop-
58 ment of model safety programs and other initiatives as may be
59 determined by the executive director and the board of manag-
60 ers.

61 (b) Failure of an employer to timely pay premium taxes as
62 provided in subsection (a) of this section, to timely file a
63 payroll report or to maintain an adequate premium deposit shall
64 cause the employer's account to become delinquent. No

65 employer will be declared delinquent or be assessed any penalty
66 for the delinquency if the commission determines that the
67 delinquency has been caused by delays in the administration of
68 the fund. The commission shall, in writing, within sixty days
69 of the end of each reporting period notify all delinquent
70 employers of their failure to timely pay premium taxes, to
71 timely file a payroll report or to maintain an adequate premium
72 deposit. Each employer who fails to timely file any payroll
73 report or timely pay the premium tax due with the report, or
74 both, for any reporting period commencing on and after the first
75 day of July, one thousand nine hundred ninety-five, shall pay a
76 late reporting or payment penalty of the greater of fifty dollars
77 or a sum obtained by multiplying the premium tax due with the
78 report by the penalty rate applicable to that reporting period.
79 The penalty rate to be used in a workers' compensation
80 commission's fiscal year is calculated annually on the first day
81 of each fiscal year. The penalty rate used to calculate the
82 penalty for each reporting period in a fiscal year is the quotient,
83 rounded to the nearest higher whole number percentage rate,
84 obtained by dividing the sum of the prime rate plus four percent
85 by four. The prime rate is the rate published in the *Wall Street*
86 *Journal* on the last business day of the commission's prior
87 fiscal year reflecting the base rate on corporate loans posted by
88 at least seventy-five percent of the nation's thirty largest banks.
89 The late penalty shall be paid with the most recent reporting
90 period's report and payment and is due when that reporting
91 period's report and payment are filed. If the late penalty is not
92 paid when due, it may be charged to and collected by the
93 commission from the employer's premium deposit account or
94 otherwise as provided by law. The notification shall demand
95 the filing of the delinquent payroll report and payment of
96 delinquent premium taxes, the penalty for late reporting or
97 payment of premium taxes or premium deposit, the interest
98 penalty and an amount sufficient to maintain the premium
99 deposit before the end of the third month following the end of
100 the preceding reporting period. Interest shall accrue and be

101 charged on the delinquent premium payment and premium
102 deposit pursuant to section thirteen of this article.

103 (c) Whenever the commission notifies an employer of the
104 delinquent status of its account, the notification shall explain
105 the legal consequence of subsequent default by an employer
106 required to subscribe to the fund and the legal consequences of
107 termination of an electing employer's account.

108 (d) Failure by the employer, who is required to subscribe to
109 the fund and who fails to resolve the delinquency within the
110 prescribed period, shall place the account in default and shall
111 deprive the default employer of the benefits and protection
112 afforded by this chapter, including section six of this article,
113 and the employer is liable as provided in section eight of this
114 article. The default employer's liability under these sections is
115 retroactive to midnight of the last day of the month following
116 the end of the reporting period for which the delinquency
117 occurs. The commission shall notify the default employer of
118 the method by which the employer may be reinstated with the
119 fund. The commission shall also notify the employees of the
120 employer by written notice as hereinafter provided in this
121 section.

122 (e) Failure by any employer, who voluntarily elects to
123 subscribe, to resolve the delinquency within the prescribed
124 period shall place the account in default and shall automatically
125 terminate the election of the employer to pay into the workers'
126 compensation fund and shall deprive the employer and the
127 employees of the default elective employer of the benefits and
128 protection afforded by this chapter, including section six of this
129 article, and the employer is liable as provided in section eight
130 of this article. The default employer's liability under that
131 section is retroactive to midnight of the last day of the month
132 following the end of the payment period for which the delin-
133 quency occurs. Employees who were the subject of the default

134 employer's voluntary election to provide them the benefits
135 afforded by this chapter shall have the protection terminated at
136 the time of their employer's default.

137 (f) (1) Except as provided in subdivision (3) of this subsec-
138 tion, any employer who is required to subscribe to the fund and
139 who is in default on the effective date of this section or who
140 subsequently defaults, and any employer who has elected to
141 subscribe to the fund and who defaults and whose account is
142 terminated prior to the effective date of this section or whose
143 account is subsequently terminated, shall be restored immedi-
144 ately to the benefits and protection of this chapter only upon the
145 filing of all delinquent payroll and other reports required by the
146 commission and payment into the fund of all unpaid premiums,
147 an adequate premium deposit, accrued interest and the penalty
148 for late reporting and payment. Interest is calculated as pro-
149 vided by section thirteen of this article.

150 The commission shall not have the authority to waive either
151 premium or accrued interest: *Provided*, That until termination
152 of the commission, the commissioner shall have the authority
153 to waive either premium or accrued interest if the waiver is part
154 of the full and final resolution of administrative or civil
155 litigation. The provisions of section seventeen of this article
156 apply to any action or decision of the commission under this
157 section.

158 (2) The commission may restore a defaulted or terminated
159 employer through a reinstatement agreement. The reinstatement
160 agreement shall require the payment in full of all premium
161 taxes, premium deposits, the penalty for late reporting and
162 payment, past accrued interest and future interest calculated
163 pursuant to the provisions of section thirteen of this article.
164 Notwithstanding the filing of a reinstatement application or the
165 entering into of a reinstatement agreement, the commission is
166 authorized to file a lien against the employer as provided by

167 section five-a of this article. In addition, entry into a reinstatement
168 agreement is discretionary with the commission. Its
169 discretion shall be exercised in keeping with the fiduciary
170 obligations owed to the workers' compensation fund. If the
171 commission declines to enter into a reinstatement agreement
172 and if the employer does not comply with the provisions of
173 subdivision (1) of this subsection, the commission may proceed
174 with any of the collection efforts provided by section five-a of
175 this article or as otherwise provided by this code. Applications
176 for reinstatement shall: (A) Be made upon forms prescribed by
177 the commission; (B) include a report of the gross wages payroll
178 of the employer which had not been reported to the commission
179 during the entire period of delinquency and default. The gross
180 wages information shall be certified by the employer or its
181 authorized agent; and (C) include a payment of a portion of the
182 liability equal to one half of one percent of the gross payroll
183 during the period of delinquency and default or equal to another
184 portion of the liability determined by rule but not to exceed the
185 amount of the entire liability due and owing for the period of
186 delinquency and default. An employer who applies for reinstatement
187 is entitled to the benefits and protection of this
188 chapter on the day a properly completed and acceptable
189 application which is accompanied by the application payment
190 is received by the commission; *Provided*, That if the commission
191 reinstates an employer subject to the terms of a reinstatement
192 agreement, the subsequent failure of the employer to make
193 scheduled payments or to pay accrued or future interest in
194 accordance with the reinstatement agreement or to timely file
195 current reports and to pay current premiums within the month
196 following the end of the period for which the report and
197 payment are due, or to otherwise maintain its account in good
198 standing or, if the reinstatement agreement does not require
199 earlier restoration of the premium deposit, to restore the
200 premium deposit to the required amount by the end of the
201 repayment period shall cause the reinstatement application and
202 the reinstatement agreement to be null, void and of no effect,

203 and the employer is denied the benefits and protection of this
204 chapter effective from the date that the employer's account
205 originally became delinquent.

206 (3) Any employer who fails to maintain its account in good
207 standing with regard to subsequent premium taxes and premium
208 deposits after filing an application for reinstatement and prior
209 to the final resolution of an application for reinstatement by
210 entering into a reinstatement agreement or by payment of the
211 liability in full as provided in subdivision (1) of this subsection
212 shall cause the reinstatement application to be null, void and of
213 no effect and the employer shall be denied the benefits and
214 protection of this chapter effective from the date that the
215 employer's account originally became delinquent.

216 (4) Following any failure of an employer to comply with
217 the provisions of a reinstatement agreement, the commission
218 may make and continue with any of the collection efforts
219 provided by this chapter or elsewhere in this code even if the
220 employer files another reinstatement application.

221 (g) With the exception noted in subsection (h), section one
222 of this article, no employee of an employer required by this
223 chapter to subscribe to the workers' compensation fund shall be
224 denied benefits provided by this chapter because the employer
225 failed to subscribe or because the employer's account is either
226 delinquent or in default.

227 (h) (1) The provisions of this section shall not deprive any
228 individual of any cause of action which has accrued as a result
229 of an injury or death which occurred during any period of
230 delinquency not resolved in accordance with the provisions of
231 this article, or subsequent failure to comply with the terms of
232 the repayment agreement.

233 (2) Upon withdrawal from the fund or termination of
234 election of any employer, the employer shall be refunded the

235 balance due the employer of its deposit, after deducting all
236 amounts owed by the employer to the workers' compensation
237 fund and other agencies of this state, and the commission shall
238 notify the employees of the employer of the termination in the
239 manner as the commission may consider best and sufficient.

240 (3) Notice to employees provided in this section shall be
241 given by posting written notice that the employer is defaulted
242 under the compensation law of West Virginia and in the case of
243 employers required by this chapter to subscribe and pay
244 premiums to the fund, that the defaulted employer is liable to its
245 employees for injury or death, both in workers' compensation
246 benefits and in damages at common law or by statute; and in the
247 case of employers not required by this chapter to subscribe and
248 pay premiums to the fund, but voluntarily electing to do so as
249 provided in this article, that neither the employer nor the
250 employees are protected by the law as to any injury or death
251 sustained after the date specified in the notice. The notice shall
252 be in the form prescribed by the commission and shall be
253 posted in a conspicuous place at the chief works of the em-
254 ployer, as it appears in records of the commission. If the chief
255 works of the employer cannot be found or identified, the notices
256 shall be posted at the front door of the courthouse of the county
257 in which the chief works are located, according to the commis-
258 sion's records. Any person who shall, prior to the reinstatement
259 of the employer, as provided in this section, or prior to sixty
260 days after the posting of the notice, whichever shall first occur,
261 remove, deface or render illegible the notice, shall be guilty of
262 a misdemeanor and, upon conviction thereof, shall be fined one
263 thousand dollars. The notice shall state this provision upon its
264 face. The commission may require any sheriff, deputy sheriff,
265 constable or other official of the state of West Virginia,
266 authorized to serve civil process, to post the notice and to make
267 return thereof of the fact of the posting to the commission. Any
268 failure of the officer to post any notice within ten days after he
269 or she has received the notice from the commission, without

270 just cause or excuse, constitutes a willful failure or refusal to
271 perform a duty required of him or her by law within the
272 meaning of section twenty-eight, article five, chapter sixty-one
273 of this code. Any person actually injured by reason of the
274 failure has an action against the official, and upon any official
275 bond he or she may have given, for the damages as the person
276 may actually have incurred, but not to exceed, in the case of any
277 surety upon the bond, the amount of the penalty of the bond.
278 Any official posting the notice as required in this subdivision is
279 entitled to the same fee as is now or may hereafter be provided
280 for the service of process in suits instituted in courts of record
281 in the state of West Virginia. The fee shall be paid by the
282 commission out of any funds at its disposal, but shall be
283 charged by the commission against the account of the employer
284 to whose delinquency the notice relates.

**§23-2-5a. Collection of premiums from defaulting employers;
interest and penalties; civil remedies; creation and
enforcement of lien against employer and pur-
chaser; duty of secretary of state to register liens;
distrain powers; insolvency proceedings; secretary
of state to withhold certificates of dissolution;
injunctive relief; bond; attorney fees and costs.**

1 (a) The workers' compensation commission in the name of
2 the state may commence a civil action against an employer
3 who, after due notice, defaults in any payment required by this
4 chapter. If judgment is against the employer, the employer
5 shall pay the costs of the action. A civil action under this
6 section shall be given preference on the calendar of the court
7 over all other civil actions. Upon prevailing in a civil action,
8 the commission is entitled to recover its attorneys' fees and
9 costs of action from the employer.

10 (b) In addition to the provisions of subsection (a) of this
11 section, any payment, interest and penalty due and unpaid under

12 this chapter is a personal obligation of the employer immedi-
13 ately due and owing to the commission and shall, in addition,
14 be a lien enforceable against all the property of the employer:
15 *Provided*, That the lien shall not be enforceable as against a
16 purchaser (including a lien creditor) of real estate or personal
17 property for a valuable consideration without notice, unless
18 docketed as provided in section one, article ten-c, chapter
19 thirty-eight of this code: *Provided, however*, That the lien may
20 be enforced as other judgment liens are enforced through the
21 provisions of said chapter and the same is considered deemed
22 by the circuit court to be a judgment lien for this purpose.

23 (c) In addition to all other civil remedies prescribed, the
24 commission may in the name of the state, after giving appropri-
25 ate notice as required by due process, distrain upon any
26 personal property, including intangible property, of any
27 employer delinquent for any payment, interest and penalty
28 thereon. If the commission has good reason to believe that the
29 property or a substantial portion of the property is about to be
30 removed from the county in which it is situated, upon giving
31 appropriate notice, either before or after the seizure, as is proper
32 in the circumstances, the commission may likewise distrain in
33 the name of the state before the delinquency occurs. For that
34 purpose, the commission may require the services of a sheriff
35 of any county in the state in levying the distress in the county
36 in which the sheriff is an officer and in which the personal
37 property is situated. A sheriff collecting any payment, interest
38 and penalty thereon is entitled to the compensation as provided
39 by law for his or her services in the levy and enforcement of
40 executions. Upon prevailing in any distraint action, the
41 commission is entitled to recover its attorneys' fees and costs
42 of action from the employer.

43 (d) In case a business subject to the payments, interest and
44 penalties thereon imposed under this chapter is operated in
45 connection with a receivership or insolvency proceeding in any

46 state court in this state, the court under whose direction the
47 business is operated shall, by the entry of a proper order or
48 decree in the cause, make provisions, so far as the assets in
49 administration will permit, for the regular payment of the
50 payments, interest and penalties as they become due.

51 (e) The secretary of state of this state shall withhold the
52 issuance of any certificate of dissolution or withdrawal in the
53 case of any corporation organized under the laws of this state or
54 organized under the laws of any other state and admitted to do
55 business in this state, until notified by the commission that all
56 payments, interest and penalties thereon against the corporation
57 which is an employer under this chapter have been paid or that
58 provision satisfactory to the commission has been made for
59 payment.

60 (f) In any case when an employer required to subscribe to
61 the fund defaults in payments of premium, premium deposits,
62 penalty or interest thereon, for as many as two reporting
63 periods, which reporting periods need not be consecutive, and
64 remains in default after due notice, the commission may bring
65 action in the circuit court of Kanawha County to enjoin the
66 employer from continuing to carry on the business in which the
67 liability was incurred: *Provided*, That the commission may as
68 an alternative to this action require the delinquent employer to
69 file a bond in the form prescribed by the commission with
70 satisfactory surety in an amount not less than fifty percent more
71 than the payments, interest and penalties due.

§23-2-9. Election of employer or employers' group to be self-insured and to provide own system of compensation; exceptions; catastrophe coverage; self administration; rules; penalties; regulation of self-insurers.

1 (a) Notwithstanding any provisions of this chapter to the
2 contrary, the following types of employers or employers'

3 groups may apply for permission to self-insure their workers'
4 compensation risk including their risk of catastrophic injuries.

5 (1) The types of employers are:

6 (A) Any employer who is of sufficient capability and
7 financial responsibility to ensure the payment to injured
8 employees and the dependents of fatally injured employees of
9 benefits provided for in this chapter at least equal in value to
10 the compensation provided for in this chapter;

11 (B) Any employer or group of employers as provided for
12 subdivision (c) of such capability and financial responsibility
13 who maintains its own benefit fund or system of compensation
14 to which its employees are not required or permitted to contrib-
15 ute and whose benefits are at least equal in value to those
16 provided for in this chapter; or

17 (C) Any employer who is signatory to a collective bargain-
18 ing agreement that allows for participation in a group workers'
19 compensation insurance program may join with any other
20 employer or employers that are signatory to a collective
21 bargaining agreement or agreements that allow for participation
22 in a group workers' compensation program and jointly apply to
23 the commission to collectively self-insure their obligations
24 under this chapter. The employers must collectively meet the
25 conditions set forth in paragraph (A) or (B) of this subdivision.
26 There shall be joint and several liability for all employers who
27 choose to jointly self-insure under the provisions of this article.

28 (2) In order to be approved for self-insurance status, the
29 employer shall:

30 (A) Have an effective health and safety program at its
31 workplaces; and

32 (B) Provide security or bond in an amount and form
33 determined by the executive director with the approval of the

34 board of managers which shall balance the employer's financial
35 condition based upon an analysis of its audited financial
36 statements and the full accrued value of current liability for
37 future claim payments based upon generally accepted actuarial
38 and accounting principles of the employer's existing and
39 expected liability.

40 (3) Any employer whose record upon the books of the
41 commission shows a liability, as determined on an accrued
42 basis against the workers' compensation fund incurred on
43 account of injury to or death of any of the employer's employ-
44 ees, in excess of premiums paid by the employer, shall not be
45 granted the right, individually and directly or from the benefit
46 funds or system of compensation, to be self-insured until the
47 employer has paid into the workers' compensation fund the
48 amount of the excess of liability over premiums paid, including
49 the employer's proper proportion of the liability incurred on
50 account of catastrophes or second injuries as defined in section
51 one, article three of this chapter and charged against such fund.

52 (4) Upon a finding that the employer has met all of the
53 requirements of this section, the employer may be permitted
54 self-insurance status. An annual review of each self-insurer's
55 continuing ability to meet its obligations and the requirements
56 of this section shall be made by the workers' compensation
57 commission. This review shall include a redetermination of the
58 amount of security or bond which shall be provided by the
59 employer. Failure to provide any new amount or form of
60 security or bond may cause the employer's self-insurance status
61 to be terminated by the workers' compensation commission.
62 The security or bond provided by employers prior to the second
63 day of February, one thousand nine hundred ninety-five, shall
64 continue in full force and effect until the performance of the
65 employer's annual review and the entry of any appropriate
66 decision on the amount or form of the employer's security or
67 bond.

68 (5) Whenever a self-insured employer furnishes security or
69 bond, including replacement and amended bonds and other
70 securities, as surety to ensure the employer's or guarantor's
71 payment of all obligations under this chapter for which the
72 security or bond was furnished, the security or bond shall be in
73 the most current form or forms approved and authorized by the
74 commission for use by the employer or its guarantors, surety
75 companies, banks, financial institutions or others in its behalf
76 for that purpose.

77 (b) (1) Notwithstanding any provision in this chapter to the
78 contrary, self-insured employers shall, effective the first day of
79 July, two thousand four, administer their own claims. The
80 executive director shall, pursuant to rules promulgated by the
81 board of managers, regulate the administration of claims by
82 employers granted permission to self-insure their obligations
83 under this chapter. Such rules shall be promulgated at least
84 thirty days prior to the first day of July, two thousand four. A
85 self-insured employer shall comply with rules promulgated by
86 the board of managers governing the self-administration of its
87 claims.

88 (2) An employer or employers' group who self-insures its
89 risk and self-administers its claims shall exercise all authority
90 and responsibility granted to the commission in this chapter and
91 provide notices of action taken to effect the purposes of this
92 chapter to provide benefits to persons who have suffered
93 injuries or diseases covered by this chapter. An employer or
94 employers' group granted permission to self-insure and self-
95 administer its obligations under this chapter shall at all times be
96 bound and shall comply fully with all of the provisions of this
97 chapter. Furthermore, all of the provisions contained in article
98 four of this chapter pertaining to disability and death benefits
99 are binding on and shall be strictly adhered to by the self-
100 insured employer in its administration of claims presented by
101 employees of the self-insured employer. Violations of the

102 provisions of this chapter and such rules relating to this chapter
103 as may be approved by the board of managers may constitute
104 sufficient grounds for the termination of the authority for any
105 employer to self-insure its obligations under this chapter.
106 Claim notices currently generated by the commission on behalf
107 of self-insured employers must be generated and sent by the
108 self-insured employer or its third-party administrator.

109 (c) Each self-insured employer shall, on or before the last
110 day of the first month of each quarter or other assigned report-
111 ing period, file with the commission a certified statement of the
112 total gross wages and earnings of all of the employer's employ-
113 ees subject to this chapter for the preceding quarter or other
114 assigned reporting period. Each self-insured employer shall
115 pay into the workers' compensation fund as portions of its self-
116 insured employer premium tax:

117 (1) A sum sufficient to pay the employer's proper portion
118 of the expense of the administration of this chapter;

119 (2) A sum sufficient to pay the employer's proper portion
120 of the expense of claims for those employers who are in default
121 in the payment of premium taxes or other obligations;

122 (3) A sum sufficient to pay the employer's fair portion of
123 the expenses of the disabled workers' relief fund;

124 (4) A sum sufficient to maintain as an advance deposit an
125 amount equal to the previous quarter or other assigned reporting
126 period's payment of each of the foregoing three sums;

127 (5) A sum as determined by the commission to be sufficient
128 to pay the employer's portion of rates, surcharges or deficit
129 management and deficit reduction assessments; and

130 (6) A sum as determined by the commission to pay the
131 employer's portion of self-insured catastrophic injury benefits,

132 and second injury payments on all self-insured second injury
133 claims other than second injury claims for those employers self-
134 insured for second injury. Any employer previously self-
135 insured for second injury benefits shall continue to be responsi-
136 ble for payment of those benefits.

137 (d) The required payments to the employer's injured
138 employees or dependents of fatally injured employees as
139 benefits provided for by this chapter including second injury
140 benefits and catastrophic injury benefits, if applicable, shall
141 constitute the remaining portion of the self-insurer's premium
142 tax.

143 (e) Notwithstanding any provision of subsection (d) of this
144 section to the contrary, except for those increases made
145 effective for fiscal year two thousand four by action of the
146 compensation programs performance council heretofore
147 established in article three, chapter twenty-one-a of this code
148 taken prior to the effective date of the amendment and
149 reenactment of this section, the portion of the premium taxes
150 for each self-insured employer as determined under subdivi-
151 sions (1) through (6), inclusive, subsection (c) of this section
152 shall not be increased during fiscal years two thousand four,
153 two thousand five and two thousand six.

154 (f)(1) If an employer defaults in the payment of any portion
155 of its self-insured employer premium taxes, surcharges or
156 assessments, the commission shall, in an appropriate case,
157 determine the full accrued value based upon generally accepted
158 actuarial and accounting principles of the employer's liability
159 including the costs of all awarded claims and of all incurred but
160 not reported claims. The amount determined may, in an
161 appropriate case, be assessed against the employer. The
162 commission may demand and collect the present value of the
163 defaulted tax liability. Interest shall accrue upon the demanded
164 amount as provided for in section thirteen of this article until

165 the premium tax is fully paid. Payment of all amounts then due
166 to the commission and to the employer's employees is a
167 sufficient basis for reinstating the employer to good standing
168 with the fund. In addition, any self-insured employer who,
169 without good cause, ceases to make required payments to the
170 employer's injured employees or dependents of fatally injured
171 employees as benefits provided for by this chapter including
172 second injury benefits and catastrophic injury benefits, if
173 applicable, is in default. The board of managers shall establish
174 by rule the procedures by which the existence or nonexistence
175 of good cause is to be determined by the commission.

176 (2) Premium tax assessments are special revenue taxes
177 under and according to the provisions of state workers' com-
178 pensation law and are considered to be tax claims, as priority
179 claims or administrative expense claims according to those
180 provisions under the law provided in the United States bank-
181 ruptcy code, Title 11 of the United States Code. In addition, as
182 the same was previously intended by the prior provisions of this
183 section, this amendment and reenactment is for the purpose of
184 clarification of the taxing authority of the workers' compensa-
185 tion commission.

186 (g) Each self-insured employer shall elect whether or not to
187 self-insure its catastrophic injury risk as defined in subsection
188 (c), section one, article three of this chapter. A self-insured
189 employer who elects to insure its catastrophic risk through a
190 policy of excess insurance obtained through a private insurance
191 carrier approved by the commission shall provide a copy of the
192 policy to the commission. Upon termination of the commis-
193 sion, self-insured employers shall either self-insure their
194 catastrophic risk or insure their catastrophic risk through a
195 policy of excess insurance obtained through a private insurance
196 carrier approved by the insurance commissioner. Self-insured
197 employers shall also reinsure their catastrophic risks.

198 (1) If the employer does not elect to self-insure its cata-
199 strophic risk, the employer shall pay premium taxes for this
200 coverage in the same manner as is provided for in section four
201 of this article and in rules adopted to implement that section.
202 As stated in this subsection, this option shall expire upon
203 termination of the commission. If the employees of that
204 employer suffer injury or death from a catastrophe, the payment
205 of the resulting benefits shall be made from the catastrophe
206 reserve of the surplus fund provided for in subsection (b),
207 section one, article three of this chapter. Any portion of an
208 employer's catastrophic liability insured and paid under a
209 policy of insurance purchased by the employer shall not be
210 included in the liabilities upon which the employer's security or
211 bond is determined in subsection (a) of this section.

212 (2) If an otherwise self-insured employer elects to self-
213 insure its catastrophic risk, the security or bond required in
214 subsection (a) of this section shall include the liability for the
215 catastrophic risk.

216 (h) For those employers previously permitted to self-insure
217 their second injury risks, the amount of the security or bond
218 required in subsection (a) of this section shall include the
219 liability for that risk. All benefits provided for by this chapter
220 which are awarded to the employer's employees which consti-
221 tute second injury life awards shall be paid by the employer and
222 not the commission.

223 (i) The commission may create, implement, establish and
224 administer a perpetual self-insurance security risk pool of
225 funds, sureties, securities, insurance provided by private
226 insurance carriers or other states' programs, and other property,
227 of both real and personal properties, to secure the payment of
228 obligations of self-insured employers. If a pool is created, the
229 board of managers shall adopt rules for the organizational plan,
230 participation, contributions and other payments which may be

231 required of self-insured employers under this section. The
232 board of managers may adopt a rule authorizing the commis-
233 sion to assess each self-insured employer in proportion accord-
234 ing to each employer's portion of the unsecured obligation and
235 liability or to assess according to some other method provided
236 for by rule which shall properly create and fund the risk pool to
237 serve the needs of employees, employers and the workers'
238 compensation fund by providing adequate security. The board
239 of managers, in establishing a security risk pool, may authorize
240 the executive director to use any assessments, premium taxes
241 and revenues and appropriations as may be made available to
242 the commission. Effective upon termination of the commis-
243 sion, all statutory and regulatory authority provided to the
244 commission and board of managers over pools created pursuant
245 to this section shall transfer to the insurance commissioner:
246 *Provided*, That the funds contained in the security pool shall be
247 deposited into the old fund and the funds contained in the
248 guaranty pool shall be deposited in the self-insured employer
249 guaranty risk pool created in article two-c of this chapter. All
250 assets held by the commission for security pursuant to 85 CSR
251 §19 (2004) shall transfer to the insurance commissioner.

252 (j) Any self-insured employer which has had a period of
253 inactivity due to the nonemployment of employees which
254 results in its reporting of no wages on reports to the commission
255 for a period of four or more consecutive quarters shall have its
256 status at the commission inactivated and shall apply for
257 reactivation to status as a self-insured employer prior to its
258 reemployment of employees. Despite the inactivation, the self-
259 insured employer shall continue to make payments on all
260 awards for which it is responsible. Upon application for
261 reactivation of its status as an operating self-insured employer,
262 the employer shall document that it meets the eligibility
263 requirements needed to maintain self-insured employer status
264 under this section and any rules adopted to implement it. If the
265 employer is unable to requalify and obtain approval for

266 reactivation, the employer shall, effective with the date of
267 employment of any employee, become a subscriber to the
268 workers' compensation fund and, upon termination of the
269 commission, shall purchase workers' compensation insurance
270 as provided for in article two-c of this chapter, but shall
271 continue to be a self-insurer as to the prior period of active
272 status and to furnish security or bond and meet its prior self-
273 insurance obligations.

274 (k) In any case under the provisions of this section that
275 require the payment of compensation or benefits by an em-
276 ployer in periodical payments and the nature of the case makes
277 it possible to compute the present value of all future payments,
278 the commission may, in its discretion, at any time compute and
279 permit to be paid into the workers' compensation fund an
280 amount equal to the present value of all unpaid future payments
281 on the award or awards for which liability exists in trust.
282 Thereafter, the employer shall be discharged from any further
283 portion of premium tax liability upon the award or awards and
284 payment of the award or awards shall be assumed by the
285 commission. Upon termination of the commission, those self-
286 insured employers may thereafter purchase workers' compensa-
287 tion insurance as provided for in article two-c of this chapter,
288 but said self-insured employers shall remain liable for their
289 self-insured employer claims liabilities.

290 (l) Any employer subject to this chapter, who elects to carry
291 the employer's own risk by being a self-insured employer and
292 who has complied with the requirements of this section and of
293 any applicable rules, shall not be liable to respond in damages
294 at common law or by statute for the injury or death of any
295 employee, however occurring, after the election's approval and
296 during the period that the employer is allowed to carry the
297 employer's own risk.

298 (m) An employer may not hire any person or group to self-
299 administer claims under this chapter as a third-party administra-

300 tor unless the person or group has been determined to be
301 qualified to be a third-party administrator by the commission
302 pursuant to rules adopted by the board of managers. Any
303 person or group whose status as a third-party administrator has
304 been revoked, suspended or terminated by the commission shall
305 immediately cease administration of claims and shall not
306 administer claims unless subsequently authorized by the
307 commission.

308 (n) All regulatory, oversight, and document gathering
309 authority provided to the commission under section nine, article
310 two, chapter twenty-three shall transfer to the insurance
311 commissioner and the industrial council upon termination of the
312 commission.

ARTICLE 2A. SUBROGATION.

§23-2A-1. Subrogation; limitations; effective date.

1 (a) Where a compensable injury or death is caused, in
2 whole or in part, by the act or omission of a third party, the
3 injured worker or, if he or she is deceased or physically or
4 mentally incompetent, his or her dependents or personal
5 representative are entitled to compensation under the provisions
6 of this chapter and shall not by having received compensation
7 be precluded from making claim against the third party.

8 (b) Notwithstanding the provisions of subsection (a) of this
9 section, if an injured worker, his or her dependents or his or her
10 personal representative makes a claim against the third party
11 and recovers any sum for the claim, the commission or a self-
12 insured employer shall be allowed statutory subrogation with
13 regard to medical benefits paid as of the date of the recovery.
14 The commission or self-insured employer shall permit the
15 deduction from the amount received reasonable attorney's fees
16 and reasonable costs. It is the duty of the injured worker, his or
17 her dependents, his or her personal representative, or his or her

18 attorney to notify the commission and the employer when the
19 claim is filed against the third party.

20 (c) In the event that an injured worker, his or her depend-
21 ents or personal representative makes a claim against a third
22 party, there shall be, and there is hereby created, a statutory
23 subrogation lien upon the moneys received which shall exist in
24 favor of the commission or self-insured employer. Any injured
25 worker, his or her dependents or personal representative who
26 receives moneys in settlement in any manner of a claim against
27 a third party remains subject to the subrogation lien until
28 payment in full of the amount permitted to be subrogated under
29 subsection (b) of this section is paid.

30 (d) Effective the first day of January, two thousand six, the
31 commission, any successor to the commission, any other private
32 carrier and any self-insured employer shall be allowed statutory
33 subrogation with regard to all medical and indemnity benefits
34 actually paid as of the date of the recovery. The commission,
35 successor to the commission, any other private carrier and the
36 self-insured employer shall permit the deduction from the
37 amount received a reasonable attorney's fees and costs and may
38 negotiate the amount to accept as subrogation. It is the duty of
39 the injured worker, his or her dependents, his or her personal
40 representative or his or her attorney to give reasonable notice to
41 the commission, successor to the commission, any other private
42 carrier, or the self-insured employer after a claim is filed
43 against the third party and prior to the disbursement of any third
44 party recovery. The statutory subrogation described in this
45 section does not apply to uninsured and underinsured motorist
46 coverage or any other insurance coverage purchased by the
47 injured worker or on behalf of the injured worker. If the injured
48 worker obtains a recovery from a third party and the injured
49 worker, personal representative or the injured worker's attorney
50 fails to protect the statutory right of subrogation created herein,
51 the injured worker, personal representative and the injured

52 worker's attorney shall lose the right to retain attorney fees and
53 costs out of the subrogation amount. In addition, such failure
54 creates a cause of action for the private carrier or self-insured
55 employer against the injured worker, personal representative
56 and the injured worker's attorney for the amount of the full
57 subrogation amount and the reasonable fees and costs associ-
58 ated with any such cause of action. The right of subrogation
59 granted by the provisions of this subsection shall not attach to
60 any claim arising from a right of action which arose or accrued,
61 in whole or in part, prior to the effective date of the amendment
62 and reenactment of this section during the year two thousand
63 five.

64 (e) The right of subrogation granted the commission in
65 subsections (a) through (c), inclusive, of this section shall be
66 exercised by the insurance commissioner and his or her
67 designated administrator of the old fund, as set forth in article
68 two-c of this chapter, for any claim arising from a right of
69 action which arose or accrued, in whole or in part, prior to the
70 effective date of the amendment and reenactment of this section
71 during the year two thousand five. The insurance commissioner
72 and his or her designated administrator shall be paid a recovery
73 fee of ten percent of the actual amount recovered through
74 subrogation with the remainder to be deposited into the old
75 fund.

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-1. Findings and purpose.

§23-2C-2. Definitions.

§23-2C-3. Creation of employer mutual as successor organization of the West Virginia workers' compensation commission.

§23-2C-4. Governance and organization.

§23-2C-5. Creation of the industrial council; duties.

§23-2C-6. Creation of new fund, old fund, mutualization transition fund, uninsured employer fund, self-insured employer guaranty risk pool, self-insured employer security risk pool, private carrier guaranty fund, and assigned risk fund.

§23-2C-7. Custody, investment and disbursement of funds.

- §23-2C-8. West Virginia uninsured employers' fund.
- §23-2C-9. West Virginia private carrier guaranty fund.
- §23-2C-10. West Virginia adverse risk assignment.
- §23-2C-11. Transfer of assets from new fund to the mutual insurance company established as a successor to the commission; transfer of commission employees.
- §23-2C-12. Certain personnel provisions governing employees laid-off by the mutual during its initial year of operation.
- §23-2C-13. Certain retraining benefits to those employees laid-off by the mutual during its first year of operation.
- §23-2C-14. Certain benefits provided to commission employees.
- §23-2C-15. Mandatory coverage; changing of coverage.
- §23-2C-16. Administration of old fund.
- §23-2C-17. Administration of a competitive system.
- §23-2C-18. Ratemaking; insurance commissioner.
- §23-2C-19. Special provisions as to private carrier premium collection.
- §23-2C-20. Claims administration issues.
- §23-2C-21. Limitation of liability of insurer or third-party administrator; administrative fines are exclusive remedies.
- §23-2C-22. Rules.
- §23-2C-23. Transfer of assets and contracts.

§23-2C-1. Findings and purpose.

- 1 (a) The Legislature finds that:
 - 2 (1) There is a long-term actuarial funding crisis in the state-
3 run monopolistic workers' compensation system;
 - 4 (2) Similar short-term and long-term crises have been
5 ongoing during the past two decades;
 - 6 (3) During the current crisis, employers in West Virginia
7 find it increasingly difficult to afford the rates charged by the
8 workers' compensation commission for workers' compensation
9 coverage and that paying said rates adversely impacts employ-
10 ers' ability to compete in a global economic environment;
 - 11 (4) The cost of obtaining workers' compensation coverage
12 from the state system may result in many employers leaving the
13 state;

14 (5) Employers' access to competitive workers' compensa-
15 tion rates and the resulting economic development benefit is of
16 utmost importance to the citizens of West Virginia;

17 (6) A mechanism is needed to provide an enduring solution
18 to this recurring workers' compensation crisis;

19 (7) An employers' mutual insurance company or a similar
20 entity has proven to be a successful mechanism in other states
21 for helping employers secure insurance and for stabilizing the
22 insurance market;

23 (8) There is a substantial public interest in creating a
24 method to provide a stable workers' compensation insurance
25 market in this state;

26 (9) The state-run workers' compensation program is a
27 substantial actual and potential liability to the state;

28 (10) There is substantial public benefit in transferring
29 certain actual and potential future liability of the state to the
30 private sector and creating a stable self-sufficient entity which
31 will be a potential source of workers' compensation coverage
32 for employers in this state;

33 (11) A stable, financially viable insurer in the private sector
34 will aid in providing a continuing source of insurance funds to
35 compensate injured workers; and

36 (12) Because the public will greatly benefit from the
37 formation of an employers' mutual insurance company, state
38 efforts to encourage and support the formation of such an
39 entity, including providing funding for the entity's initial
40 capital, is in the clear public interest.

41 (b) The purpose of this article is to create a mechanism for
42 the formation of an employers' mutual insurance company that
43 will provide:

44 (1) A means for employers to obtain workers' compensa-
45 tion insurance that is reasonably available and affordable; and

46 (2) Compensation to employees of mutual policyholders
47 who suffer work place injuries as defined in chapter twenty-
48 three of this code.

§23-2C-2. Definitions.

1 (a) "Executive director" means the executive director of the
2 West Virginia workers' compensation commission as provided
3 in section one-b, article one, chapter twenty-three of this code.

4 (b) "Commission" means the West Virginia workers'
5 compensation commission as provided by section one, article
6 one, chapter twenty-three of this code.

7 (c) "Insurance commissioner" means the insurance
8 commissioner of West Virginia as provided in section one,
9 article two, chapter thirty-three of this code.

10 (d) "Company" or "successor to the commission" means the
11 employers' mutual insurance company created pursuant to the
12 terms of this article.

13 (e) "Policy default" shall mean a policyholder that has
14 failed to comply with the terms of its workers' compensation
15 insurance policy and is consequently without workers' compen-
16 sation insurance coverage.

17 (f) "Industrial insurance" means insurance which provides
18 all compensation and benefits required by chapter twenty-three
19 of this code.

20 (g) "Insurer" includes:

21 (1) A self-insured employer; and

22 (2) A private carrier.

23 (h) "Industrial council" means the advisory group estab-
24 lished in section five of this article.

25 (i) "Mutualization transition fund" shall be a fund over
26 which the state treasurer is custodian. Moneys transferred or
27 otherwise payable to the mutualization transition fund shall be
28 deposited in the state treasury to the credit of the mutualization
29 transition fund. Disbursements shall be made from the
30 mutualization transition fund upon requisitions signed by the
31 executive director, and, upon termination of the commission,
32 the insurance commissioner, and shall be reasonably related to
33 the legal, operational, consultative and human resource related
34 expenses associated with the establishment of the company and
35 the transferring of personnel from the commission to the
36 company.

37 (j) "New fund" shall mean a fund owned and operated by
38 the commission and, upon termination of the commission, the
39 successor organization of the West Virginia workers' compen-
40 sation commission and shall consist of those funds transferred
41 to it from the workers' compensation fund and any other
42 applicable funds. New fund shall include all moneys due and
43 payable to the workers' compensation fund for the quarters
44 ending the thirtieth day of September, two thousand five and
45 the thirty-first day of December, two thousand five, which have
46 not been collected by the workers' compensation fund as of the
47 thirty-first day of December, two thousand five.

48 (k) "New fund liabilities" shall mean all claims payment
49 obligations (indemnity and medical expenses) for all claims,
50 actual and incurred but not reported, for any claim with a date
51 of injury or last exposure on or after the first day of July, two
52 thousand five: *Provided*, That new fund liabilities shall begin
53 with claims payments becoming due and owing on said claims
54 on or after the first day of January, two thousand six.

55 (l) "Old fund" shall mean a fund held by the state trea-
56 surer's office consisting of those funds transferred to it from the
57 workers' compensation fund or other sources and those funds
58 due and owing the workers' compensation fund as of the
59 thirtieth day of June, two thousand five that are thereafter
60 collected. The old fund and assets therein shall remain property
61 of the state and shall not novate or otherwise transfer to the
62 company.

63 (m) "Old fund liabilities" mean all claims payment obliga-
64 tions (indemnity and medical expenses), related liabilities and
65 appropriate administrative expenses necessary for the adminis-
66 tration of all claims, actual and incurred but not reported, for
67 any claim with a date of injury or last exposure on or before the
68 thirtieth day of June, two thousand five: *Provided*, That old
69 fund liabilities shall include all claims payments for any claim,
70 regardless of date of injury or last exposure, through the thirty-
71 first day of December, two thousand five: *Provided, however*,
72 That old fund liabilities shall include all claims with dates of
73 injuries or last exposure prior to the first day of July, two
74 thousand four for bankrupt self-insured employers that had
75 defaulted on their claims obligations which have been recog-
76 nized by the commission in its actuarially determined liability
77 number as of the thirtieth day of June, two thousand five.

78 (n) "Private carrier" means any insurer or the legal repre-
79 sentative of an insurer authorized by the insurance commis-
80 sioner to provide workers' compensation insurance pursuant to
81 this chapter and which maintains an office in the state. The
82 term does not include a self-insured employer or private
83 employers but shall include any successor to the commission.

84 (o) "Uninsured employer fund" means a fund held by the
85 state treasurer's office consisting of those funds transferred to
86 it from the workers' compensation fund and any other source.
87 Disbursements from the uninsured employer fund shall be upon

88 requisitions signed by the insurance commissioner and the
89 administrator of the fund, and as otherwise set forth in an
90 exempt legislative rule promulgated by the workers' compensa-
91 tion board of managers.

92 (p) "Self-insured employer guaranty risk pool" shall be a
93 fund held by the state treasurer's office consisting of those
94 funds transferred to it from the guaranty pool created pursuant
95 to 85 CSR §19 (2004) and any future funds collected through
96 continued administration of that exempt legislative rule as
97 administered by the insurance commissioner. Disbursements
98 shall be made from the self-insured employer guaranty risk pool
99 upon requisitions signed by the insurance commissioner and
100 the administrator of the fund. The obligations of the fund shall
101 be as provided in 85 CSR §19 (2004). The company shall
102 administer the self-insured employer guaranty risk pool for a
103 term and administrative fee as provided in the administration of
104 the old fund.

105 (q) "Self-insured employer security risk pool" shall be a
106 fund held by the state's treasurer consisting of those funds paid
107 into it through the insurance commissioner's administration of
108 85 CSR §19 (2004). Disbursement from said fund shall be
109 made from the self-insured employer security risk pool upon
110 requisitions signed by the insurance commissioner and the
111 administrator of the fund. The obligations of the fund shall be
112 as provided in 85 CSR §19: *Provided*, That said liabilities shall
113 be limited to those self-insured employers who default on their
114 claims obligations after the termination of the commission. The
115 company shall administer the self-insured employer security
116 risk pool for a term and administrative fee as provided in the
117 administration of the old fund.

118 (r) "Private carrier guaranty fund" shall be a fund held by
119 the state treasurer's office consisting of funds deposited
120 pursuant to this article. Disbursements shall be made from the

121 private carrier guaranty fund upon requisitions signed by the
122 insurance commissioner and the administrator of the fund. The
123 obligations of the fund shall be as provided in this article. The
124 company shall administer the private carrier guaranty fund for
125 a term and administrative fee as provided in the administration
126 of the old fund.

127 (s) "Assigned risk fund" shall be a fund held by the state
128 treasurer's office consisting of funds deposited pursuant to this
129 article. Disbursements shall be made from the assigned risk
130 fund upon requisitions signed by the insurance commissioner.
131 The obligations of the fund shall be as provided in this article.

132 (t) "Comprehensive financial plan" shall mean the plan
133 compiled by the director for acceptance by the insurance
134 commissioner identifying and forecasting cash flows, funding
135 sources, debt terms and structures, and scheduled amortization
136 and permanent resolution of all old fund liabilities. The
137 comprehensive financial plan shall provide for the retirement of
138 the revenue bonds authorized by article two-d, chapter twenty-
139 three of this code and all realized and potential claims against
140 the old fund shall be fully reserved. The comprehensive
141 financial plan may include any other information the insurance
142 commissioner may require as a basis for managing the post-
143 transition fiscal soundness of the old fund.

**§23-2C-3. Creation of employer mutual as successor organization
of the West Virginia workers' compensation com-
mission.**

1 (a) On or before the first day of June, two thousand five, the
2 executive director may take such actions as are necessary to
3 establish an employers' mutual insurance company as a
4 domestic, private, nonstock, corporation to:

5 (1) Insure employers against liability for injuries and
6 occupational diseases for which their employees may be

7 entitled to receive compensation pursuant to chapter twenty-
8 three of this code and federal Longshore and Harbor Workers'
9 Compensation Act, 33 U. S. C. §901, *et seq.*;

10 (2) Provide employer's liability insurance incidental to and
11 provided in connection with the insurance specified in para-
12 graph (1), including coal-workers pneumoconiosis coverage and
13 employer excess liability coverage as provided in this chapter;
14 and

15 (3) Transact such other kinds of property and casualty
16 insurance for which the company is otherwise qualified under
17 the provisions of this code.

18 (4) The company shall not sell, assign or transfer substan-
19 tial assets or ownership of the company.

20 (b) If the executive director establishes a domestic mutual
21 insurance company pursuant to subsection (a) of this section:

22 (1) As soon as practical, the company established pursuant
23 to the provisions of this article shall, through a vote of a
24 majority of its provisional board, file its corporate charter and
25 bylaws with the insurance commissioner and apply for a license
26 with the insurance commissioner to transact insurance in this
27 state. Notwithstanding any other provision of this code, the
28 insurance commissioner shall act on the documents within
29 fifteen days of the filing by the company.

30 (2) In recognition of the workers' compensation insurance
31 liability insurance crisis in this state at the time of enactment of
32 this article and the critical need to expedite the initial operation
33 of the company, the Legislature hereby authorizes the insurance
34 commissioner to review the documentation submitted by the
35 company and to determine the initial capital and surplus
36 requirements of the company, notwithstanding the provisions
37 of section five-b, article three of chapter thirty-three. The

38 company shall furnish the insurance commissioner with all
39 information and cooperate in all respects necessary for the
40 insurance commissioner to perform the duties set forth in this
41 section and in other provisions of this chapter and chapter
42 thirty-three. The insurance commissioner shall monitor the
43 economic viability of the company during its initial operation
44 on not less than a monthly basis, until such time as the commis-
45 sioner in his or her discretion, determines that monthly report-
46 ing is not necessary. In all other respects the company shall be
47 subject to comply with the applicable provisions of chapter
48 thirty-three of this code.

49 (3) Subject to the provisions of subsection (4) of this
50 section, the insurance commissioner may waive other require-
51 ments imposed on mutual insurance companies by the provi-
52 sions of chapter thirty-three as the insurance commissioner
53 determines is necessary to enable the company to begin
54 insuring employers in this state at the earliest possible date.

55 (4) Within forty months of the date of the issuance of its
56 license to transact insurance, the company shall comply with
57 the capital and surplus requirements set forth in subsection (a),
58 section five-b, article three, chapter thirty-three of this code in
59 effect on the effective date of this enactment, unless said
60 deadline is extended by the insurance commissioner.

61 (c) For the duration of its existence, the company is not and
62 shall not be considered a department, unit, agency, or instru-
63 mentality of the state for any purpose. All debts, claims,
64 obligations and liabilities of the company, whenever incurred,
65 shall be the debts, claims, obligations and liabilities of the
66 company only and not of the state or of any department, unit,
67 agency, instrumentality, officer or employee of the state.

68 (d) The moneys of the company are not and shall not be
69 considered part of the general revenue fund of the state. The

70 debts, claims, obligations and liabilities of the company are not
71 and shall not be considered a debt of the state or a pledge of the
72 credit of the state.

73 (e) The company is not subject to provisions of article nine-
74 a, chapter six of this code; the provisions of chapter twenty-
75 nine-b of this code; the provisions of article three, chapter five-
76 a of this code; the provisions of article six, chapter twenty-nine
77 of this code; the provisions of article six-a of said chapter; or
78 the provisions of chapter twelve of this code.

79 (f) If the commission has been terminated, effective upon
80 said termination, private carriers, including the company, shall
81 not be subject to payment of premium taxes, surcharges and
82 credits contained in article three of chapter thirty-three of this
83 code on premiums received for coverage under this chapter. In
84 lieu thereof, the workers' compensation insurance market shall
85 be subject to the following:

86 (1) Each fiscal year, the insurance commissioner shall
87 calculate a percentage surcharge to be collected by each private
88 carrier from its policy holders. The surcharge percentage shall
89 be calculated by dividing the previous fiscal year's total
90 premiums collected plus deductible payments by all employers
91 into the portion of the insurance commissioner's budget amount
92 attributable to regulation of the private carrier market. This
93 resulting percentage shall be applied to each policy holder's
94 premium payment and deductible payments as a surcharge and
95 remitted to the insurance commissioner. Said surcharge shall
96 be remitted within ten (10) days of receipt of premium pay-
97 ments, whenever said payments are made by its insureds;

98 (2) Each fiscal year, the insurance commissioner shall
99 calculate a percentage surcharge to be remitted on a monthly
100 basis by self-insured employers and said percentage shall be
101 calculated by dividing previous year's self-insured payroll in

102 the state into the portion of the insurance commissioner's
103 budget amount attributable to regulation of the self-insured
104 employer market. This resulting percentage shall be applied to
105 each self-insured employer's monthly payroll and the resulting
106 amount shall be remitted as a regulatory surcharge by each self-
107 insured employer. The workers' compensation board of
108 managers may promulgate a rule for implementation of this
109 section. The company, all other private carriers and all self-
110 insured employers shall furnish the insurance commissioner
111 with all required information and cooperate in all respects
112 necessary for the insurance commissioner to perform the duties
113 set forth in this section and in other provisions of this chapter
114 and chapter thirty-three. The surcharge shall be calculated so
115 as to only defray the costs associated with the administration of
116 chapter twenty-three of this code and the funds raised shall not
117 be used for any other purpose.

118 (3) Upon termination of the commission, the company and
119 all other private carriers shall collect a premiums surcharge
120 from their policy holders equal to ten percent, or such higher or
121 lower rate as annually determined, by the first day of May of
122 each year, by the insurance commissioner to produce forty-five
123 million dollars annually, of each policy holder's periodic
124 premium amount for workers' compensation insurance.
125 Additionally, by the first day of May each year, the self-insured
126 employer community shall be assessed a cumulative total of
127 nine million dollars. The methodology for the assessment shall
128 be fair and equitable and determined by exempt legislative rule
129 issued by the workers' compensation board of managers. The
130 amount collected shall be remitted to the insurance commis-
131 sioner for deposit in the workers' compensation debt reduction
132 fund created in section five, article two-d of this chapter.

133 (g) The new premiums surcharge imposed by subdivision
134 (2), subsection (f) of this section shall sunset and not be
135 collectible with respect to workers' compensation insurance

136 premiums paid when the policy is renewed on or after the first
137 day of the month following the month in which the Governor
138 certifies to the Legislature that the revenue bonds issued
139 pursuant to article two-d, chapter twenty-three of this code have
140 been retired and that the unfunded liability of the old fund has
141 been paid or has been provided for in its entirety, whichever
142 occurs last.

§23-2C-4. Governance and organization.

1 (a) (1) The commission shall implement the initial forma-
2 tion and organization of the company as provided by this
3 article.

4 (2) From the inception of the company, until the first day of
5 January, two thousand six, the company shall be governed by
6 a provisional board of directors consisting of the three-persons
7 on the executive committee of the workers' compensation board
8 of managers and four members of the Legislature. Two
9 members of the West Virginia Senate and two members of the
10 West Virginia House of Delegates shall serve as advisory
11 nonvoting members of the board. The Governor shall appoint
12 the legislative members to the board. No more than three of the
13 legislative members shall be of the same political party. The
14 provisional board shall have the authority to function as
15 necessary to establish the company and cause it to become
16 operational, including the right to contract on behalf of the
17 company. Each voting board member shall receive compensa-
18 tion of not more than three hundred fifty dollars per day and
19 actual and necessary expenses for each day during which he or
20 she is required to and does attend a meeting of the board.

21 (3) The provisional board shall develop procedures for the
22 nomination of the board of directors that will succeed the
23 provisional board on the first day of January, two thousand six,
24 and for the conduct of the election, to be held no later than the

25 first day of November, two thousand five, and shall give notice
26 of the election to the current subscribers to the workers'
27 compensation fund. These procedures shall be exempt from the
28 provisions of article three, chapter twenty-nine-a of this code.

29 (4) Except as limited by this section and applicable insur-
30 ance rules and statutes, the company may: (1) On its own; (2)
31 through the formation or acquisition of subsidiaries; or (3)
32 through a joint enterprise, offer:

33 (A) Workers' compensation insurance in a state other than
34 West Virginia to the extent it also provides workers' compensa-
35 tion or occupational disease insurance coverage to the employer
36 pursuant to chapter twenty-three of this code;

37 (B) Other workers' compensation products and services and
38 related products and services in West Virginia or other states;
39 and

40 (C) Other property and casualty insurance in West Virginia
41 and other states.

42 (b) Effective the first day of January, two thousand six, the
43 company shall be governed by a board of directors consisting
44 of seven directors, as follows:

45 (1) Three owners or officers of an entity that has purchased
46 or will immediately upon termination of the commission
47 purchase and maintain an active workers' compensation
48 insurance policy from the company. At least one shall be a
49 certified public accountant with financial management or
50 pension or insurance audit expertise and at least one shall be an
51 attorney with financial management experience.

52 (2) Two directors who have substantial experience as an
53 officer or employee of a company in the insurance industry, one
54 of whom is from a company with less than fifty employees;

55 (3) One director with general knowledge and experience in
56 business management who is an officer and employee of the
57 company and is responsible for the daily management of the
58 company; and

59 (4) The chief executive officer of the company.

60 (c) The directors and officers of the company are to be
61 chosen in accordance with the articles of incorporation and
62 bylaws of the company. The initial board of directors selected
63 shall serve for the following terms: (1) Two for four-year terms;
64 (2) two for three-year terms; (3) two for two-year terms; and (4)
65 one for a one-year term. Thereafter, the directors shall serve
66 staggered terms of four years. No director chosen may serve
67 more than two consecutive terms, except for the chief executive
68 officer of the company. Furthermore, owners, directors, or
69 employees of employers otherwise licensed to write workers'
70 compensation insurance in this state or licensed or otherwise
71 authorized to act as a third-party administrator shall not be
72 eligible to be nominated, appointed, elected or serve on the
73 company's board of directors.

74 (d) The executive director shall prepare and file articles of
75 incorporation and bylaws in accordance with the provisions of
76 this article and the provisions of chapters thirty-one and thirty-
77 three of this code.

§23-2C-5. Creation of the industrial council; duties.

1 (a) There is hereby created within the office of the insur-
2 ance commissioner an industrial council.

3 (b) On or before the first day of July, two thousand five, the
4 governor with the advice and consent of the Senate, shall
5 appoint five voting members to the industrial council who meet
6 the requirements and qualifications prescribed in this subsec-
7 tion. Two members of the West Virginia Senate and two

8 members of the West Virginia House of Delegates shall serve
9 as advisory nonvoting members of the board. The governor
10 shall appoint the legislative members to the board. No more
11 than three of the legislative members may be of the same
12 political party. The insurance commissioner shall serve as an
13 advisory nonvoting member of the board.

14 (1) (A) Five members shall be appointed by the governor
15 with the advice and consent of the Senate for terms that begin
16 upon appointment after the effective date of this legislation and
17 expire as follows:

18 (i) One member shall be appointed for a term ending the
19 thirtieth day of June, two thousand seven;

20 (ii) Two members shall be appointed for a term ending the
21 thirtieth day of June, two thousand eight; and

22 (iii) Two members shall be appointed for a term ending the
23 thirtieth day of June, two thousand nine.

24 (B) Except for appointments to fill vacancies, each subse-
25 quent appointment shall be for a term ending the thirtieth day
26 of June of the fourth year following the year the preceding term
27 expired. In the event a vacancy occurs, it shall be filled by
28 appointment for the unexpired term. A member whose term has
29 expired shall continue in office until a successor has been duly
30 appointed and qualified. No member of the council may be
31 removed from office by the governor except for official
32 misconduct, incompetency, neglect of duty or gross immorality.

33 (C) No appointed member may be a candidate for or hold
34 elected office. Members may be reappointed for no more than
35 two full terms.

36 (2) Each of the appointed voting members of the council
37 shall be appointed based upon his or her demonstrated knowl-

38 edge and experience to effectively accomplish the purposes of
39 this chapter. They shall meet the minimum qualifications as
40 follows:

41 (A) Each shall hold a baccalaureate degree from an
42 accredited college or university: *Provided*, That no more than
43 one of the appointed voting members may serve without a
44 baccalaureate degree from an accredited college or university
45 if the member has a minimum of fifteen years' experience in his
46 or her field of expertise as required in this subdivision;

47 (B) Each shall have a minimum of ten years' experience in
48 his or her field of expertise. The governor shall consider the
49 following guidelines when determining whether potential
50 candidates meet the qualifications of this subsection: Expertise
51 in insurance claims management; expertise in insurance
52 underwriting; expertise in the financial management of pen-
53 sions or insurance plans; expertise as a trustee of pension or
54 trust funds of more than two hundred beneficiaries or three
55 hundred million dollars; expertise in workers' compensation
56 management; expertise in loss prevention and rehabilitation;
57 expertise in occupational medicine demonstrated by licensure
58 as a medical doctor in West Virginia and experience, board
59 certification or university affiliation; or expertise in similar
60 areas of endeavor;

61 (C) At least one shall be a certified public accountant with
62 financial management or pension or insurance audit expertise;
63 at least one shall be an attorney with financial management
64 experience; one shall be an academician holding an advanced
65 degree from an accredited college or university in business,
66 finance, insurance or economics; and one shall represent
67 organized labor.

68 (D) The council shall appoint one member to serve as
69 chairperson. The chairperson shall serve for a one-year term
70 and may serve more than one consecutive term. The council

71 shall hold meetings at the request of the chairperson or at the
72 request of at least three of the members of the council, but no
73 less frequently than once every three months. The chairperson
74 shall determine the date and time of each meeting. Three
75 members of the council constitute a quorum for the conduct of
76 the business of the council. No vacancy in the membership of
77 the council shall impair the right of a quorum to exercise all the
78 rights and perform all the duties of the council. No action shall
79 be taken by the council except upon the affirmative vote of
80 three members of the council.

81 (3) (A) Each voting appointed member of the council shall
82 receive compensation of not more than three hundred fifty
83 dollars per day for each day during which he or she is required
84 to and does attend a meeting of the board.

85 (B) Each voting appointed member of the council is entitled
86 to be reimbursed for actual and necessary expenses incurred for
87 each day or portion thereof engaged in the discharge of official
88 duties in a manner consistent with guidelines of the travel
89 management office of the department of administration.

90 (C) Each member of the council shall be provided appropri-
91 ate liability insurance, including, but not limited to, errors and
92 omissions coverage, without additional premium, by the state
93 board of risk and insurance management established pursuant
94 to article twelve, chapter twenty-nine of this code.

95 (c) The industrial council shall:

96 (1) In consultation with the insurance commissioner,
97 establish operating guidelines and policies designed to ensure
98 the effective administration of the workers' compensation
99 insurance market in West Virginia.

100 (2) Review and approve, reject or modify rules that are
101 proposed by the insurance commissioner for operation and

102 regulation of the workers' compensation insurance market
103 before the rules are filed with the secretary of state. The rules
104 adopted by the industrial council are not subject to sections nine
105 through sixteen, inclusive, article three, chapter twenty-nine-a
106 of this code. The industrial council shall follow the remaining
107 provisions of said chapter for giving notice to the public of its
108 actions and for holding hearings and receiving public comments
109 on the rules.

110 (3) In accordance with the laws and rules of West Virginia,
111 establish and monitor performance standards and measurements
112 to ensure the timeliness and accuracy of activities performed
113 under chapter twenty-three of this code and applicable rules.

114 (4) Submit for approval by the Legislature, as an isolated
115 and clearly discernable component of the insurance commis-
116 sioner's budget, a budget for the sufficient administrative
117 resources and funding requirements necessary for their duties
118 under this article.

119 (5) Perform all record and information gathering functions
120 necessary to carry out its duties under this code.

121 (6) Every two years, conduct an overview of the safety
122 initiatives currently being utilized or which could be utilized in
123 the workers' compensation insurance market and report said
124 finding to the joint committee on government and finance.
125 Each private carrier and self-insured employer shall cooperate
126 with the council in the performance of its duties to evaluate
127 insurer services provided to employers in controlling losses and
128 providing information on the prevention of industrial accidents
129 or occupational diseases. Each employer, private carrier and
130 self-insured employer shall provide to the council, upon
131 request, any information, statistics or data in its records
132 requested by the council in the performance of these duties.

133 (7) Perform all other duties as specifically provided in this
134 chapter for the industrial council and those duties incidental
135 thereto.

136 (8) Establish a method of indexing claims of injured
137 workers that will make information concerning the injured
138 workers of one insurer available to other insurers.

139 (A) Every insurer shall provide information, as required by
140 the industrial council, for establishing and maintaining the
141 claims index.

142 (B) If an employee files a claim with an insurer, the insurer
143 is entitled to receive from the administrator a list of the prior
144 claims of the employee. If the insurer desires to inspect the
145 files related to the prior claims, he or she must obtain the
146 written consent of the employee or the insurance commissioner
147 or his or her designee. The use of the information contained in
148 the files is limited to the administration of the claim.

**§23-2C-6. Creation of new fund, old fund, mutualization transi-
tion fund, uninsured employer fund, self-insured
employer guaranty risk pool, self-insured employer
security risk pool, private carrier guaranty fund,
and assigned risk fund.**

1 (a) Effective upon the date upon which this enactment is
2 made effective by the Legislature, there is hereby created in the
3 state treasury a "workers' compensation old fund", "workers'
4 compensation new fund", "mutualization transition fund",
5 "workers' compensation uninsured employers' fund", "self-
6 insured employer guaranty risk pool", "self-insured employer
7 security risk pool", "private carrier guaranty fund" and an
8 "assigned risk fund". The executive director of the workers'
9 compensation commission shall have full authority to adminis-
10 ter the old fund, the new fund, the mutualization transition fund,
11 the uninsured employers' fund, the self-insured employer

12 guaranty risk pool, the self-insured employer security risk pool
13 and the private carrier guaranty fund until termination of the
14 commission. As soon as practicable upon the establishment of
15 the mutualization transition fund, the executive director shall
16 cause thirty-five million dollars to be transferred from the
17 workers' compensation fund into the mutualization transition
18 fund. All unencumbered funds remaining in the mutualization
19 transition fund as of termination of the commission shall be
20 transferred into the private carrier guaranty fund or, if the
21 proclamation set forth in this article has not been issued, back
22 to the workers' compensation fund. Expenditures from the
23 funds established by this section shall be upon appropriation of
24 the Legislature except that during the fiscal year ending the
25 thirtieth day of June, two thousand five, expenditures from the
26 mutualization transition fund up to amounts expended for the
27 purposes of this article are authorized rather than pursuant to an
28 appropriation by the Legislature.

29 (b) If the proclamation set forth in this article is issued, then
30 upon termination of the commission, the funds contained in the
31 workers' compensation fund shall be disbursed as follows: (1)
32 A minimum of three hundred million dollars into the workers'
33 compensation old fund, the exact amount of which shall be set
34 forth in the governor's proclamation provided in this article; (2)
35 five million dollars into the uninsured employers' fund; and (3)
36 the remainder into the new fund. Additionally, the funds
37 contained in the guaranty pool provided in 85 CSR §19 (2004)
38 shall be transferred into the self-insured employer guaranty risk
39 pool created in this article.

§23-2C-7. Custody, investment and disbursement of funds.

1 (a) The state treasurer shall be the custodian of the workers'
2 compensation old fund, workers' compensation uninsured
3 employers' fund, the self-insured employer guaranty risk pool,
4 the self-insured employer security risk pool, the private carrier

5 guaranty fund and the assigned risk pool and moneys payable
6 to each of these funds shall be deposited in the state treasury to
7 the credit of the funds. Each fund shall be a separate and
8 distinct fund upon the books and records of the auditor and
9 treasurer. Disbursements from these funds shall be made upon
10 requisitions signed by the executive director and, effective upon
11 termination of the commission, the administrator of the funds
12 and the insurance commissioner. The workers' compensation
13 old fund, the workers' compensation uninsured employer fund,
14 the self-insured employer guaranty risk pool, self-insured
15 employer security risk pool, the private carrier guaranty fund
16 and the assigned risk fund are participant plans as defined in
17 section two, article six, chapter twelve of this code and are
18 subject to the provisions of section nine-a of said article. The
19 funds may be invested by the investment management board in
20 accordance with said article.

21 (b) If the governor issues the proclamation set forth in this
22 article, then, effective upon termination of the commission, all
23 remaining assets and funds contained in the workers' compen-
24 sation fund which are payable to the new fund shall be so
25 disbursed and paid to the company by communication of the
26 executive director to the state treasurer or other appropriate
27 state official prior to the termination of the commission.

§23-2C-8. West Virginia uninsured employers' fund.

1 (a) The West Virginia uninsured employers' fund shall be
2 governed by the following:

3 (1) All money and securities in the fund must be held by the
4 state treasurer as custodian thereof to be used solely as provided
5 in this article.

6 (2) The state treasurer may disburse money from the fund
7 only upon written requisition of the insurance commissioner
8 and administrator of the fund.

9 (3) The insurance commissioner shall assess each private
10 carrier and all self-insured employers an amount to be deposited
11 in the fund. The assessment may be collected by each private
12 carrier from its policy holders in the form of a policy surcharge.
13 To establish the amount of the assessment, the insurance
14 commissioner shall determine the amount of money necessary
15 to maintain an appropriate balance in the fund for each fiscal
16 year and shall allocate a portion of that amount to be payable by
17 private carriers, a portion to be payable by self-insured employ-
18 ers, and a portion to be paid by any other appropriate group.
19 After allocating the amounts payable, the insurance commis-
20 sioner shall apply an assessment rate to the:

21 (A) Private carriers that reflects the relative hazard of the
22 employments covered by the private carriers, results in an
23 equitable distribution of costs among the private carriers and is
24 based upon expected annual premiums to be received;

25 (B) Self-insured employers that results in an equitable
26 distribution of costs among the self-insured employers and is
27 based upon expected annual expenditures for claims; and

28 (C) Any other categories of payees that results in an
29 equitable distribution of costs among them and is based upon
30 expected annual expenditures for claims or premium to be
31 received.

32 (4) The workers' compensation board of managers may
33 adopt rules for the establishment and administration of the
34 assessment methodologies, rates, payments and any penalties
35 that the workers' compensation board of managers determines
36 are necessary to carry out the provisions of this section.

37 (b) Payments from the fund shall be governed by the
38 following:

39 (1) Except as otherwise provided in this subsection, an
40 injured worker of any employer required to be covered under
41 this chapter who has failed to obtain coverage may receive
42 compensation from the uninsured employers' fund if:

43 (A) He or she meets all jurisdictional and entitlement
44 provisions of this chapter;

45 (B) He or she files a claim with the insurance commis-
46 sioner; and

47 (C) He or she makes an irrevocable assignment to the
48 insurance commissioner a right to be subrogated to the rights of
49 the injured employee.

50 (2) If the insurance commissioner receives a claim, it shall
51 immediately notify the employer of the claim. For the purposes
52 of this section, the employer has the burden of proving that it
53 provided mandatory workers' compensation insurance coverage
54 for the employee or that it was not required to maintain
55 workers' compensation insurance for the employee. If the
56 employer meets this burden, benefits shall not be paid from the
57 fund.

58 (3) Any employer who has failed to provide mandatory
59 coverage required by the provisions of chapter twenty-three of
60 this code is liable for all payments made on its behalf, including
61 any benefits, administrative costs and attorney's fees paid from
62 the fund or incurred by the insurance commissioner.

63 (4) The insurance commissioner:

64 (A) May recover from the employer the payments made by
65 it, any accrued interest and attorney fees and costs by bringing
66 a civil action in a court of competent jurisdiction.

67 (B) May enter into a contract with any person, including the
68 administrator of the uninsured employers' fund, to assist in the
69 collection of any liability of an uninsured employer.

70 (C) In lieu of a civil action, may enter into an agreement or
71 settlement regarding the collection of any liability of an
72 uninsured employer.

73 (5) The insurance commissioner shall:

74 (A) Determine whether the employer was insured within
75 five days after receiving notice of the claim from the employee.

76 (B) Assign the claim to the administrator of the fund for
77 administration and, if appropriate, payment of compensation.

78 (6) Upon determining whether the claim is accepted or
79 denied, the fund administrator shall notify the injured employee
80 and the named employer of its determination.

81 (7) Any party aggrieved by a determination made by the
82 insurance commissioner or the fund administrator regarding the
83 claims decisions made pursuant to this section may appeal that
84 determination by filing a protest with the office of judges as set
85 forth in article five of this chapter.

86 (8) An uninsured employer is liable for the interest on any
87 amount paid on his or her claims from the fund. The interest
88 must be calculated at a rate set in accordance with the provi-
89 sions of section thirteen, article two of this chapter, com-
90 pounded monthly, from the date the claim is paid from the
91 account until payment is received by the insurance commis-
92 sioner or fund administrator from the employer.

93 (9) Attorney's fees recoverable by the insurance commis-
94 sioner or administrator pursuant to this section must be paid at
95 the usual and customary rate for that attorney.

96 (10) In addition to any other liabilities provided in this
97 section, the insurance commissioner or the fund administrator
98 may impose an administrative fine of not more than ten
99 thousand dollars against an employer if the employer fails to
100 provide mandatory coverage required by this chapter. All fines
101 and other moneys collected pursuant to this section shall be
102 deposited into the uninsured employer fund.

103 (c) The company shall be the administrator of the uninsured
104 employers' fund from the fund's inception and thereafter for
105 seven years and shall be charged with all authority and respon-
106 sibilities incidental to the administration of the fund which are
107 necessary to accomplish the express provisions and the intent
108 of this chapter. The company shall be paid a monthly adminis-
109 trative fee of five percent of claims paid each month for the
110 administration of the fund through the thirty-first day of
111 December, two thousand ten, and four percent of claims paid
112 each month for the administration of the fund thereafter through
113 the thirty-first day of December, two thousand twelve. The
114 company's administrative duties shall include, but not be
115 limited to, receipt of all claims, processing said claims, provid-
116 ing for the payment of said claims through the state treasurer's
117 office or other applicable state agency and ensuring, through the
118 selection and assignment of counsel, that claims decisions are
119 properly defended. The administration of the fund after this
120 seven year period shall be subject to the procedures set forth in
121 article three, chapter five-a of this code.

122 (d) Employees of self-insured employers who are injured
123 while employed by a self-insured employer are ineligible for
124 benefits from the West Virginia uninsured employer fund.

§23-2C-9. West Virginia private carrier guaranty fund.

1 (a) The private carrier guaranty fund established in article
2 two-c of this chapter shall provide benefits to those employees

3 whose employers' private carrier is found to be insolvent by a
4 court of competent jurisdiction in the insurer's state of domicile
5 or has otherwise defaulted on its payment obligations and is
6 subject to an administrative action by the insurance commis-
7 sioner.

8 (b) The private carrier guaranty fund shall be funded
9 through assessments on each private carrier of workers'
10 compensation insurance. All assessments shall be deposited in
11 the private carrier guaranty fund established in this article. The
12 assessment may be collected by each carrier from its policy
13 holders in the form of a policy surcharge. To establish the
14 amount of the assessment, the insurance commissioner shall
15 determine the amount of money necessary to pay outstanding
16 obligations of the defaulting private carrier and to maintain an
17 appropriate balance in the fund for each fiscal year. The
18 insurance commissioner shall apply an assessment rate to the
19 private carriers that reflects the relative hazard of the employ-
20 ments covered by the private carriers, results in an equitable
21 distribution of costs among the private carriers and is based
22 upon expected annual premiums to be received.

23 (c) A defaulting private carrier shall not be permitted to
24 write any workers' compensation insurance in this state until it
25 has reimbursed the private carrier guaranty fund for any
26 payments made for the private carrier's unpaid obligations.

27 (d) Private carriers providing workers' compensation
28 insurance shall not be subject to article twenty-six, chapter
29 thirty-three of this code for any premiums received for coverage
30 provided under this chapter.

31 (e) The insurance commissioner may promulgate rules to
32 implement the provisions of this section.

§23-2C-10. West Virginia adverse risk assignment.

1 (a) To qualify for adverse risk assignment, an employer
2 must have been categorically declined coverage by at least two
3 insurers that are not affiliated with each other. The employer
4 shall have the burden of establishing that at least two insurers
5 are unwilling to provide coverage at any premium level that is
6 reasonably related to the risk presented by the employer.

7 (b) To qualify for adverse risk assignment, the employer
8 shall make an application to the insurance commissioner and
9 shall submit the evidence described in subsection (a) of this
10 section.

11 (c) Upon receipt of the adverse risk assignment application,
12 the insurance commissioner shall determine whether subsection
13 (a) of this section has been satisfied. If so, the insurance
14 commissioner shall, through the assigned risk fund, provide
15 coverage to the applicant at a premium level to be determined
16 by the insurance commissioner, which premiums shall be
17 consistent with generally accepted accounting principles,
18 actuarially sound, and consistent with classification and rate-
19 making methodologies found in the insurance industry. All
20 rates, surcharges or assessments and assignment of adverse risk
21 employers shall be fair and equitable and financially sound in
22 accordance with generally accepted accounting principles.

23 (d) The coverage provided by this section shall be pursuant
24 to a pooling arrangement managed by the insurance commis-
25 sioner. The insurance commissioner may contract with any
26 third party, including any private carrier, to administer this
27 pooling arrangement. Costs necessary to operate this pooling
28 arrangement shall be funded by premiums paid by covered
29 employers, surcharges, if any, to covered employers and
30 assessments to private carriers providing workers' compensa-
31 tion insurance in this state.

32 (e) The workers' compensation board of managers shall
33 promulgate a rule for the establishment of the pooling mecha-

34 nism and administration thereof; assessment of private carriers;
35 and rating structure with differing rate tiers for insureds.

36 (f) As often as necessary, the insurance commissioner may
37 assess all private carriers providing workers' compensation
38 insurance in this state such funds as are necessary to cover any
39 deficiencies in the pooling arrangement. The assessments shall
40 result in an equitable distribution of costs among private
41 carriers based upon premiums received by the private carriers.
42 Assessments made upon private carriers pursuant to this section
43 may be collected by each carrier from its policy holders in the
44 form of a surcharge.

§23-2C-11. Transfer of assets from new fund to the mutual insurance company established as a successor to the commission; transfer of commission employees.

1 (a) If the governor determines that:

2 (1) The old fund assets are sufficient to satisfy the old fund
3 liabilities or that a revenue source has been secured to satisfy
4 the old fund liabilities as they occur from time to time;

5 (2) The executive director has established a mutual insurance
6 company pursuant to this code;

7 (3) The comprehensive financial plan has been accepted by
8 the insurance commissioner; and

9 (4) The commissioner of insurance has determined that the
10 mutual insurance company established by the executive director
11 qualifies:

12 (A) For a certificate of authority to transact workers'
13 compensation insurance in this state; and

14 (B) For the authority to issue nonassessable policies of
15 insurance pursuant to this code, the governor shall issue a

16 proclamation stating that the events described in subdivisions
17 (1) through (4), inclusive, of this subsection have occurred,
18 along with the exact amount of funds to be transferred from the
19 workers' compensation fund to the old fund. The Governor
20 shall establish the effective date of the termination of the
21 commission in the proclamation.

22 (b) If the governor issues said proclamation:

23 The executive director shall cause the transfer to the mutual
24 insurance company established pursuant this code the premiums
25 and other money paid or payable, transferred or transferable
26 from the workers' compensation fund into the new fund, old
27 fund, and any other applicable fund. The investment manage-
28 ment board, state treasurer and any other agency or board shall
29 fully cooperate in the transfer of the new fund assets.

30 (c) Upon the issuance of the proclamation set forth in
31 subsection (a) of this section, all commission employees
32 assigned regulatory duties shall transfer, along with the assets
33 necessary to support the functions being performed, from the
34 commission to the insurance commissioner: *Provided*, That the
35 executive director shall, in consultation with the insurance
36 commissioner, have sole authority to identify and select the
37 employees that are employed by the commission to be assigned
38 and transferred to the insurance commission. For purposes of
39 this section, regulatory duties shall include, but may not be
40 limited to, self-insurance, rating services, office of judges and
41 board of review.

42 (d) The division of personnel shall cooperate fully by
43 assisting in all personnel activities necessary to expedite all
44 changes for the commission and the insurance commissioner.
45 Due to the emergency currently existing at the commission and
46 the urgent need to develop fast, efficient claims processing,
47 management and administration, the insurance commissioner is

48 hereby granted authority to reorganize internal functions and
49 operations and to delegate, assign, transfer, combine, establish,
50 eliminate and consolidate responsibilities and duties to and
51 among the positions transferred under the authority of this
52 subsection. These actions shall not be subject to the grievance
53 process. The provisions of this subsection are not effective
54 after the thirty-first day of December, two thousand six.

**§23-2C-12. Certain personnel provisions governing employees
laid-off by the mutual during its initial year of
operation.**

1 (a) If a mutual insurance company is established pursuant
2 to this article, a person who:

3 (1) Is employed on the first day of January, two thousand
4 five, by the commission;

5 (2) Was employed by the commission upon its termination;
6 and

7 (3) Is laid off by the company on or before the thirtieth day
8 of June, two thousand eight, is entitled to be placed on an
9 appropriate reemployment list maintained by the department of
10 personnel and to be allowed a preference on that list. The
11 department of personnel shall maintain such an employee on
12 the reemployment list indefinitely, or until the employee has
13 declined three offers of employment at a paygrade substantially
14 similar to that of his or her position upon termination of the
15 commission, or until he or she is reemployed by the executive
16 branch of state government, whichever occurs earlier.

17 (b) The executive director may select former bureau of
18 employment program employees who are, upon the termination
19 of the commission, employees of the office of information
20 services and communication and who enter into an employment
21 contract with the company before the first day of December,

- 22 two thousand five, to become employees of the company and
23 said employees shall be afforded the benefits of this section.

§23-2C-13. Certain retraining benefits to those employees laid-off by the mutual during its first year of operation.

1 If a domestic mutual insurance company is established
2 pursuant to this article, the chief executive officer of the
3 company shall enter into an agreement with the department of
4 personnel for the provision of services and training to an
5 employee of the company who is laid off during the first year
6 of the company's operation and requires additional training to
7 obtain other gainful employment. The department of personnel
8 shall administer the program. The fees required for those
9 services and training shall be in an amount established by the
10 department or personnel, must not exceed two million dollars,
11 in the aggregate, and shall be paid out of the mutualization
12 transition fund. The executive director may select former
13 bureau of employment program employees who are, upon the
14 termination of the commission, employees of the office of
15 information services and communication and who enter into an
16 employment contract with the company before the first day of
17 December, two thousand five, to become employees of the
18 company and said employees shall be afforded the benefits of
19 this section.

§23-2C-14. Certain benefits provided to commission employees.

1 (a) If a domestic mutual insurance company is created
2 pursuant to this article and becomes operational as a private
3 carrier, then the company shall pay the full actuarial cost to
4 purchase years of credit for not more than five years of service
5 under the state's public employee retirement system to those
6 individuals who retire upon termination of the commission or
7 who become employed by the company upon termination of the
8 commission. The amount purchased per employee shall be

9 calculated by allowing six months of credit to be purchased for
10 each year of service with the commission or its predecessors,
11 including the bureau of employment programs, and shall be
12 paid out of the mutualization transition fund. If upon said
13 purchase, an employee does not vest in the public employee
14 retirement plan, the employee can receive his or her contribu-
15 tion from the retirement plan and an amount equal to the
16 employer's contribution to be payable out of the mutualization
17 transition fund.

18 (b) The public employees' retirement system shall take
19 such action as is necessary to carry out the provisions of
20 subsection (a).

21 (c) All employees employed by the commission on the
22 thirty-first day of December, two thousand four, who are
23 employed by the company immediately upon termination of the
24 commission shall have the following options related to their
25 accrued sick leave: Freeze said accrued sick leave at the balance
26 that existed as of thirty-first day of December, two thousand
27 four and use said sick leave at the time of retirement to pur-
28 chase insurance through the public employee insurance agency.
29 Any related charges shall be paid from the old fund; have their
30 accrued sick leave irrevocably surrendered in exchange for one
31 hour of pay for each hour of accrued sick leave surrendered to
32 be payable from the mutualization transition fund.

33 (d) The executive director may select former bureau of
34 employment program employees who are, upon the termination
35 of the commission, employees of the office of information
36 services and communication and who enter into an employment
37 contract with the company before the first day of December,
38 two thousand five, to become employees of the company and
39 said employees shall be afforded the benefits of this section.

§23-2C-15. Mandatory coverage; changing of coverage.

1 (a) Effective upon termination of the commission, all
2 subscriber policies with the commission shall novate to the
3 company and all employers otherwise shall purchase workers'
4 compensation insurance from the company, unless permitted to
5 self-insure their obligations. The company shall assume
6 responsibility for all new fund obligations of the subscriber
7 policies which novate to the company or which are issued
8 thereafter. Each subscriber whose policy novates to the com-
9 pany shall also have its advanced deposit credited to its account
10 with the company. Employers purchasing workers' compensa-
11 tion insurance from the company shall have the right to
12 designate a representative or agent to act on its behalf in any
13 and all matters relevant to coverage and claims as administered
14 by the company.

15 (b) Effective the first day of July, two thousand eight, an
16 employer may elect to: (1) Continue to purchase workers'
17 compensation insurance from the company; (2) purchase
18 workers' compensation insurance from another private carrier
19 licensed and otherwise authorized to transact workers' compen-
20 sation insurance in this state; or (3) self-insure its obligations if
21 it satisfies all requirements of this code to so self-insure and is
22 permitted to do so: *Provided*, That all state and local govern-
23 mental bodies, including, but not limited to, all counties and
24 municipalities and their subdivisions and including all boards,
25 colleges, universities and schools, shall continue to purchase
26 workers' compensation insurance from the company through
27 the thirtieth day of June, two thousand twelve. The company
28 and other private carriers shall be permitted to sell workers'
29 compensation insurance through licensed agents in the state.
30 To the extent that a private carrier markets workers' compensa-
31 tion insurance through a licensed agent, it shall be subject to all
32 applicable provisions of chapter thirty-three of the code. All
33 employers' must immediately notify the insurance commis-
34 sioner of its private carrier and any change thereto.

35 (c) An employer may elect to change its private insurer
36 carrier on or after the first day of July, two thousand eight, if
37 the employer has:

38 (1) Given at least thirty days' notice to the insurance
39 commissioner of the change of insurer; and

40 (2) Furnished evidence satisfactory to the insurance
41 commissioner that the payment of compensation has otherwise
42 been secured.

43 (d) Each private carrier and employer shall notify the
44 insurance commissioner if an employer has changed his or her
45 insurer or has allowed his or her insurance to lapse within
46 twenty-four hours or by the end of the next working day,
47 whichever is later, after the insurer has notice of the change or
48 lapse. Every employer shall post a notice upon its premises in
49 a conspicuous place identifying its industrial insurer. The
50 notice must include the insurer's name, business address and
51 telephone number and the name, business address and telephone
52 number of its nearest adjuster in this state. The employer shall
53 at all times maintain the notice provided for the information of
54 his or her employees. Release of employer policy information
55 and status by the industrial council and the insurance commis-
56 sioner shall be governed by section four, article one, chapter
57 twenty-three of this code. The insurance commissioner shall
58 collect and maintain information related to officers, directors
59 and ten percent or more owners of each carrier's policy holders.
60 The private carrier shall provide said information to the
61 insurance commissioner.

62 (e) Any rule promulgated by the workers' compensation
63 board of managers empowering agencies of this state to revoke
64 or refuse to grant, issue or renew any contract, license, permit,
65 certificate or other authority to conduct a trade, profession or
66 business to or with any employer whose account is in default
67 with the commission shall be fully enforceable by the insurance

68 commissioner against the employer in policy default with a
69 private carrier.

70 (f) Effective the first day of July, two thousand eight, the
71 company may decline to offer coverage to any applicant.
72 Effective the first day of July, two thousand eight, the company
73 and private carriers may cancel a policy or decline to renew a
74 policy upon the issuance of sixty days written advance notice to
75 the policyholder: *Provided*, That cancellation of the policy by
76 the carrier for failure of consideration to be paid by the policy-
77 holder is effective after fifteen days advance written notice of
78 cancellation to the policyholder.

§23-2C-16. Administration of old fund.

1 (a) Notwithstanding any provision of this code to the
2 contrary, the company shall be the administrator of the workers'
3 compensation old fund from inception of the company and
4 thereafter for seven years and shall be charged with all authority
5 and responsibilities incidental to the administration of the old
6 fund which are necessary to accomplish the express provisions
7 and the intent of this chapter. The company shall be paid a
8 monthly administrative fee of five percent of claims paid each
9 month for the administration of the old fund through the thirty-
10 first day of December, two thousand ten, and four percent of
11 claims paid each month for the administration of the old fund
12 thereafter through the thirty-first day of December, two
13 thousand twelve. The company's administrative duties shall
14 include, but not be limited to, receipt of all claims, processing
15 said claims, providing for the payment of said claims through
16 the state treasurer's office or other applicable state agency, and
17 ensuring, through the selection and assignment of counsel, that
18 claims decisions are properly defended. The administration of
19 the old fund after this seven-year period shall be subject to the
20 procedures set forth in article three, chapter five-a of this code.

21 (b) The insurance commissioner may contract or employ
22 counsel to perform legal services related solely to the collection
23 of moneys due the old fund, including the collection of moneys
24 due the old fund and enforcement of repayment agreements
25 entered into for the collection of moneys due on or before the
26 thirtieth day of June, two thousand five, in any administrative
27 proceeding and in any state or federal court.

28 (c) The insurance commissioner shall review claims
29 determined to be payable from the old fund and may contest the
30 determination pursuant to the provisions of article five of this
31 chapter.

32 (d) The insurance commissioner may conduct or cause to be
33 conducted an annual audit to be performed on the old fund.

§23-2C-17. Administration of a competitive system.

1 (a) Every policy of insurance issued by a private carrier:

2 (1) Shall be in writing;

3 (2) Shall contain the insuring agreements and exclusions;
4 and

5 (3) If it contains a provision inconsistent with this chapter,
6 it shall be deemed to be reformed to conform with this chapter.

7 (b) The workers' compensation board of managers shall
8 promulgate a rule which prescribes the requirements of a basic
9 policy to be used by private carriers.

10 (c) A private carrier may enter into a contract to have his or
11 her plan of insurance administered by a third-party administra-
12 tor, including the company. A private carrier shall not enter
13 into a contract with any person for the administration of any
14 part of the plan of insurance unless that person maintains an
15 office in this state and has registered with the insurance

16 commissioner of this state in accordance with article forty-six,
17 chapter thirty-three of the code.

18 (d) A self-insured employer or a private carrier may:

19 (1) Enter into a contract or contracts with one or more
20 organizations for managed care to provide comprehensive
21 medical and health care services to employees for injuries and
22 diseases that are compensable pursuant to chapter twenty-three
23 of this code. The managed care plan must be approved pursu-
24 ant to the provisions of section three, article four of this chapter.

25 (2) Require employees to obtain medical and health care
26 services for their industrial injuries from those organizations
27 and persons with whom the self-insured employer, or private
28 carrier has contracted or as the self-insured employer or private
29 carrier otherwise prescribes.

30 (3) Except for emergency care, require employees to obtain
31 the approval of the self-insured employer or private carrier
32 before obtaining medical and health care services for their
33 industrial injuries from a provider of health care who has not
34 been previously approved by the self-insured employer or
35 private carrier.

36 (e) A private carrier or self-insured employer may inquire
37 about and request medical records of an injured employee that
38 concern a preexisting medical condition that is reasonably
39 related to the industrial injury of that injured employee.

40 (f) An injured employee must sign all medical releases
41 necessary for the insurer of his or her employer to obtain
42 information and records about a preexisting medical condition
43 that is reasonably related to the industrial injury of the em-
44 ployee and that will assist the insurer to determine the nature
45 and amount of workers' compensation to which the employee
46 is entitled.

§23-2C-18. Ratemaking; insurance commissioner.

1 (a) For the fiscal year beginning the first day of July, two
2 thousand six, the company shall charge the actuarially deter-
3 mined base rates for the fiscal year. The base rates shall be
4 calculated by the company and submitted for approval by the
5 insurance commissioner.

6 (b) For the fiscal year beginning the first day of July, two
7 thousand seven, the company shall charge the actuarially
8 determined base rates for said fiscal year. The base rates shall
9 be calculated by the company and submitted for approval by the
10 insurance commissioner.

11 (c) Effective for the fiscal year beginning the first day of
12 July, two thousand eight, all private carriers' rates shall be
13 governed by the following:

14 (1) For the period beginning on first day of July, two
15 thousand eight, and ending on the thirtieth day of June, two
16 thousand nine, no more than five percent variance from the base
17 rates established by the insurance commissioner.

18 (2) For the period beginning on the first day of July, two
19 thousand nine, and ending on the thirtieth day of June, two
20 thousand ten, no more than ten percent variance from the base
21 rates established by the insurance commissioner.

22 (d) For the period beginning on the first day of July, two
23 thousand six through the thirtieth day of June, two thousand ten,
24 the company and, when applicable, a private carrier, may
25 continue to calculate experience modification factors and other
26 related rating modification methodologies to adequately insure
27 individual employer risks.

28 (e) The variances provided in this section are only applica-
29 ble to base rates and shall be exclusive of experience modifica-

30 tion and other related adjustments, including surcharges
31 imposed by this chapter.

32 (f) For the period beginning the first day of July, two
33 thousand ten, and thereafter, the insurance commissioner shall
34 set base rates for approved classifications and thereafter in
35 accordance with rules established in accordance with subsection
36 nine of this section. Said rates shall be released to the public at
37 least ninety days prior to the first day of July each year. Within
38 thirty days from this release date, private carriers shall submit
39 to the insurance commissioner their proposed rates, which may
40 be higher than the base rates established by the insurance
41 commissioner. The insurance commissioner retains authority
42 to disapprove rates in effect if it is determined that the rates are
43 not in compliance with the following:

44 (1) Rates must not be excessive, inadequate or unfairly
45 discriminatory, nor may an insurer charge any rate which if
46 continued will have or tend to have the effect of destroying
47 competition or creating a monopoly.

48 (2) The insurance commissioner may disapprove rates if
49 there is not a reasonable degree of price competition at the
50 consumer level with respect to the class of business to which
51 they apply. In determining whether a reasonable degree of
52 price competition exists, the insurance commissioner shall
53 consider all relevant tests, including:

54 (A) The number of insurers actively engaged in the class of
55 business and their shares of the market;

56 (B) The existence of differentials in rates in that class of
57 business;

58 (C) Whether long-run profitability for private carriers
59 generally of the class of business is unreasonably high in
60 relation to its risk;

61 (D) Consumers' knowledge in regard to the market in
62 question; and

63 (E) Whether price competition is a result of the market or
64 is artificial. If competition does not exist, rates are excessive if
65 they are likely to produce a long-run profit that is unreasonably
66 high in relation to the risk of the class of business, or if ex-
67 penses are unreasonably high in relation to the services ren-
68 dered.

69 (3) Rates are inadequate if they are clearly insufficient,
70 together with the income from investments attributable to them,
71 to sustain projected losses and expenses in the class of business
72 to which they apply.

73 (4) One rate is unfairly discriminatory in relation to another
74 in the same class if it clearly fails to reflect equitably the
75 differences in expected losses and expenses. Rates are not
76 unfairly discriminatory because different premiums result for
77 policyholders with similar exposure to loss but different
78 expense factors, or similar expense factors but different
79 exposure to loss, so long as the rates reflect the differences with
80 reasonable accuracy. Rates are not unfairly discriminatory if
81 they are averaged broadly among persons insured under a
82 group, franchise or blanket policy.

83 (g) The rate-making provisions and premium provisions
84 contained in article two of this chapter shall not be applicable
85 to the company or other private carriers. The workers' compen-
86 sation board of managers, in consultation with the insurance
87 commissioner, shall issue an exempt legislative rule to govern
88 ratemaking and premium collection by the company and other
89 private carriers.

§23-2C-19. Special provisions as to private carrier premium collection.

1 (a) Each employer who is required to purchase and main-
2 tain workers' compensation insurance or who elects to purchase
3 workers' compensation insurance shall pay a premium to a
4 private carrier. Each carrier shall notify its policy holders of
5 the mandated premium payment methodology and under what
6 circumstances a policy holder will be found to be in policy
7 default.

8 (b) An employer who is required to purchase and maintain
9 workers' compensation insurance but fails to do so or otherwise
10 enters policy default shall be deprived of the benefits and
11 protection afforded by this chapter, including section six, article
12 two of this chapter, and the employer is liable as provided in
13 section eight of said article. The policy defaulted employer's
14 liability under these sections is retroactive to day the policy
15 default occurs. The private carrier shall notify the policy
16 defaulted employer of the method by which the employer may
17 be reinstated with the private carrier.

18 (c) A private carrier is authorized to commence a civil
19 action against an employer who, after due notice, defaults on
20 any payment. If judgment is against the employer, the em-
21 ployer shall pay the costs of the action. Upon prevailing in a
22 civil action, the private carrier is entitled to recover its attor-
23 neys' fees and costs of action from the employer.

24 (d) In addition to the provisions of subsection (a) of this
25 section, any payment, interest and penalty due and unpaid under
26 this chapter is a personal obligation of the employer, its officers
27 and its directors, immediately due and owing to the private
28 carrier and shall, in addition, be a lien enforceable against all
29 the property of the employer: *Provided*, That the lien shall not
30 be enforceable as against a purchaser (including a lien creditor)
31 of real estate or personal property for a valuable consideration
32 without notice, unless docketed as provided in section one,
33 article ten-c, chapter thirty-eight of this code: *Provided*,

34 *however*, That the lien may be enforced as other judgment liens
35 are enforced through the provisions of said chapter and the
36 same is considered deemed by the circuit court to be a judgment
37 lien for this purpose.

38 (e) The secretary of state of this state shall withhold the
39 issuance of any certificate of dissolution or withdrawal in the
40 case of any corporation organized under the laws of this state or
41 organized under the laws of any other state and admitted to do
42 business in this state, until notified by its private carrier that all
43 payments, interest and penalties thereon against the corporation
44 which is an employer under this chapter have been paid or that
45 provision satisfactory to the private carrier has been made for
46 payment.

47 (f) In addition to any other liabilities provided in this
48 section, the insurance commissioner may impose an administra-
49 tive fine of not more than ten thousand dollars against an
50 employer if the employer fails to provide mandatory coverage
51 required by the this chapter. Further, prior to providing an
52 applicant employer with coverage mandated in this chapter, all
53 private carriers shall exercise reasonable due diligence to
54 ensure that an employer applicant has not been in policy default
55 with another carrier or in default with the commission. If it is
56 discovered that the employer applicant remains in policy
57 default with another carrier or the commission, the company or
58 new carrier shall not provide the coverage mandated by this
59 chapter until such time as the preexisting policy default is
60 cured. Any provider violating this provision may be fined not
61 more than ten thousand dollars by the insurance commissioner.

62 (g) The company and the insurance commissioner shall be
63 provided extraordinary powers to collect any premium amounts
64 payable to the workers' compensation fund or the new fund and
65 due from first day of July, two thousand five, through the
66 thirtieth day of June, two thousand eight. Those powers shall

67 include: (1) Withholding of coverage effective the first day of
68 January, two thousand six. Employers without coverage shall
69 immediately be deprived of the benefits and protection afforded
70 by this chapter, including section six, article two of this chapter
71 and the employer is liable as provided in section eight of said
72 article; (2) the right to maintain a civil action against all officers
73 and directors of the employer individually for collection of the
74 premium owed; and (3) the right to immediately report the
75 employers' to the state tax department and other state agencies
76 to secure suspension of any and all licenses, certificates,
77 permits, registrations and other similar approval documents
78 necessary for the employer to conduct business in this state.

§23-2C-20. Claims administration issues.

1 (a) A self-insured employer shall continue to comply with
2 rules promulgated by the board of managers governing the self-
3 administration of its claims and the successor to the commis-
4 sion shall also comply with the rules promulgated by the board
5 of managers governing the self-administration of claims.

6 (b) The successor to the commission, any other private
7 carrier and any employer that self-insures its risk and self-
8 administers its claims shall exercise all authority and responsi-
9 bility granted to the commission in this chapter and provide
10 notices of action taken to effect the purposes of this chapter to
11 provide benefits to persons who have suffered injuries or
12 diseases covered by this chapter. The successor to the commis-
13 sion, private carriers and self-insured employers shall at all
14 times be bound and shall comply fully with all of the provisions
15 of this chapter. Furthermore, all of the provisions contained in
16 article four of this chapter pertaining to disability and death
17 benefits are binding on and shall be strictly adhered to by the
18 successor to the commission, private carriers, and the self-
19 insured employer in their administration of claims presented by
20 employees of the self-insured employer.

21 (c) Upon termination of the commission, the occupational
22 pneumoconiosis board shall be transferred to the insurance
23 commissioner and shall be administered by the insurance
24 commissioner. The company and other private carriers shall
25 have all authority and responsibility granted to the self-insured
26 employers in the administration and processing of occupational
27 pneumoconiosis claims.

28 (d) Upon termination of the commission, all claims
29 allocation responsibilities shall transfer from the commission to
30 the insurance commissioner.

31 (e) Upon termination of the commission, the administrator
32 of the old fund shall have all administrative and adjudicatory
33 authority vested in the commission in administering old law
34 liabilities and otherwise processing and deciding old law
35 claims.

§23-2C-21. Limitation of liability of insurer or third-party administrator; administrative fines are exclusive remedies.

1 (a) No cause of action may be brought or maintained by an
2 employee against a private carrier or a third-party administrator,
3 or any employee or agent of a private carrier or third-party
4 administrator, who violates any provision of this chapter or
5 chapter thirty-three of this code.

6 (b) Any administrative fines or remedies provided in this
7 chapter or rules promulgated by the workers' compensation
8 commission or the insurance commissioner are the exclusive
9 civil remedies for any violation of this chapter committed by a
10 private carrier or a third-party administrator or any agent or
11 employee of a private carrier or a third-party administrator.

12 (c) Upon a determination by the Office of Judges' that a
13 denial of compensability, a denial of an initial award of

14 temporary total disability or a denial of an authorization for
15 medical benefits was unreasonable, reasonable attorney's fees
16 and the costs actually incurred in the process of obtaining a
17 reversal of the denial shall be awarded to the claimant and paid
18 by the company, private carrier or self-insured employer which
19 issued the unreasonable denial. A denial is unreasonable if,
20 after submission by or on behalf of the claimant, of evidence of
21 the compensability of the claim, the entitlement to initial
22 temporary total disability benefits or medical benefits, the
23 company, private carrier or self-insured employer is unable to
24 demonstrate that it had evidence or a legal basis supported by
25 legal authority at the time of the denial which is relevant and
26 probative and supports the denial of the award or authorization.
27 Payment of attorney's fees and costs awarded under this
28 subsection will be made to the claimant at the conclusion of
29 litigation, including all appeals, of the claimant's protest of the
30 denial.

§23-2C-22. Rules.

1 Except as otherwise provided in this chapter, all rules
2 applicable to the former workers' compensation commission
3 are hereby adopted and made effective as to the operation of the
4 workers' compensation insurance market to the extent that they
5 are not in conflict with the current law. Authority to enforce
6 the existing rules and the regulatory functions of the commis-
7 sion as set forth in chapter twenty-three of the code shall
8 transfer from the commission to the insurance commissioner
9 effective upon termination of the commission.

§23-2C-23. Transfer of assets and contracts.

1 With the establishment of the company, all commission
2 assets, excluding those necessary to perform the regulatory
3 function of the insurance commissioner under this chapter are
4 hereby transferred and assigned to the company.

ARTICLE 2D. WORKERS' COMPENSATION DEBT REDUCTION BONDS.

§23-2D-1. Short title.

§23-2D-2. Legislative findings; legislative intent.

§23-2D-3. Definitions.

§23-2D-4. Workers' compensation debt reduction revenue bonds; amount; when may issue.

§23-2D-5. Special account created; use of moneys in the fund.

§23-2D-5a. Excess regular coal severance taxes.

§23-2D-6. Creation of debt service fund; disbursements to pay debt service on workers' compensation debt reduction revenue bonds.

§23-2D-7. Covenants of state.

§23-2D-8. Workers' compensation debt reduction revenue bonds lawful investments.

§23-2D-9. Refunding bonds.

§23-2D-10. Approval and payment of all necessary expenses.

§23-2D-1. Short title.

- 1 This article shall be known and may be cited as the
- 2 "Workers' Compensation Debt Reduction Bond Act".

§23-2D-2. Legislative findings; legislative intent.

- 1 The Legislature finds and declares that:

- 2 (a) The supreme court of appeals has ruled that article X,
- 3 section four of the constitution does not preclude issuance of
- 4 revenue bonds which are to be redeemed from a special fund.

- 5 (b) The supreme court of appeals has also ruled that the
- 6 Legislature may not designate funds that will be used to
- 7 liquidate a bond issue out of a current tax source that flows into
- 8 the general revenue fund.

- 9 (c) This act imposes several new taxes and provides for
- 10 those taxes to be deposited in the workers' compensation debt
- 11 reduction fund created in section five of this article, which is a
- 12 special account in the treasury and is not part of the state
- 13 general revenue fund.

14 (d) This act also provides for certain special revenue dollars
15 that are not part of the state general revenue fund to also be
16 deposited in the workers' compensation debt reduction fund.

17 (e) This article provides for the reduction of the old fund
18 liability of the workers' compensation commission through the
19 issuance of revenue bonds for the purpose of:

20 (1) Providing for the safety and soundness of the workers'
21 compensation system; and

22 (2) Redeeming the unfunded liability of the workers'
23 compensation fund in order to realize savings over the remain-
24 ing term of the amortization schedules of the unfunded actuarial
25 accrued liabilities.

26 (f) The general credit of the state will not be pledged for
27 repayment of bonds issued under this article and repayment will
28 come from moneys that are not part of the state's general
29 revenue fund.

§23-2D-3. Definitions.

1 For purposes of this article:

2 (a) "Old fund" means the fund created in sections two and
3 six, article two-c of this chapter;

4 (b) "Workers' compensation commission" or "commission"
5 means the West Virginia workers' compensation commission
6 established under article one, chapter twenty-three of this code,
7 or any successor to all or any substantial part of its powers and
8 duties; and

9 (c) "Workers' compensation debt reduction revenue bond"
10 means any bond or bonds issued by the economic development
11 authority pursuant to this article.

§23-2D-4. Workers' compensation debt reduction revenue bonds; amount; when may issue.

1 (a) Revenue bonds of the state of West Virginia are hereby
2 authorized to be issued and sold by the West Virginia economic
3 development authority created and provided in article fifteen,
4 chapter thirty-one of this code, solely for the paying down and
5 elimination of the current unfunded liability of the workers'
6 compensation fund, as provided by the constitution and the
7 provisions of this article. The principal of, and the interest and
8 redemption premium, if any, on, the bonds shall be payable
9 solely from the special fund provided in section six of this
10 article for repayment.

11 (b) The bonds shall bear such date or dates and mature at
12 such time or times, be in such amounts, be in such denomina-
13 tions, be in such registered form, carry such registration
14 privileges, be due and payable at such time or times, not
15 exceeding thirty years from their respective dates, and place and
16 in such amounts, and subject to such terms of redemption as the
17 resolution may provide: *Provided*, That in no event may the
18 amount of bonds issued pursuant to this article exceed one
19 billion five hundred million dollars.

20 (c) Revenue bonds issued under this article shall state on
21 their face that the bonds do not constitute a debt of the state of
22 West Virginia; that payment of the bonds, interest and charges
23 thereon cannot become an obligation of the state of West
24 Virginia; and that the bondholders' remedies are limited in all
25 respects to the "special revenue fund" established in this article
26 for the liquidation of the bonds.

27 (d) Net proceeds from sale of these bonds shall be deposited
28 in the old fund.

§23-2D-5. Special account created; use of moneys in the fund.

1 (a) There is hereby created in the state treasury a special
2 interest bearing account known as the "workers' compensation
3 debt reduction fund." Funds in this account may be invested in
4 the manner permitted by the provisions of article six, chapter
5 twelve of this code, with interest income a proper credit to this
6 fund.

7 (b) Moneys to be deposited in this account include:

8 (1) The amounts provided in section two, article eleven-a,
9 chapter four of this code;

10 (2) The net amount of all moneys received by the tax
11 commissioner from collection of the new taxes imposed by
12 section four, article thirteen-v, chapter eleven of this code,
13 including any interest, additions to tax, or penalties collected
14 with respect to these taxes pursuant to article ten, chapter
15 eleven of this code;

16 (3) The net amount of moneys received by the insurance
17 commissioner from collection of the new premiums tax
18 imposed by section three, article two-c of this chapter; and

19 (4) Moneys from racetrack video lottery net terminal
20 income, as provided in section ten and ten-b, article twenty-
21 two-a, chapter twenty-nine of this code.

22 (c) Moneys in this account are to be used and expended to
23 reduce the workers' compensation debt or to pay debt service
24 on bonds sold pursuant to this article for the purpose of
25 reducing or paying the workers' compensation debt, or for any
26 combination of both of these purposes.

27 (d) From the moneys deposited in this fund, there shall first
28 be transferred each month to the debt service fund created in
29 section six of this article sufficient amounts to provide for the
30 timely payment of the principal, interest and redemption

31 premium, if any, on any revenue bonds or refunding bonds
32 issued pursuant to this article, as determined in the trust
33 agreement or agreements. Remaining moneys shall be trans-
34 ferred monthly to the old fund.

§23-2D-5a. Excess regular coal severance taxes.

1 When in any fiscal year ending after the thirtieth day of
2 June, two thousand six, the state collects net severance tax on
3 the privilege of severing, extracting, reducing to possession or
4 producing coal for sale profit or commercial use imposed by
5 section three, article thirteen-a, chapter eleven of the code, that
6 is in excess of the net amount of the tax collected in fiscal year
7 two thousand six, fifty percent of the difference shall be
8 deposited in the old fund created in article two-c of this chapter.
9 For purposes of this section, the amount of the additional
10 severance tax on coal imposed pursuant to section six, article
11 thirteen-a, chapter eleven of the code, collected each fiscal year
12 for the benefit of counties and municipalities as provided in
13 said section six, shall be excluded when determining the
14 amount of the tax imposed by section three, article thirteen-a,
15 chapter eleven of the code, that is collected each fiscal year
16 from the privilege of severing, extracting, reducing to posses-
17 sion or producing coal for sale, profit or commercial use. The
18 provisions of this section shall not be effective after the thirtieth
19 day of June, two thousand nine.

**§23-2D-6. Creation of debt service fund; disbursements to pay
debt service on workers' compensation debt
reduction revenue bonds.**

1 (a) There is hereby created a special account in the state
2 treasury, which shall be designated and known as the "West
3 Virginia Workers' Compensation Debt Reduction Revenue
4 Bond Debt Service Fund", into which shall monthly be depos-
5 ited amounts from the workers' compensation debt reduction

6 fund necessary to pay debt service on the bonds and to provide
7 for any coverage requirements.

8 (b) All amounts deposited in the fund shall be pledged to
9 the repayment of the principal, interest and redemption pre-
10 mium, if any, on any revenue bonds or refunding revenue bonds
11 authorized by this article, including any and all commercially
12 customary and reasonable costs and expenses which may be
13 incurred in connection with the issuance, refunding, redemption
14 or defeasance thereof.

15 (c) The treasurer shall transfer monies in this fund as set
16 forth in the trust agreement for the bonds issued under this
17 article.

18 (d) A lien on the proceeds of the West Virginia workers'
19 compensation debt reduction revenue bond debt service fund up
20 to a maximum amount equal to the projected annual principal,
21 interest and coverage ratio requirements may be granted by the
22 economic development authority in favor of the bonds it issues
23 secured by this fund.

§23-2D-7. Covenants of state.

1 The state of West Virginia covenants and agrees with the
2 holders of the bonds issued pursuant hereto as follows: (1) That
3 such bonds shall never constitute a direct and general obligation
4 of the state of West Virginia; (2) that the full faith and credit of
5 the state is not hereby pledged to secure the payment of the
6 principal and interest of such bonds; (3) that new annual state
7 taxes that are not and never were part of the state general
8 revenue fund shall be collected in an amount sufficient to pay
9 as it may accrue the interest on such bonds and the principal
10 thereof; and (4) that the moneys transferred to the workers'
11 compensation debt reduction revenue bond debt service fund as
12 provided in this article are irrevocably set aside and dedicated

13 to the payment of the interest on and principal of any bond
14 becoming due and payable in such year.

**§23-2D-8. Workers' compensation debt reduction revenue bonds
lawful investments.**

1 All workers' compensation debt reduction revenue bonds
2 issued pursuant to this article shall be lawful investments for
3 banking institutions, societies for savings, building and loan
4 associations, savings and loan associations, deposit guarantee
5 associations, trust companies, insurance companies, including
6 domestic for life and domestic not for life insurance companies.

§23-2D-9. Refunding bonds.

1 Any workers' compensation debt reduction revenue bonds
2 which are outstanding may at any time be refunded by the
3 issuance of refunding bonds in an amount deemed necessary to
4 refund the principal of the bonds to be refunded, together with
5 any unpaid interest thereon; to accomplish the purpose of this
6 article; and to pay any premiums and commissions necessary to
7 be paid in connection therewith. Any refunding may be effected
8 whether the workers' compensation debt reduction revenue
9 bonds to be refunded shall have then matured or shall thereafter
10 mature. Any refunding bonds issued pursuant to this article
11 shall be payable from the workers' compensation debt reduction
12 revenue bond debt service fund shall be secured in accordance
13 with the provisions of this article.

§23-2D-10. Approval and payment of all necessary expenses.

1 All necessary expenses, including legal expenses, incurred
2 in the issuance of any revenue bonds pursuant to this article
3 shall be paid out of bond proceeds.

ARTICLE 3. WORKERS' COMPENSATION FUND.

§23-3-1. Compensation fund; catastrophe and catastrophe payment defined; compensation by employers.

§23-3-4. Deposits and disbursements considered abandoned property; disposition of property.

§23-3-1. Compensation fund; catastrophe and catastrophe payment defined; compensation by employers.

1 (a) The commission shall establish a workers' compensa-
2 tion fund from the premiums and other funds paid thereto by
3 employers, as provided in this section, for the benefit of
4 employees of employers who have paid the premiums applica-
5 ble to the employers and have otherwise complied fully with the
6 provisions of section five, article two of this chapter, and for the
7 benefit, to the extent elsewhere in this chapter set out, of
8 employees of employers who have elected, under section nine,
9 article two of this chapter, to make payments into the workers'
10 compensation fund as provided for in this section, and for the
11 benefit of the dependents of all the employees, and for the
12 payment of the administration expenses of this chapter. The
13 workers' compensation fund created pursuant to this article
14 shall terminate upon termination of the commission and its
15 proceeds shall be distributed as set forth in article two-c of this
16 chapter.

17 (b) A portion of all premiums that are paid into the work-
18 ers' compensation fund by subscribers not electing to carry
19 their own risk under section nine, article two of this chapter that
20 is set aside to create and maintain a reserve of the fund to cover
21 the catastrophe hazard and all losses not otherwise specifically
22 provided for in this chapter. The percentage to be set aside is
23 determined pursuant to the rules adopted to implement section
24 four, article two of this chapter and shall be in an amount
25 sufficient to maintain a solvent fund. All interest earned on
26 investments by the workers' compensation fund, which is
27 attributable to the reserve, shall be credited to the fund.
28 Effective upon termination of the commission, all funds in the

29 catastrophe fund shall be transferred into the old fund, all
30 claims payable as a consequence of a catastrophe hazard shall
31 be payable from the old fund and any premiums due under this
32 article shall be payable to the old fund. Employers shall
33 purchase catastrophe insurance from the company or another
34 private carrier and shall also reinsure their catastrophic risk.

35 (c) A catastrophe is hereby defined as an accident in which
36 three or more employees are killed or receive injuries which, in
37 the case of each individual, consist of: Loss of both eyes or the
38 sight thereof; loss of both hands or the use thereof; loss of both
39 feet or the use thereof; or loss of one hand and one foot or the
40 use thereof. The aggregate of all medical and hospital bills and
41 other costs and all benefits payable on account of a catastrophe
42 is defined as "catastrophe payment". In case of a catastrophe
43 to the employees of an employer who is an ordinary premium-
44 paying subscriber to the fund, or to the employees of an
45 employer who, having elected to carry the employer's own risk
46 under section nine, article two of this chapter, has previously
47 elected, or may later elect, to pay into the catastrophe reserve of
48 the fund under the provisions of said section, the catastrophe
49 payment arising from the catastrophe shall not be charged
50 against, or paid by, the employer but shall be paid from the
51 catastrophe reserve of the fund.

52 (d) For all awards made on or after the effective date of the
53 amendments to this section enacted during the year two
54 thousand three, the following provisions relating to second
55 injury are not applicable. For awards made before the date
56 specified in this subsection, if an employee who has a definitely
57 ascertainable physical impairment, caused by a previous
58 occupational injury, occupational pneumoconiosis or occupa-
59 tional disease, irrespective of its compensability, becomes
60 permanently and totally disabled through the combined effect
61 of the previous injury and a second injury received in the course
62 of and as a result of his or her employment, the employer shall

63 be chargeable only for the compensation payable for the second
64 injury: *Provided*, That in addition to the compensation, and
65 after the completion of the payments therefor, the employee
66 shall be paid the remainder of the compensation that would be
67 due for permanent total disability out of the workers' compen-
68 sation fund. The procedure by which the claimant's request for
69 a permanent total disability award under this section is ruled
70 upon shall require that the issue of the claimant's degree of
71 permanent disability first be determined. Thereafter, by means
72 of a separate order, a decision shall be made as to whether the
73 award is a second injury award under this subsection or a
74 permanent total disability award to be charged to the em-
75 ployer's account or to be paid directly by the employer if the
76 employer has elected to be self-insured employer under the
77 provisions of section nine, article two of this chapter.

78 (e) Employers electing, as provided in this chapter, to
79 compensate individually and directly their injured employees
80 and their fatally injured employees' dependents shall do so in
81 the manner prescribed by the commission and shall make all
82 reports and execute all blanks, forms and papers as directed by
83 the commission, and as provided in this chapter.

§23-3-4. Deposits and disbursements considered abandoned property; disposition of property.

1 (a) All disbursements from the workers' compensation fund
2 and the other funds created pursuant to this chapter including
3 the advance deposits by employers where there has been no
4 activity for a period of five years, are presumed abandoned and
5 subject to the custody of the state as unclaimed property under
6 the provisions of article eight, chapter thirty-six of this code.
7 The funds shall be kept in a separate account by the state
8 treasurer, apart from other unclaimed property funds. Ninety
9 days after the state treasurer has advertised the accounts and
10 paid any claims, he or she shall remit the balance of those funds
11 held in the account to the credit of the workers' compensation

12 fund or to other affected funds. Such property shall become the
13 property of, and owned exclusively by, the workers' compensa-
14 tion fund. Effective upon termination of the commission, said
15 funds otherwise meeting the requirements of this section shall
16 be deposited into the old fund as set forth in article two-c of this
17 chapter.

18 (b) Notwithstanding any provision of law to the contrary,
19 all interest and other earnings accruing to the investments and
20 deposits of the workers' compensation fund and of the other
21 funds created pursuant to this chapter are credited only to the
22 account of the workers' compensation fund or to such other
23 affected fund.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1b. Report of injuries by employers.

§23-4-1c. Payment of temporary total disability benefits directly to claimant;
payment of medical benefits; payments of benefits during protest;
right of commission, successor to the commission, other private
carriers and self-insured employers to collect payments improperly
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§23-4-1d. Method and time of payments for permanent disability.

§23-4-1e. Temporary total disability benefits not to be paid for periods of correc-
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§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and
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for violation; payments to certain providers prohibited; medical cost
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§23-4-3b. Creation of health care advisory panel.

§23-4-4. Funeral expenses; wrongfully seeking payment; criminal penalties.

§23-4-6. Classification of and criteria for disability benefits.

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pneumoconiosis.

§23-4-6b. Occupational hearing loss claims.

- §23-4-7. Release of medical information to employer; legislative findings; effect of application for benefits; duty of employer.
- §23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority; suspension of benefits.
- §23-4-7b. Trial return to work.
- §23-4-8. Physical examination of claimant.
- §23-4-8a. Occupational pneumoconiosis board; composition; term of office; duties; quorum; remuneration.
- §23-4-8b. Occupational pneumoconiosis board; procedure; autopsy.
- §23-4-8c. Occupational pneumoconiosis board; reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims.
- §23-4-9. Physical and vocational rehabilitation.
- §23-4-10. Classification of death benefits; "dependent" defined.
- §23-4-11. To whom death benefits paid.
- §23-4-12. Application of benefits.
- §23-4-14. Computation of benefits.
- §23-4-15. Application for benefits.
- §23-4-15a. Nonresident alien beneficiaries.
- §23-4-15b. Determination of nonmedical questions by commission; claims for occupational pneumoconiosis; hearing.
- §23-4-16. Jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules.
- §23-4-16a. Interest on benefits.
- §23-4-17. Commutation of periodical benefits.
- §23-4-20. Postmortem examinations.
- §23-4-24. Permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction.
- §23-4-25. Permanent total disability benefits; reduction of disability benefits for wages earned by claimant.

§23-4-1b. Report of injuries by employers.

- 1 It is the duty of every employer to report to the commis-
- 2 sion, the successor to the commission or another private carrier,
- 3 whichever is applicable, every injury sustained by any person
- 4 in his or her employ. The report shall be on forms prescribed

5 by the commission or the insurance commissioner, whichever
6 is applicable, and shall be made within five days of the em-
7 ployer's receipt of the employee's notice of injury, required by
8 section one-a of this article, or within five days after the
9 employer has been notified by the commission or the insurance
10 commissioner, whichever is applicable, that a claim for benefits
11 has been filed on account of such injury, whichever is sooner,
12 and, notwithstanding any other provision of this chapter to the
13 contrary, the five-day period may not be extended by the
14 commission the successor to the commission, or another private
15 carrier, whichever is applicable, but the employer has the right
16 to file a supplemental report at a later date. The employer's
17 report of injury shall include a statement as to whether or not,
18 on the basis of the information available, the employer disputes
19 the compensability of the injury or objects to the payment of
20 temporary total disability benefits in connection with the injury.
21 The statements by the employer shall not prejudice the em-
22 ployer's right thereafter to contest the compensability of the
23 injury, or to object to any subsequent finding or award, in
24 accordance with article five of this chapter; but an employer's
25 failure to make timely report of an injury as required in this
26 section, or statements in the report to the effect that the em-
27 ployer does not dispute the compensability of the injury or
28 object to the payment of temporary total disability benefits for
29 the injury, shall be considered to be a waiver of the employer's
30 right to object to any interim payment of temporary total
31 disability benefits paid by the commission, the successor to the
32 commission, or another private carrier with respect to any
33 period from the date of injury to the date of receipt of any
34 objection made to the interim payments by the employer.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of commission, successor to the commission, other private carriers and self-insured employers to collect payments improperly made.

1 (a) In any claim for benefits under this chapter, the work-
2 ers' compensation commission, the successor to the commis-
3 sion, other private carriers or self-insured employer, whichever
4 is applicable, shall determine whether the claimant has sus-
5 tained a compensable injury within the meaning of section one
6 of this article and enter an order giving all parties immediate
7 notice of the decision.

8 (1) The commission, successor to the commission, other
9 private carrier or self-insured employer, whichever is applica-
10 ble, may enter an order conditionally approving the claimant's
11 application if it finds that obtaining additional medical evidence
12 or evaluations or other evidence related to the issue of compen-
13 sability would aid the commission in making a correct final
14 decision. Benefits shall be paid during the period of conditional
15 approval; however, if the final decision is one that rejects the
16 claim, the payments shall be considered an overpayment. The
17 commission, successor to the commission, other private carrier
18 or self-insured employer, whichever is applicable, may only
19 recover the amount of the overpayment as provided for in
20 subsection (h) of this section.

21 (2) In making a determination regarding the compensability
22 of a newly filed claim or upon a filing for the reopening of a
23 prior claim pursuant to the provisions of section sixteen of this
24 article based upon an allegation of recurrence, reinjury,
25 aggravation or progression of the previous compensable injury
26 or in the case of a filing of a request for any other benefits
27 under the provisions of this chapter, the commission, successor
28 to the commission, other private carrier or self-insured em-
29 ployer, whichever is applicable, shall consider the date of the
30 filing of the claim for benefits for a determination of the
31 following:

32 (A) Whether the claimant had a scheduled shutdown
33 beginning within one week of the date of the filing;

34 (B) Whether the claimant received notice within sixty days
35 of the filing that his or her employment position was to be
36 eliminated, including, but not limited to, the claimant's
37 worksite, a layoff or the elimination of the claimant's employ-
38 ment position;

39 (C) Whether the claimant is receiving unemployment
40 compensation benefits at the time of the filing; or

41 (D) Whether the claimant has received unemployment
42 compensation benefits within sixty days of the filing. In the
43 event of an affirmative finding upon any of these four factors,
44 the finding shall be given probative weight in the overall
45 determination of the compensability of the claim or of the
46 merits of the reopening request.

47 (3) Any party may object to the order of the commission,
48 successor to the commission, other private carrier or self-
49 insured employer, whichever is applicable, and obtain an
50 evidentiary hearing as provided in section one, article five of
51 this chapter: *Provided*, That if the successor to the commis-
52 sioner, other private carrier or self-insured, whichever is
53 applicable, fails to timely issue a ruling upon any application or
54 motion as provided by law, or if the claimant files a timely
55 protest to the ruling of a self-insured employer, private carrier,
56 or other issuing entity, denying the compensability of the claim,
57 denying initial temporary total disability benefits or denying
58 medical authorization, the office of judges shall provide a
59 hearing on the protest on an expedited basis as determined by
60 rule of the office of judges.

61 (b) Where it appears from the employer's report, or from
62 proper medical evidence, that a compensable injury will result
63 in a disability which will last longer than three days as provided
64 in section five of this article, the commission, successor to the
65 commission, other private carrier or self-insured employer,
66 whichever is applicable, may immediately enter an order
67 commencing the payment of temporary total disability benefits

68 to the claimant in the amounts provided for in sections six and
69 fourteen of this article, and the payment of the expenses
70 provided for in subsection (a), section three of this article,
71 relating to the injury, without waiting for the expiration of the
72 thirty-day period during which objections may be filed to the
73 findings as provided in section one, article five of this chapter.
74 The commission, successor to the commission, other private
75 carrier or self-insured employer, whichever is applicable, shall
76 enter an order commencing the payment of temporary total
77 disability or medical benefits within fifteen working days of
78 receipt of either the employee's or employer's report of injury,
79 whichever is received sooner, and also upon receipt of either a
80 proper physician's report or any other information necessary for
81 a determination. The commission, successor to the commis-
82 sion, other private carrier or self-insured employer, whichever
83 is applicable, shall give to the parties immediate notice of any
84 order granting temporary total disability or medical benefits.
85 When an order granting temporary total disability benefits is
86 made, the claimant's return-to-work potential shall be assessed.
87 The commission may schedule medical and vocational evalua-
88 tion of the claimant and assign appropriate personnel to
89 expedite the claimant's return to work as soon as reasonably
90 possible.

91 (c) The commission, successor to the commission, other
92 private carrier or self-insured employer, whichever is applica-
93 ble, may enter orders granting temporary total disability
94 benefits upon receipt of medical evidence justifying the
95 payment of the benefits. The commission, successor to the
96 commission, other private carrier or self-insured employer,
97 whichever is applicable, may not enter an order granting
98 prospective temporary total disability benefits for a period of
99 more than ninety days: *Provided*, That when the commission,
100 successor to the commission, other private carrier or self-
101 insured employer, whichever is applicable, determines that the
102 claimant remains disabled beyond the period specified in the
103 prior order granting temporary total disability benefits, the

104 commission shall enter an order continuing the payment of
105 temporary total disability benefits for an additional period not
106 to exceed ninety days and shall give immediate notice to all
107 parties of the decision.

108 (d) Upon receipt of the first report of injury in claim, the
109 commission, successor to the commission, other private carrier
110 or self-insured employer, whichever is applicable, shall request
111 from the employer or employers any wage information neces-
112 sary for determining the rate of benefits to which the employee
113 is entitled. If an employer does not furnish this information
114 within fifteen days from the date the commission, successor to
115 the commission, other private carrier or self-insured employer,
116 whichever is applicable, received the first report of injury in the
117 case, the employee shall be paid temporary total disability
118 benefits for lost time at the rate the commission obtains from
119 reports made pursuant to subsection (b), section two, article two
120 of this chapter. If no wages have been reported, the commis-
121 sion, successor to the commission, other private carrier or self-
122 insured employer, whichever is applicable, shall make the
123 payments at the rate the commission, successor to the commis-
124 sion, other private carrier or self-insured employer, whichever
125 is applicable, finds would be justified by the usual rate of pay
126 for the occupation of the injured employee. The rate of benefits
127 shall be adjusted both retroactively and prospectively upon
128 receipt of proper wage information. The commission shall have
129 access to all wage information in the possession of any state
130 agency.

131 (e) Subject to the limitations set forth in section sixteen of
132 this article, upon a finding of the commission, successor to the
133 commission, other private carrier or self-insured employer,
134 whichever is applicable, that a claimant who has sustained a
135 previous compensable injury which has been closed by order,
136 or by the claimant's return to work, suffers further temporary
137 total disability or requires further medical or hospital treatment
138 resulting from the compensable injury, payment of temporary

139 total disability benefits to the claimant in the amount provided
140 for in sections six and fourteen of this article shall immediately
141 commence, and the expenses provided for in subsection (a),
142 section three of this article, relating to the disability, without
143 waiting for the expiration of the thirty-day period during which
144 objections may be filed. Immediate notice to the parties of the
145 decision shall be given.

146 (f) Where the employer is a subscriber to the workers'
147 compensation fund under the provisions of article three of this
148 chapter, and upon the findings aforesaid, the commission shall
149 mail all workers' compensation checks paying temporary total
150 disability benefits directly to the claimant and not to the
151 employer for delivery to the claimant.

152 (g) Where the employer has elected to carry its own risk
153 under section nine, article two of this chapter, and upon the
154 findings aforesaid, the self-insured employer shall immediately
155 pay the amounts due the claimant for temporary total disability
156 benefits. A copy of the notice shall be sent to the claimant.

157 (h) In the event that an employer files a timely objection to
158 any order of the division with respect to compensability, or any
159 order denying an application for modification with respect to
160 temporary total disability benefits, or with respect to those
161 expenses outlined in subsection (a), section three of this article,
162 the division shall continue to pay to the claimant such benefits
163 and expenses during the period of such disability. Where it is
164 subsequently found by the division that the claimant was not
165 entitled to receive such temporary total disability benefits or
166 expenses, or any part thereof, so paid, the division shall, when
167 the employer is a subscriber to the fund, credit said employer's
168 account with the amount of the overpayment. When the
169 employer has protested the compensability or applied for
170 modification of a temporary total disability benefit award or
171 expenses and the final decision in that case determines that the
172 claimant was not entitled to the benefits or expenses, the

173 amount of benefits or expenses is considered overpaid. For all
174 awards made or nonawarded partial benefits paid the commis-
175 sion, the successor to the commission, other private carriers, or
176 self-insured employer may recover the amount of overpaid
177 benefits or expenses by withholding, in whole or in part, future
178 disability benefits payable to the individual in the same or other
179 claims and credit the amount against the overpayment until it is
180 repaid in full.

181 (i) In the event that the commission, successor to the
182 commission, other private carrier or self-insured employer,
183 whichever is applicable, finds that, based upon the employer's
184 report of injury, the claim is not compensable, the commission,
185 successor to the commission, other private carrier or self-
186 insured employer, whichever is applicable, shall provide a copy
187 of the employer's report to the claimant in addition to the order
188 denying the claim.

189 (j) If a claimant is receiving benefits paid through a wage
190 replacement plan, salary continuation plan or other benefit plan
191 provided by the employer to which the employee has not
192 contributed, and that plan does not provide an offset for
193 temporary total disability benefits to which the claimant is also
194 entitled under this chapter as a result of the same injury or
195 disease, the employer shall notify the commission of the
196 duplication of the benefits paid to the claimant. Upon receipt
197 of the notice, the commission, successor to the commission,
198 other private carrier or self-insured employer, whichever is
199 applicable, shall reduce the temporary total disability benefits
200 provided under this chapter by an amount sufficient to ensure
201 that the claimant does not receive monthly benefits in excess of
202 the amount provided by the employer's plan or the temporary
203 total disability benefit, whichever is greater: *Provided*, That this
204 subsection does not apply to benefits being paid under the terms
205 and conditions of a collective bargaining agreement.

§23-4-1d. Method and time of payments for permanent disability.

1 (a) If the commission, successor to the commission, other
2 private carrier or self-insured employer, whichever is applica-
3 ble, makes an award for permanent partial or permanent total
4 disability, the commission, successor to the commission, other
5 private carrier or self-insured employer, whichever is applica-
6 ble, shall start payment of benefits by mailing or delivering the
7 amount due directly to the employee within fifteen working
8 days from the date of the award: *Provided*, That the commis-
9 sion, successor to the commission, other private carrier or self-
10 insured employer, whichever is applicable, may withhold
11 payment of the portion of the award that is the subject of
12 subsection (b) of this section until seventy-seven days have
13 expired without an objection being filed.

14 (b) When the commission, successor to the commission,
15 other private carrier, self-insured employer, the office of judges
16 or the workers' compensation board of review, whichever is
17 applicable, enters an order or provides notice granting the
18 claimant a permanent total disability award and an objection or
19 petition for appeal is filed by the employer, the commission, the
20 successor to the commission or other private carrier, payment
21 of monthly permanent total disability benefits shall begin.
22 However, any payment for a back period of benefits from the
23 onset date of total permanent disability to the date of the award
24 shall be limited to a period of twelve months of benefits. If,
25 after all litigation is completed and the time for the filing of any
26 further objections or appeals to the award has expired and the
27 award of permanent total disability benefits is upheld, the
28 claimant shall receive the remainder of benefits due to him or
29 her based upon the onset date of permanent total disability that
30 was finally determined.

31 (c) If the claimant is owed any additional payment of back
32 permanent total disability benefits, the commission, successor
33 to the commission, other private carrier or self-insured em-
34 ployer, whichever is applicable, shall not only pay the claimant
35 the sum owed but shall also add thereto interest at the simple

36 rate of six percent per annum from the date of the initial award
37 granting the total permanent disability to the date of the final
38 order upholding the award. In the event that an intermediate
39 order directed an earlier onset date of permanent total disability
40 than was found in the initial award, the interest-earning period
41 for that additional period shall begin upon the date of the
42 intermediate award. Any interest payable shall be charged to
43 the account of the employer or shall be paid by the employer if
44 it has elected to carry its own risk.

45 (d) If a timely protest to the award is filed, as provided in
46 section one or nine, article five of this chapter, benefits shall
47 continue to be paid to the claimant benefits during the period of
48 the disability unless it is subsequently found that the claimant
49 was not entitled to receive the benefits, or any part thereof, in
50 which event the commission shall, where the employer is a
51 subscriber to the fund, credit the employer's account with the
52 amount of the overpayment. If the final decision in any case
53 determines that a claimant was not lawfully entitled to benefits
54 paid to him or her pursuant to a prior decision, the amount of
55 benefit paid shall be considered overpaid. For all awards made
56 or nonawarded partial benefits paid the commission, successor
57 to the commission, other private carrier or self-insured em-
58 ployer, whichever is applicable, may only recover that amount
59 by withholding, in whole or in part, as determined by the
60 commission, successor to the commission, other private carrier
61 or self-insured employer, whichever is applicable, future
62 disability benefits payable to the individual in the same or other
63 claims and credit the amount against the overpayment until it is
64 repaid in full.

65 (e) An award for permanent partial disability shall be made
66 as expeditiously as possible and in accordance with the time
67 frame requirements promulgated by the board of managers.

68 (f) If a claimant is receiving benefits paid through a
69 retirement plan, wage replacement plan, salary continuation

70 plan or other benefit plan provided by the employer to which
71 the employee has not contributed, and that plan does not
72 provide an offset for permanent total disability benefits to
73 which the claimant is also entitled under this chapter as a result
74 of the same injury or disease, the employer shall notify the
75 commission, successor to the commission, other private carrier
76 or self-insured employer, whichever is applicable, of the
77 duplication of the benefits paid to the claimant. Upon receipt
78 of the notice, the commission, successor to the commission,
79 other private carrier or self-insured employer, whichever is
80 applicable, shall reduce the permanent total disability benefits
81 provided under this chapter by an amount sufficient to ensure
82 that the claimant does not receive monthly benefits in excess of
83 the amount provided by the employer's plan or the permanent
84 total disability benefit, whichever is greater: *Provided*, That this
85 subsection does not apply to benefits being paid under the terms
86 and conditions of a collective bargaining agreement.

§23-4-1e. Temporary total disability benefits not to be paid for periods of correctional center or jail confinement; denial of workers' compensation benefits for injuries or disease incurred while confined.

1 (a) Notwithstanding any provision of this code to the
2 contrary, no person shall be jurisdictionally entitled to tempo-
3 rary total disability benefits for that period of time in excess of
4 three days during which that person is confined in a state
5 correctional facility or jail: *Provided*, That confinement shall
6 not affect the claimant's eligibility for payment of expenses:
7 *Provided, however*, That this subsection is applicable only to
8 injuries and diseases incurred prior to any period of confine-
9 ment. Upon release from confinement, the payment of benefits
10 for the remaining period of temporary total disability shall be
11 made if justified by the evidence and authorized by order of the
12 commission, successor to the commission, other private carrier
13 or self-insured employer, whichever is applicable.

14 (b) Notwithstanding any provision of this code to the
15 contrary, no person confined in a state correctional facility or
16 jail who suffers injury or a disease in the course of and resulting
17 from his or her work during the period of confinement which
18 work is imposed by the administration of the state correctional
19 facility or jail and is not suffered during the person's usual
20 employment with his or her usual employer when not confined
21 shall receive benefits under the provisions of this chapter for
22 the injury or disease.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care program; payments; interlocutory orders.

1 (a) The workers' compensation commission, and effective
2 upon termination of the commission, the insurance commis-
3 sioner, shall establish and alter from time to time, as it deter-
4 mines appropriate, a schedule of the maximum reasonable
5 amounts to be paid to health care providers, providers of
6 rehabilitation services, providers of durable medical and other
7 goods and providers of other supplies and medically related
8 items or other persons, firms or corporations for the rendering
9 of treatment or services to injured employees under this
10 chapter. The commission and effective upon termination of the
11 commission, the insurance commissioner, also, on the first day
12 of each regular session and also from time to time, as it may
13 consider appropriate, shall submit the schedule, with any
14 changes thereto, to the Legislature.

15 The commission, and effective upon termination of the
16 commission, all private carriers and self-insured employers or
17 their agents, shall disburse and pay for personal injuries to the
18 employees who are entitled to the benefits under this chapter as
19 follows:

20 (1) Sums for health care services, rehabilitation services,
21 durable medical and other goods and other supplies and
22 medically related items as may be reasonably required. The
23 commission, and effective upon termination of the commission,
24 all private carriers and self-insured employers or their agents,
25 shall determine that which is reasonably required within the
26 meaning of this section in accordance with the guidelines
27 developed by the health care advisory panel pursuant to section
28 three-b of this article: *Provided*, That nothing in this section
29 shall prevent the implementation of guidelines applicable to a
30 particular type of treatment or service or to a particular type of
31 injury before guidelines have been developed for other types of
32 treatment or services or injuries: *Provided, however*, That any
33 guidelines for utilization review which are developed in
34 addition to the guidelines provided for in section three-b of this
35 article may be used by the commission, and effective upon
36 termination of the commission, all private carriers and self-
37 insured employers or their agents, until superseded by guide-
38 lines developed by the health care advisory panel pursuant to
39 said section. Each health care provider who seeks to provide
40 services or treatment which are not within any guideline shall
41 submit to the commission, and effective upon termination of the
42 commission, all private carriers, self-insured employers and
43 other payors, specific justification for the need for the addi-
44 tional services in the particular case and the commission shall
45 have the justification reviewed by a health care professional
46 before authorizing the additional services. The commission,
47 and effective upon termination of the commission, all private
48 carriers, self-insured employers and other payors, may enter
49 into preferred provider and managed care agreements which

50 provides for fees and other payments which deviate from the
51 schedule set forth in this subsection.

52 (2) Payment for health care services, rehabilitation services,
53 durable medical and other goods and other supplies and
54 medically related items authorized under this subsection may be
55 made to the injured employee or to the person, firm or corpora-
56 tion who or which has rendered the treatment or furnished
57 health care services, rehabilitation services, durable medical or
58 other goods or other supplies and items, or who has advanced
59 payment for them, as the commission, and effective upon
60 termination of the commission, all private carriers, self-insured
61 employers and other payors, considers proper, but no payments
62 or disbursements shall be made or awarded by the commission
63 unless duly verified statements on forms prescribed by the
64 commission, and effective upon termination of the commission,
65 all private carriers, self-insured employers and other payors,
66 have been filed within six months after the rendering of the
67 treatment or the delivery of such goods, supplies or items or
68 within ninety days of a subsequent compensability ruling if a
69 claim is initially rejected: *Provided*, That no payment under this
70 section shall be made unless a verified statement shows no
71 charge for or with respect to the treatment or for or with respect
72 to any of the items specified in this subdivision has been or will
73 be made against the injured employee or any other person, firm
74 or corporation. When an employee covered under the provi-
75 sions of this chapter is injured, in the course of and as a result
76 of his or her employment and is accepted for health care
77 services, rehabilitation services, or the provision of durable
78 medical or other goods or other supplies or medically related
79 items, the person, firm or corporation rendering the treatment
80 may not make any charge or charges for the treatment or with
81 respect to the treatment against the injured employee or any
82 other person, firm or corporation which would result in a total
83 charge for the treatment rendered in excess of the maximum
84 amount set forth therefor in the commission schedule set forth
85 in this subsection.

86 (3) Any pharmacist filling a prescription for medication for
87 a workers' compensation claimant shall dispense a generic
88 brand of the prescribed medication if a generic brand exists. If
89 a generic brand does not exist, the pharmacist may dispense the
90 name brand. In the event that a claimant wishes to receive the
91 name brand medication in lieu of the generic brand, the
92 claimant may receive the name brand medication but, in that
93 event, the claimant is personally liable for the difference in
94 costs between the generic brand medication and the brand name
95 medication.

96 (4) In the event that a claimant elects to receive health care
97 services from a health care provider from outside of the state of
98 West Virginia and if that health care provider refuses to abide
99 by and accept as full payment the reimbursement made by the
100 workers' compensation commission, and effective upon
101 termination of the commission, all private carriers and self-
102 insured employers or their agents, pursuant to the schedule of
103 maximum reasonable amounts of fees authorized by this
104 subsection, with the exceptions noted below, the claimant is
105 personally liable for the difference between the scheduled fee
106 and the amount demanded by the out-of-state health care
107 provider.

108 (A) In the event of an emergency where there is an urgent
109 need for immediate medical attention in order to prevent the
110 death of a claimant or to prevent serious and permanent harm
111 to the claimant, if the claimant receives the emergency care
112 from an out-of-state health care provider who refuses to accept
113 as full payment the scheduled amount, the claimant is not
114 personally liable for the difference between the amount
115 scheduled and the amount demanded by the health care pro-
116 vider. Upon the claimant's attaining a stable medical condition
117 and being able to be transferred to either a West Virginia health
118 care provider or an out-of-state health care provider who has
119 agreed to accept the scheduled amount of fees as payment in
120 full, if the claimant refuses to seek the specified alternative

121 health care providers, he or she is personally liable for the
122 difference in costs between the scheduled amount and the
123 amount demanded by the health care provider for services
124 provided after attaining stability and being able to be trans-
125 ferred.

126 (B) In the event that there is no health care provider
127 reasonably near to the claimant's home who is qualified to
128 provide the claimant's needed medical services who is either
129 located in the state of West Virginia or who has agreed to
130 accept as payment in full the scheduled amounts of fees, the
131 commission, upon application by the claimant, may authorize
132 the claimant to receive medical services from another health
133 care provider. The claimant is not personally liable for the
134 difference in costs between the scheduled amount and the
135 amount demanded by the health care provider.

136 (b) (1) No employer shall enter into any contracts with any
137 hospital, its physicians, officers, agents or employees to render
138 medical, dental or hospital service or to give medical or surgical
139 attention to any employee for injury compensable within the
140 purview of this chapter and no employer shall permit or require
141 any employee to contribute, directly or indirectly, to any fund
142 for the payment of such medical, surgical, dental or hospital
143 service within such hospital for the compensable injury. Any
144 employer violating this subsection is liable in damages to the
145 employer's employees as provided in section eight, article two
146 of this chapter, and any employer or hospital or agent or
147 employee thereof violating the provisions of this section is
148 guilty of a misdemeanor and, upon conviction thereof, shall be
149 punished by a fine not less than one hundred dollars nor more
150 than one thousand dollars or by imprisonment not exceeding
151 one year, or both.

152 (2) The provisions of this subsection shall not prohibit an
153 employer, the successor to the commission, other private carrier
154 or self-insured employer from participating in a managed health

155 care plan, including, but not limited to, a preferred provider
156 organization or program or a health maintenance organization
157 or managed care organization or other medical cost containment
158 relationship with the providers of medical, hospital or other
159 health care. An employer, successor to the commission, other
160 private carrier or self-insured employer that provides a man-
161 aged health care plan approved by the commission or, upon
162 termination of the commission, the insurance commissioner,
163 for its employees or the employees of its insured may require an
164 injured employee to use health care providers authorized by the
165 managed health care plan for care and treatment of his or her
166 compensable injuries. If the employer does not provide a
167 managed health care plan or program, the claimant may select
168 his or her initial health care provider for treatment of a compen-
169 sable injury or disease, except as provided under subdivision (3)
170 of this subsection. If a claimant wishes to change his or her
171 health care provider and if his or her employer has established
172 and maintains a managed health care plan, the claimant shall
173 select a new health care provider through the managed health
174 care plan. A claimant who has used the providers under the
175 employer's managed health care plan may select a health care
176 provider outside the employer's plan for treatment of the
177 compensable injury or disease if the employee receives written
178 approval from the commission to do so and the approval is
179 given pursuant to criteria established by rule of the commission.

180 (3) If the commission enters into an agreement which has
181 been approved by the board of managers with a managed health
182 care plan, including, but not limited to, a preferred provider
183 organization or program, a health maintenance organization or
184 managed care organization or other health care delivery
185 organization or organizations or other medical cost containment
186 relationship with the providers of medical, hospital or other
187 health care, then:

188 (A) If an injured employee's employer does not provide a
189 managed health care plan approved by the commission for its

190 employees as described in subdivision (2) of this subsection, the
191 commission may require the employee to use health care
192 providers authorized by the commission's managed health care
193 plan for care and treatment of his or her compensable injuries;
194 and

195 (B) If a claimant seeks to change his or her initial choice of
196 health care provider where neither the employer nor the
197 commission had an approved health care management plan at
198 the time the initial choice was made, and if the claimant's
199 employer does not provide access to such a plan as part of the
200 employer's general health insurance benefit, then the claimant
201 shall be provided with a new health care provider from the
202 commission's managed health care plan available to him or her.

203 (c) When an injury has been reported to the commission by
204 the employer without protest, the commission or self-insured
205 employer may pay, within the maximum amount provided by
206 schedule established under this section, bills for health care
207 services without requiring the injured employee to file an
208 application for benefits.

209 (d) The commission, successor to the commission, other
210 private carrier or self-insured employer, whichever is applica-
211 ble, shall provide for the replacement of artificial limbs,
212 crutches, hearing aids, eyeglasses and all other mechanical
213 appliances provided in accordance with this section which later
214 wear out, or which later need to be refitted because of the
215 progression of the injury which caused the devices to be
216 originally furnished, or which are broken in the course of and
217 as a result of the employee's employment. The commission,
218 successor to the commission, other private carrier or self-
219 insured employer shall pay for these devices, when needed,
220 notwithstanding any time limits provided by law.

221 (e) No payment shall be made to a health care provider who
222 is suspended or terminated under the terms of section three-c of
223 this article except as provided in subsection (c) of said section.

224 (f) The commission, successor to the commission, other
225 private carrier or self-insured employer, whichever is applica-
226 ble, may engage in and contract for medical cost containment
227 programs, pharmacy benefits management programs, medical
228 case management programs and utilization review programs.
229 Payments for these programs shall be made from the workers'
230 compensation fund or the funds of the successor to the commis-
231 sion, other private carrier, or self-insured employer. Any order
232 issued pursuant to the program shall be interlocutory in nature
233 until an objecting party has exhausted all review processes
234 provided for by the commission, successor to the commission,
235 other private carrier or self-insured employer, whichever is
236 applicable.

237 (g) Notwithstanding the provisions of this section, the
238 commission, successor to the commission, other private carrier
239 or self-insured employer may establish fee schedules, make
240 payments and take other actions required or allowed pursuant
241 to article twenty-nine-d, chapter sixteen of this code.

§23-4-3b. Creation of health care advisory panel.

1 (a) The commission shall establish a health care advisory
2 panel consisting of representatives of the various branches and
3 specialties among health care providers in this state which shall
4 be in existence until termination of the commission. There
5 shall be a minimum of five members of the health care advisory
6 panel who shall receive reasonable compensation for their
7 services and reimbursement for reasonable actual expenses.
8 Each member of this panel shall be provided appropriate
9 professional or other liability insurance, without additional
10 premium, by the state board of risk and insurance management
11 created pursuant to article twelve, chapter twenty-nine of this
12 code. The panel shall:

13 (1) Establish guidelines for the health care which is
14 reasonably required for the treatment of the various types of

15 injuries and occupational diseases within the meaning of section
16 three of this article;

17 (2) Establish protocols and procedures for the performance
18 of examinations or evaluations performed by physicians or
19 medical examiners pursuant to sections seven-a and eight of
20 this article;

21 (3) Assist the commission in establishing guidelines for the
22 evaluation of the care provided by health care providers to
23 injured employees for purposes of section three-c of this article;

24 (4) Assist the commission in establishing guidelines
25 regarding the anticipated period of disability for the various
26 types of injuries pursuant to subsection (b), section seven-a of
27 this article; and

28 (5) Assist the commission in establishing appropriate
29 professional review of requests by health care providers to
30 exceed the guidelines for treatment of injuries and occupational
31 diseases established pursuant to subdivision (1) of this section.

32 (b) In addition to the requirements of subsection (a) of this
33 section, on or before the thirty-first day of December, two
34 thousand three, the board of managers shall promulgate a rule
35 establishing the process for the medical management of claims
36 and awards of disability which includes, but is not limited to,
37 reasonable and standardized guidelines and parameters for
38 appropriate treatment, expected period of time to reach maxi-
39 mum medical improvement and range of permanent partial
40 disability awards for common injuries and diseases or, in the
41 alternative, which incorporates by reference the medical and
42 disability management guidelines, plan or program being
43 utilized by the commission for the medical and disability
44 management of claims, with the requirements, standards,
45 parameters and limitations of such guidelines, plan or program
46 having the same force and effect as the rule promulgated in
47 compliance herewith.

§23-4-4. Funeral expenses; wrongfully seeking payment; criminal penalties.

1 (a) In case the personal injury causes death, reasonable
2 funeral or cemetery expense, in an amount to be fixed, from
3 time to time, by the commission, and upon its termination, the
4 insurance commissioner, shall be paid from the fund, or the
5 private carrier, payment to be made to the persons who have
6 furnished the services and supplies, or to the persons who have
7 advanced payment for the services and supplies, as the commis-
8 sion may determine proper, in addition to any award made to
9 the employee's dependents.

10 (b) A funeral director or cemeterian, or any person who
11 furnished the services and supplies associated with the funeral
12 or cemetery expenses, or a person who has advanced payment
13 for the services and supplies, is prohibited from making any
14 charge or charges against the employee's dependents for funeral
15 expenses which would result in a total charge for funeral
16 expenses in excess of the amount fixed by the commission, and
17 upon its termination, the insurance commissioner, unless:

18 (1) The person seeking funeral expenses notifies, in writing
19 and prior to the rendering of any service, the employee's
20 dependent as to the exact cost of the service and the exact
21 amount the employee's dependent would be responsible for
22 paying in excess of the amount fixed by the commission or
23 insurance commissioner; and

24 (2) The person seeking funeral expenses secures, in writing
25 and prior to the rendering of any service, consent from the
26 employee's dependent that he or she will be responsible to
27 make payment for the amount in excess of the amount fixed by
28 the commission or the insurance commissioner.

29 (c) Any person who knowingly and willfully seeks or
30 receives payment of funeral expenses in excess of the amount
31 fixed by the commission or the insurance commissioner

32 without satisfying both of the requirements of subsection (b) of
33 this section is guilty of a misdemeanor and, upon conviction
34 thereof, shall be fined three thousand dollars or confined in jail
35 for a definite term of confinement of twelve months, or both.

§23-4-6. Classification of and criteria for disability benefits.

1 Where compensation is due an employee under the provi-
2 sions of this chapter for personal injury, the compensation shall
3 be as provided in the following schedule:

4 (a) The terms "average weekly wage earnings, wherever
5 earned, of the injured employee, at the date of injury" and
6 "average weekly wage in West Virginia", as used in this
7 chapter, have the meaning and shall be computed as set forth in
8 section fourteen of this article except for the purpose of
9 computing temporary total disability benefits for part-time
10 employees pursuant to the provisions of section six-d of this
11 article.

12 (b) For all awards made on and after the effective date of
13 the amendment and reenactment of this section during the year
14 two thousand three, if the injury causes temporary total disabili-
15 ty, the employee shall receive during the continuance of the
16 disability a maximum weekly benefit to be computed on the
17 basis of sixty-six and two-thirds percent of the average weekly
18 wage earnings, wherever earned, of the injured employee, at the
19 date of injury, not to exceed one hundred percent of the average
20 weekly wage in West Virginia: *Provided*, That in no event shall
21 an award for temporary total disability be subject to annual
22 adjustments resulting from changes in the average weekly wage
23 in West Virginia: *Provided, however*, in the case of a claimant
24 whose award was granted prior to the effective date of the
25 amendment and reenactment of this section during the year two
26 thousand three, the maximum benefit rate shall be the rate
27 applied under the prior enactment of this subsection which was
28 in effect at the time the injury occurred. The minimum weekly
29 benefits paid under this subdivision shall not be less than thirty-

30 three and one-third percent of the average weekly wage in West
31 Virginia, except as provided in sections six-d and nine of this
32 article. In no event, however, shall the minimum weekly
33 benefits exceed the level of benefits determined by use of the
34 applicable federal minimum hourly wage: *Provided further,*
35 That any claimant receiving permanent total disability benefits,
36 permanent partial disability benefits or dependents' benefits
37 prior to the first day of July, one thousand nine hundred ninety-
38 four, shall not have his or her benefits reduced based upon the
39 requirement in this subdivision that the minimum weekly
40 benefit shall not exceed the applicable federal minimum hourly
41 wage.

42 (c) Subdivision (b) of this section is limited as follows:
43 Aggregate award for a single injury causing temporary disabili-
44 ty shall be for a period not exceeding two hundred eight weeks;
45 aggregate award for a single injury for which an award of
46 temporary total disability benefits is made on or after the
47 effective date of the amendment and reenactment of this section
48 in the year two thousand three shall be for a period not exceed-
49 ing one hundred four weeks. Notwithstanding any other
50 provision of this subdivision to the contrary, no person may
51 receive temporary total disability benefits under an award for a
52 single injury for a period exceeding one hundred four weeks
53 from the effective date of the amendment and reenactment of
54 this section in the year two thousand three.

55 (d) For all awards of permanent total disability benefits that
56 are made on or after the second day of February, one thousand
57 nine hundred ninety-five, including those claims in which a
58 request for an award was pending before the division or which
59 were in litigation but not yet submitted for a decision, then
60 benefits shall be payable until the claimant attains the age
61 necessary to receive federal old age retirement benefits under
62 the provisions of the Social Security Act, 42 U.S.C. §§401 and
63 402, in effect on the effective date of this section. The claimant
64 shall be paid benefits so as not to exceed a maximum benefit of

65 sixty-six and two-thirds percent of the claimant's average
66 weekly wage earnings, wherever earned, at the time of the date
67 of injury not to exceed one hundred percent of the average
68 weekly wage in West Virginia. The minimum weekly benefits
69 paid under this section shall be as is provided for in subdivision
70 (b) of this section. In all claims in which an award for perma-
71 nent total disability benefits was made prior to the second day
72 of February, one thousand nine hundred ninety-five, the awards
73 shall continue to be paid at the rate in effect prior to the
74 effective date of the amendment and reenactment of this section
75 in the year two thousand three: *Provided*, That the provisions of
76 sections one through eight, inclusive, article four-a of this
77 chapter shall be applied thereafter to all prior awards that were
78 previously subject to its provisions. A single or aggregate
79 permanent disability of eighty-five percent or more entitles the
80 employee to a rebuttable presumption of a permanent total
81 disability for the purpose of paragraph (2), subdivision (n) of
82 this section: *Provided, however*, That the claimant must also be
83 at least fifty percent medically impaired upon a whole body
84 basis or has sustained a thirty-five percent statutory disability
85 pursuant to the provisions of subdivision (f) of this section. The
86 presumption may be rebutted if the evidence establishes that the
87 claimant is not permanently and totally disabled pursuant to
88 subdivision (n) of this section. Under no circumstances may
89 the commission, successor to the commission, other private
90 carrier or self-insured employer, whichever is applicable, grant
91 an additional permanent disability award to a claimant receiv-
92 ing a permanent total disability award: *Provided further*, That
93 if any claimant thereafter sustains another compensable injury
94 and has permanent partial disability resulting from the injury,
95 the total permanent disability award benefit rate shall be
96 computed at the highest benefit rate justified by any of the
97 compensable injuries.

98 (e) (1) For all awards made on or after the effective date of
99 the amendment and reenactment of this section during the year
100 two thousand three, if the injury causes permanent disability

101 less than permanent total disability, the percentage of disability
102 to total disability shall be determined and the award computed
103 on the basis of four weeks' compensation for each percent of
104 disability determined at the maximum or minimum benefit rates
105 as follows: Sixty-six and two-thirds percent of the average
106 weekly wage earnings, wherever earned, of the injured em-
107 ployee at the date of injury, not to exceed seventy percent of the
108 average weekly wage in West Virginia: *Provided*, That in no
109 event shall an award for permanent partial disability be subject
110 to annual adjustments resulting from changes in the average
111 weekly wage in West Virginia: *Provided, however*, That in the
112 case of a claimant whose award was granted prior to the
113 effective date of the amendment and reenactment of this section
114 during the year two thousand three, the maximum benefit rate
115 shall be the rate applied under the prior enactment of this
116 section which was in effect at the time the injury occurred.

117 (2) If a claimant is released by his or her treating physician
118 to return to work at the job he or she held before the occupa-
119 tional injury occurred and if the claimant's preinjury employer
120 does not offer the preinjury job or a comparable job to the
121 employee when a position is available to be offered, the award
122 for the percentage of partial disability shall be computed on the
123 basis of six weeks of compensation for each percent of disabili-
124 ty.

125 (3) The minimum weekly benefit under this subdivision
126 shall be as provided in subdivision (b) of this section for
127 temporary total disability.

128 (f) If the injury results in the total loss by severance of any
129 of the members named in this subdivision, the percentage of
130 disability shall be determined by the percentage of disability,
131 specified in the following table:

132 The loss of a great toe shall be considered a ten percent
133 disability.

134 The loss of a great toe (one phalanx) shall be considered a
135 five percent disability.

136 The loss of other toes shall be considered a four percent
137 disability.

138 The loss of other toes (one phalanx) shall be considered a
139 two percent disability.

140 The loss of all toes shall be considered a twenty-five
141 percent disability.

142 The loss of forepart of foot shall be considered a thirty
143 percent disability.

144 The loss of a foot shall be considered a thirty-five percent
145 disability.

146 The loss of a leg shall be considered a forty-five percent
147 disability.

148 The loss of thigh shall be considered a fifty percent
149 disability.

150 The loss of thigh at hip joint shall be considered a sixty
151 percent disability.

152 The loss of a little or fourth finger (one phalanx) shall be
153 considered a three percent disability.

154 The loss of a little or fourth finger shall be considered a five
155 percent disability.

156 The loss of ring or third finger (one phalanx) shall be
157 considered a three percent disability.

158 The loss of ring or third finger shall be considered a five
159 percent disability.

160 The loss of middle or second finger (one phalanx) shall be
161 considered a three percent disability.

162 The loss of middle or second finger shall be considered a
163 seven percent disability.

164 The loss of index or first finger (one phalanx) shall be
165 considered a six percent disability.

166 The loss of index or first finger shall be considered a ten
167 percent disability.

168 The loss of thumb (one phalanx) shall be considered a
169 twelve percent disability.

170 The loss of thumb shall be considered a twenty percent
171 disability.

172 The loss of thumb and index fingers shall be considered a
173 thirty-two percent disability.

174 The loss of index and middle fingers shall be considered a
175 twenty percent disability.

176 The loss of middle and ring fingers shall be considered a
177 fifteen percent disability.

178 The loss of ring and little fingers shall be considered a ten
179 percent disability.

180 The loss of thumb, index and middle fingers shall be
181 considered a forty percent disability.

182 The loss of index, middle and ring fingers shall be consid-
183 ered a thirty percent disability.

184 The loss of middle, ring and little fingers shall be consid-
185 ered a twenty percent disability.

186 The loss of four fingers shall be considered a thirty-two
187 percent disability.

188 The loss of hand shall be considered a fifty percent disabil-
189 ity.

190 The loss of forearm shall be considered a fifty-five percent
191 disability.

192 The loss of arm shall be considered a sixty percent disabil-
193 ity.

194 The total and irrecoverable loss of the sight of one eye shall
195 be considered a thirty-three percent disability. For the partial
196 loss of vision in one or both eyes, the percentages of disability
197 shall be determined by the commission, using as a basis the
198 total loss of one eye.

199 The total and irrecoverable loss of the hearing of one ear
200 shall be considered a twenty-two and one-half percent disabil-
201 ity. The total and irrecoverable loss of hearing of both ears
202 shall be considered a fifty-five percent disability.

203 For the partial loss of hearing in one or both ears, the
204 percentage of disability shall be determined by the commission,
205 successor to the commission, other private carrier or self-
206 insured employer, whichever is applicable, using as a basis the
207 total loss of hearing in both ears.

208 If a claimant sustains a compensable injury which results in
209 the total loss by severance of any of the bodily members named
210 in this subdivision or dies from sickness or noncompensable
211 injury before the commission makes the proper award for the
212 injury, the commission shall make the award to the claimant's
213 dependents as defined in this chapter, if any; the payment to be
214 made in the same installments that would have been paid to
215 claimant if living: *Provided*, That no payment shall be made to
216 any surviving spouse of the claimant after his or her remarriage
217 and that this liability shall not accrue to the estate of the
218 claimant and is not subject to any debts of, or charges against,
219 the estate.

220 (g) If a claimant to whom has been made a permanent
221 partial award dies from sickness or noncompensable injury, the

222 unpaid balance of the award shall be paid to claimant's depend-
223 ents as defined in this chapter, if any; the payment to be made
224 in the same installments that would have been paid to claimant
225 if living: *Provided*, That no payment shall be made to any
226 surviving spouse of the claimant after his or her remarriage, and
227 that this liability shall not accrue to the estate of the claimant
228 and is not subject to any debts of, or charges against, such
229 estate.

230 (h) For the purposes of this chapter, a finding of the
231 occupational pneumoconiosis board has the force and effect of
232 an award.

233 (i) For the purposes of this chapter, with the exception of
234 those injuries provided for in subdivision (f) of this section and
235 in section six-b of this article, the degree of permanent disabili-
236 ty other than permanent total disability shall be determined
237 exclusively by the degree of whole body medical impairment
238 that a claimant has suffered. For those injuries provided for in
239 subdivision (f) of this section and section six-b of this article,
240 the degree of disability shall be determined exclusively by the
241 provisions of said subdivision and said section. The occupa-
242 tional pneumoconiosis board created pursuant to section eight-a
243 of this article shall premise its decisions on the degree of
244 pulmonary function impairment that claimants suffer solely
245 upon whole body medical impairment. The workers' compen-
246 sation commission shall adopt standards for the evaluation of
247 claimants and the determination of a claimant's degree of whole
248 body medical impairment. Once the degree of medical impair-
249 ment has been determined, that degree of impairment shall be
250 the degree of permanent partial disability that shall be awarded
251 to the claimant. This subdivision is applicable to all injuries
252 incurred and diseases with a date of last exposure on or after the
253 second day of February, one thousand nine hundred ninety-five,
254 to all applications for an award of permanent partial disability
255 made on and after that date and to all applications for an award
256 of permanent partial disability that were pending before the

257 commission or pending in litigation but not yet submitted for
258 decision on and after that date. The prior provisions of this
259 subdivision remain in effect for all other claims.

260 (j) From a list of names of seven persons submitted to the
261 executive director by the health care advisory panel, the
262 executive director shall appoint an interdisciplinary examining
263 board consisting of five members to evaluate claimants,
264 including by examination if the board elects. The interdis-
265 ciplinary examining board shall terminate upon termination of the
266 commission and all administrative and adjudicatory functions
267 performed by the interdisciplinary examining board shall be
268 performed by the following reviewing bodies for those claims
269 over which they have administrative jurisdiction: (1) The
270 insurance commissioner or his or her designated administrator
271 of each of the funds set forth in this chapter; (2) private carriers;
272 or (3) self-insured employers. The reviewing bodies shall
273 employ or otherwise engage adequate resources, including
274 medical professionals, to perform the functions of the interdis-
275 ciplinary examining board. The board shall be composed of
276 three qualified physicians with specialties and expertise
277 qualifying them to evaluate medical impairment and two
278 vocational rehabilitation specialists who are qualified to
279 evaluate the ability of a claimant to perform gainful employ-
280 ment with or without retraining. One member of the board shall
281 be designated annually as chairperson by the executive director.
282 The term of office of each member of the board shall be six
283 years and until his or her successor has been appointed and has
284 qualified. Any member of the board may be appointed to any
285 number of terms. Any two physician members and one
286 vocational rehabilitation specialist member shall constitute a
287 quorum for the transaction of business. The executive director,
288 from time to time, shall fix the compensation to be paid to each
289 member of the board, and the members are also entitled to
290 reasonable and necessary traveling and other expenses incurred
291 while actually engaged in the performance of their duties. The
292 board shall perform the duties and responsibilities assigned by

293 the provisions of this chapter, consistent with the administrative
294 policies developed by the executive director with the approval
295 of the board of managers.

296 (1) The executive director shall establish requirements for
297 the proper completion and support for an application for
298 permanent total disability benefits within an existing or a new
299 rule no later than the first day of January, two thousand four.
300 Upon adoption of the rule by the board of managers, no issue of
301 permanent total disability may be referred to the interdisciplin-
302 ary examining board, or, any other reviewing body, unless a
303 properly completed and supported application for permanent
304 total disability benefits has been first filed Prior to the referral
305 of any issue to the interdisciplinary examining board, or, upon
306 its termination, prior to a reviewing body's adjudication of a
307 permanent total disability application, the commission, or
308 reviewing body shall conduct examinations of the claimant that
309 it finds necessary and obtain all pertinent records concerning
310 the claimant's medical history and reports of examinations and
311 forward them to the board at the time of the referral. The
312 commission or reviewing body shall provide adequate notice to
313 the employer of the filing of the request for a permanent total
314 disability award and the employer shall be granted an appropri-
315 ate period in which to respond to the request. The claimant and
316 the employer may furnish all pertinent information to the board
317 or other reviewing body and shall furnish to the board or other
318 reviewing body any information requested. The claimant and
319 the employer may each submit no more than one report and
320 opinion regarding each issue present in a given claim. The
321 employer may have the claimant examined by medical special-
322 ists and vocational rehabilitation specialists: *Provided*, That the
323 employer is entitled to only one examination on each issue
324 present in a given claim. Any additional examinations must be
325 approved by the commission or other reviewing body and shall
326 be granted only upon a showing of good cause. The reports
327 from all employer-conducted examinations must be filed with
328 the board or other reviewing body and served upon the claim-

329 ant. The board or other reviewing body may request that those
330 persons who have furnished reports and opinions regarding a
331 claimant provide it with additional information considered
332 necessary. Both the claimant and the employer, as well as the
333 commission, or other reviewing body may submit or obtain
334 reports from experts challenging or supporting the other reports
335 in the record regardless of whether or not the expert examined
336 the claimant or relied solely upon the evidence of record.

337 (2) If the board or a quorum of the board elects to examine
338 a claimant, the individual members shall conduct any examina-
339 tions that are pertinent to each of their specialties. If a claim
340 presents an issue beyond the expertise of the board, the board
341 may obtain advice or evaluations by other specialists. In
342 addition, if the board of managers determines that the number
343 of applications pending before the interdisciplinary examining
344 board has exceeded the level at which the board can review and
345 make recommendations within a reasonable time, the board of
346 managers may authorize the executive director to appoint any
347 additional members to the board that are necessary to reduce the
348 backlog of applications. The additional members shall be
349 recommended by the health care advisory panel. The executive
350 director may make any appointments he or she chooses from
351 the recommendations. The additional board members shall not
352 serve a set term but shall serve until the board of managers
353 determines that the number of pending applications has been
354 reduced to an acceptable level.

355 (3) Referrals to the board shall be limited to matters related
356 to the determination of permanent total disability under the
357 provisions of subdivision (n) of this section and to questions
358 related to medical cost containment, utilization review deci-
359 sions and managed care decisions arising under section three of
360 this article.

361 (4) In the event the board members or other reviewing body
362 elects to examine a claimant, the board or other reviewing body

363 shall prepare a report stating the tests, examinations, procedures
364 and other observations that were made, the manner in which
365 each was conducted and the results of each. The report shall
366 state the findings made by the board or other reviewing body
367 and the reasons for the findings. Copies of the reports of all
368 examinations made by the board or other reviewing body shall
369 be served upon the parties and the commission until its termina-
370 tion. Each shall be given an opportunity to respond in writing
371 to the findings and conclusions stated in the reports.

372 (5) The board or other reviewing body shall state its initial
373 recommendations to the commission in writing with an expla-
374 nation for each recommendation setting forth the reasons for
375 each. The recommendations shall be served upon the parties
376 and the commission and each shall be afforded a thirty-day
377 opportunity to respond in writing to the board or other review-
378 ing body regarding its recommendations. The board or other
379 reviewing body shall review any responses and issue its final
380 recommendations. The final recommendations shall be effectuated
381 by the entry of an appropriate order by the commission, or,
382 upon its termination, the private carrier or self-insured em-
383 ployer. For all awards for permanent total disability where the
384 claim was filed on or after the effective date of the amendment
385 and reenactment of this section in the year two thousand three,
386 the commission or other reviewing body shall establish the date
387 of onset of the claimant's permanent total disability as the date
388 when a properly completed and supported application for
389 permanent total disability benefits as prescribed in subdivision
390 (1) of this subsection that results in a finding of permanent total
391 disability was filed with the commission or other reviewing
392 body: *Provided*, That upon notification of the commission or
393 other reviewing body by a claimant or his or her representative
394 that the claimant seeks to be evaluated for permanent total
395 disability, the commission or other reviewing body shall send
396 the claimant or his or her representative the proper application
397 form. The commission or other reviewing body shall set time
398 limits for the return of the application. A properly completed

399 and supported application returned within the time limits set by
400 the commission or other reviewing body shall be treated as if
401 received on the date the commission or other reviewing body
402 was notified the claimant was seeking evaluation for permanent
403 total disability: *Provided, however,* That notwithstanding any
404 other provision of this section to the contrary, the onset date
405 may not be sooner than the date upon which the claimant meets
406 the percentage thresholds of prior permanent partial disability
407 that are established by subsection (n) of this section as a
408 prerequisite to the claimant's qualification for consideration for
409 a permanent total disability award.

410 (6) Except as noted below, objections pursuant to section
411 one, article five of this chapter to any order shall be limited in
412 scope to matters within the record developed before the
413 workers' compensation commission and the board or other
414 reviewing body and shall further be limited to the issue of
415 whether the board or other reviewing body properly applied the
416 standards for determining medical impairment, if applicable,
417 and the issue of whether the board's findings are clearly wrong
418 in view of the reliable, probative and substantial evidence on
419 the whole record. The preponderance of the evidence set forth
420 in article one of this chapter shall apply to decisions made by
421 reviewing bodies other than the commission instead of the
422 clearly wrong standard. If either party contends that the
423 claimant's condition has changed significantly since the review
424 conducted by the board or other reviewing body, the party may
425 file a motion with the administrative law judge, together with
426 a report supporting that assertion. Upon the filing of the
427 motion, the administrative law judge shall cause a copy of the
428 report to be sent to the examining board or other reviewing
429 body asking the board to review the report and provide com-
430 ments if the board chooses within sixty days of the board's
431 receipt of the report. The board or other reviewing body may
432 either supply comments or, at the board's or other reviewing
433 body's discretion, request that the claim be remanded to the
434 board for further review. If remanded, the claimant is not

435 required to submit to further examination by the employer's
436 medical specialists or vocational rehabilitation specialists.
437 Following the remand, the board or other reviewing body shall
438 file its recommendations with the administrative law judge for
439 his or her review. If the board or other reviewing body elects
440 to respond with comments, the comments shall be filed with the
441 administrative law judge for his or her review. Following the
442 receipt of either the board's or other reviewing body's recom-
443 mendations or comments, the administrative law judge shall
444 issue a written decision ruling upon the asserted change in the
445 claimant's condition. No additional evidence may be intro-
446 duced during the review of the objection before the office of
447 judges or elsewhere on appeal: *Provided*, That each party and
448 the commission may submit one written opinion on each issue
449 pertinent to a given claim based upon a review of the evidence
450 of record either challenging or defending the board's or other
451 reviewing body's findings and conclusions. Thereafter, based
452 upon the evidence of record, the administrative law judge shall
453 issue a written decision containing his or her findings of fact
454 and conclusions of law regarding each issue involved in the
455 objection. The limitation of the scope of review otherwise
456 provided in this subsection is not applicable upon termination
457 of the commission and any objections shall be subject to article
458 five of this chapter in its entirety.

459 (k) Compensation payable under any subdivision of this
460 section shall not exceed the maximum nor be less than the
461 weekly benefits specified in subdivision (b) of this section.

462 (l) Except as otherwise specifically provided in this chapter,
463 temporary total disability benefits payable under subdivision (b)
464 of this section shall not be deductible from permanent partial
465 disability awards payable under subdivision (e) or (f) of this
466 section. Compensation, either temporary total or permanent
467 partial, under this section shall be payable only to the injured
468 employee and the right to the compensation shall not vest in his
469 or her estate, except that any unpaid compensation which would

470 have been paid or payable to the employee up to the time of his
471 or her death, if he or she had lived, shall be paid to the depend-
472 ents of the injured employee if there are any dependents at the
473 time of death.

474 (m) The following permanent disabilities shall be conclu-
475 sively presumed to be total in character:

476 Loss of both eyes or the sight thereof.

477 Loss of both hands or the use thereof.

478 Loss of both feet or the use thereof.

479 Loss of one hand and one foot or the use thereof.

480 (n) (1) Other than for those injuries specified in subdivision
481 (m) of this section, in order to be eligible to apply for an award
482 of permanent total disability benefits for all injuries incurred
483 and all diseases, including occupational pneumoconiosis,
484 regardless of the date of last exposure, on and after the effective
485 date of the amendment and reenactment of this section during
486 the year two thousand three, a claimant: (A) Must have been
487 awarded the sum of fifty percent in prior permanent partial
488 disability awards; (B) must have suffered a single occupational
489 injury or disease which results in a finding by the commission
490 that the claimant has suffered a medical impairment of fifty
491 percent; or (C) has sustained a thirty-five percent statutory
492 disability pursuant to the provisions of subdivision (f) of this
493 section. Upon filing an application, the claim will be reevalu-
494 ated by the examining board or other reviewing body pursuant
495 to subdivision (i) of this section to determine if the claimant has
496 suffered a whole body medical impairment of fifty percent or
497 more resulting from either a single occupational injury or
498 occupational disease or a combination of occupational injuries
499 and occupational diseases or has sustained a thirty-five percent
500 statutory disability pursuant to the provisions of subdivision (f)
501 of this section. A claimant whose prior permanent partial

502 disability awards total eighty-five percent or more shall also be
503 examined by the board or other reviewing body and must be
504 found to have suffered a whole body medical impairment of
505 fifty percent in order for his or her request to be eligible for
506 further review. The examining board or other reviewing body
507 shall review the claim as provided for in subdivision (j) of this
508 section. If the claimant has not suffered whole body medical
509 impairment of at least fifty percent or has sustained a thirty-five
510 percent statutory disability pursuant to the provisions of
511 subdivision (f) of this section, the request shall be denied.
512 Upon a finding that the claimant has a fifty percent whole body
513 medical impairment or has sustained a thirty-five percent
514 statutory disability pursuant to the provisions of subdivision (f)
515 of this section, the review of the application continues as
516 provided for in the following paragraph of this subdivision.
517 Those claimants whose prior permanent partial disability
518 awards total eighty-five percent or more and who have been
519 found to have a whole body medical impairment of at least fifty
520 percent or have sustained a thirty-five percent statutory disabili-
521 ty pursuant to the provisions of subdivision (f) of this section
522 are entitled to the rebuttable presumption created pursuant to
523 subdivision (d) of this section for the remaining issues in the
524 request.

525 (2) For all awards made on or after the effective date of the
526 amendment and reenactment of this section during the year two
527 thousand three, disability which renders the injured employee
528 unable to engage in substantial gainful activity requiring skills
529 or abilities which can be acquired or which are comparable to
530 those of any gainful activity in which he or she has previously
531 engaged with some regularity and over a substantial period of
532 time shall be considered in determining the issue of total
533 disability. The comparability of preinjury income to post-
534 disability income will not be a factor in determining permanent
535 total disability. Geographic availability of gainful employment
536 within a driving distance of seventy-five miles from the
537 residence of the employee or within the distance from the

538 residence of the employee to his or her preinjury employment,
539 whichever is greater, will be a factor in determining permanent
540 total disability. For any permanent total disability award made
541 after the amendment and reenactment of this section in the year
542 two thousand three, permanent total disability benefits shall
543 cease at age seventy years. In addition, the vocational standards
544 adopted pursuant to subsection (m), section seven, article three
545 of this chapter shall be considered once they are effective.

546 (3) In the event that a claimant, who has been found to have
547 at least a fifty percent whole body medical impairment or has
548 sustained a thirty-five percent statutory disability pursuant to
549 the provisions of subdivision (f) of this section, is denied an
550 award of permanent total disability benefits pursuant to this
551 subdivision and accepts and continues to work at a lesser
552 paying job than he or she previously held, the claimant is
553 eligible, notwithstanding the provisions of section nine of this
554 article, to receive temporary partial rehabilitation benefits for
555 a period of four years. The benefits shall be paid at the level
556 necessary to ensure the claimant's receipt of the following
557 percentages of the average weekly wage earnings of the
558 claimant at the time of injury calculated as provided in this
559 section and sections six-d and fourteen of this article:

560 (A) Eighty percent for the first year;

561 (B) Seventy percent for the second year;

562 (C) Sixty percent for the third year; and

563 (D) Fifty percent for the fourth year: *Provided*, That in no
564 event shall the benefits exceed one hundred percent of the
565 average weekly wage in West Virginia. In no event shall the
566 benefits be subject to the minimum benefit amounts required by
567 the provisions of subdivision (b) of this section.

568 (4) Notwithstanding any provision of this subsection,
569 subsection (d) of this section or any other provision of this code

570 to the contrary, on any claim filed on or after the effective date
571 of the amendment and reenactment of this section in the year
572 two thousand three:

573 (A) No percent of whole body medical impairment existing
574 as the result of carpal tunnel syndrome for which a claim has
575 been made under this chapter may be included in the aggrega-
576 tion of permanent disability under the provisions of this
577 subsection or subsection (d) of this section; and

578 (B) No percent of whole body medical impairment existing
579 as the result of any occupational disease, the diagnosis of which
580 is based solely upon symptoms rather than specific, objective
581 and measurable medical findings, and for which a claim has
582 been made under this chapter may be included in the aggrega-
583 tion of permanent disability under the provisions of this
584 subsection or subsection (d) of this section.

585 (o) To confirm the ongoing permanent total disability status
586 of the claimant, the commission, successor to the commission,
587 other private carrier or self-insured employer, whichever is
588 applicable, may elect to have any recipient of a permanent total
589 disability award undergo one independent medical examination
590 during each of the first five years that the permanent total
591 disability award is paid and one independent medical examina-
592 tion during each three-year period thereafter until the claimant
593 reaches the age of seventy years: *Provided*, That the commis-
594 sion, successor to the commission, other private carrier or self-
595 insured employer, whichever is applicable, may elect to have
596 any recipient of a permanent total disability award under the
597 age of fifty years undergo one independent medical examina-
598 tion during each year that the permanent total disability award
599 is paid until the recipient reaches the age of fifty years, and
600 thereafter one independent medical examination during each
601 three-year period thereafter until the claimant reaches the age
602 of seventy years.

§23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

1 If an employee is found to be permanently disabled due to
2 occupational pneumoconiosis, as defined in section one of this
3 article, the percentage of permanent disability is determined by
4 the degree of medical impairment that is found by the occupa-
5 tional pneumoconiosis board. The commission, successor to
6 the commission, other private carrier or self-insured employer,
7 whichever is applicable, shall enter an order setting forth the
8 findings of the occupational pneumoconiosis board with regard
9 to whether the claimant has occupational pneumoconiosis and
10 the degree of medical impairment, if any, resulting therefrom.
11 That order is the final decision of the commission for purposes
12 of section one, article five of this chapter. If a decision is
13 objected to, the office of judges shall affirm the decision of the
14 occupational pneumoconiosis board made following hearing
15 unless the decision is clearly wrong in view of the reliable,
16 probative and substantial evidence on the whole record.
17 Compensation is paid therefor in the same manner and at the
18 same rate as is provided for permanent disability under the
19 provisions of subdivisions (d), (e), (g), (h), (i), (j), (k), (m) and
20 (n), section six of this article: *Provided*, That for any employee
21 who applies for occupational pneumoconiosis benefits whose
22 award was granted on or after the effective date of the amend-
23 ment and reenactment of this section during the year two
24 thousand three, there shall be no permanent partial disability
25 awarded based solely upon a diagnosis of occupational pneu-
26 moconiosis, it being the intent of the Legislature to eliminate
27 any permanent partial disability awards for occupational
28 pneumoconiosis without a specific finding of measurable
29 impairment.

30 If the employee dies from occupational pneumoconiosis,
31 the benefits shall be as provided for in section ten of this article;

32 as to the benefits, sections eleven to fourteen, inclusive, of this
33 article apply.

34 In cases of permanent disability or death due to occupa-
35 tional pneumoconiosis, as defined in section one of this article,
36 accompanied by active tuberculosis of the lungs, compensation
37 shall be payable as for disability or death due to occupational
38 pneumoconiosis alone.

39 The provisions of section sixteen of this article and sections
40 two, three, four and five, article five of this chapter providing
41 for the further adjustment of claims are applicable to the claim
42 of any claimant who receives a permanent partial disability
43 award for occupational pneumoconiosis.

§23-4-6b. Occupational hearing loss claims.

1 (a) In all claims for occupational hearing loss caused by
2 either a single incident of trauma or by exposure to hazardous
3 noise in the course of and resulting from employment, the
4 degree of permanent partial disability, if any, shall be deter-
5 mined in accordance with the provisions of this section and
6 awards made in accordance with the provisions of section six of
7 this article.

8 (b) The percent of permanent partial disability for a
9 monaural hearing loss shall be computed in the following
10 manner:

11 (1) The measured decibel loss of hearing due to injury at
12 the sound frequencies of five hundred, one thousand, two
13 thousand and three thousand hertz shall be determined for the
14 injured ear and the total shall be divided by four to ascertain the
15 average decibel loss;

16 (2) The percent of monaural hearing impairment for the
17 injured ear shall be calculated by multiplying by one and six-
18 tenths percent the difference by which the aforementioned

19 average decibel loss exceeds twenty-seven and one-half
20 decibels, up to a maximum of one hundred percent hearing
21 impairment, which maximum is reached at ninety decibels; and

22 (3) The percent of monaural hearing impairment obtained
23 shall be multiplied by twenty-two and one-half to ascertain the
24 degree of permanent partial disability.

25 (c) The percent of permanent partial disability for a binaural
26 hearing loss shall be computed in the following manner:

27 (1) The measured decibel loss of hearing due to injury at
28 the sound frequencies of five hundred, one thousand, two
29 thousand and three thousand hertz is determined for each ear
30 and the total for each ear shall be divided by four to ascertain
31 the average decibel loss for each ear;

32 (2) The percent of hearing impairment for each ear is
33 calculated by multiplying by one and six-tenths percent the
34 difference by which the aforementioned average decibel loss
35 exceeds twenty-seven and one-half decibels, up to a maximum
36 of one hundred percent hearing impairment, which maximum
37 is reached at ninety decibels;

38 (3) The percent of binaural hearing impairment shall be
39 calculated by multiplying the smaller percentage (better ear) by
40 five, adding this figure to the larger percentage (poorer ear) and
41 dividing the sum by six; and

42 (4) The percent of binaural hearing impairment obtained
43 shall be multiplied by fifty-five to ascertain the degree of
44 permanent partial disability.

45 (d) No permanent partial disability benefits shall be granted
46 for tinnitus, psychogenic hearing loss, recruitment or hearing
47 loss above three thousand hertz.

48 (e) An additional amount of permanent partial disability
49 shall be granted for impairment of speech discrimination, if

50 any, to determine the additional amount for binaural impair-
 51 ment, the percentage of speech discrimination in each ear shall
 52 be added together and the result divided by two to calculate the
 53 average percentage of speech discrimination, and the permanent
 54 partial disability shall be ascertained by reference to the
 55 percentage of permanent partial disability in the table below on
 56 the line with the percentage of speech discrimination obtained.
 57 To determine the additional amount for monaural impairment,
 58 the permanent partial disability shall be ascertained by refer-
 59 ence to the percentage of permanent partial disability in the
 60 table below on the line with the percentage of speech discrimi-
 61 nation in the injured ear.

62 **TABLE**

63 % of Speech Discrimination	64 % of Permanent Partial Disability	
65 90% . . . and up to and including	100%	0%
66 80% . . . and up to but not including	90%	1%
67 70% . . . and up to but not including	80%	3%
68 60% . . . and up to but not including	70%	4%
69 0% . . . and up to but not including	60%	5%

69 (f) No temporary total disability benefits shall be granted
 70 for noise-induced hearing loss.

71 (g) An application for benefits alleging a noise-induced
 72 hearing loss shall set forth the name of the employer or employ-
 73 ers and the time worked for each. The commission shall
 74 allocate to and divide any charges resulting from the claim
 75 among the employers with whom the claimant sustained
 76 exposure to hazardous noise for as much as sixty days during
 77 the period of three years immediately preceding the date of last
 78 exposure. The allocation is based upon the time of exposure
 79 with each employer. In determining the allocation, the commis-
 80 sion shall consider all the time of employment by each em-
 81 ployer during which the claimant was exposed and not just the
 82 time within the three-year period under the same allocation as
 83 is applied in occupational pneumoconiosis cases.

84 (h) The commission shall provide, consistent with current
85 practice, for prompt referral the claims for evaluation, for all
86 medical reimbursement and for prompt authorization of hearing
87 enhancement devices.

88 (i) The provisions of this section and the amendments to
89 section six of this article insofar as applicable to permanent
90 partial disabilities for hearing loss are operative as to any claim
91 filed after thirty days from the effective date of this section.

92 (j) Effective upon termination of the commission, the
93 administrative duties governing hearing loss claims shall
94 transfer to the insurance commissioner.

§23-4-7. Release of medical information to employer; legislative findings; effect of application for benefits; duty of employer.

1 (a) The Legislature hereby finds and declares that two of
2 the primary objectives of the workers' compensation system
3 established by this chapter are to provide benefits to an injured
4 claimant promptly and to effectuate his or her return to work at
5 the earliest possible time; that the prompt dissemination of
6 medical information to the commission and employer as to
7 diagnosis, treatment and recovery is essential if these two
8 objectives are to be achieved; that claimants are increasingly
9 burdened with the task of contacting their treating physicians to
10 request the furnishing of detailed medical information to the
11 commission and their employers; that the commission is
12 increasingly burdened with the administrative responsibility of
13 providing copies of medical reports to the employer involved,
14 whereas in other states the employer can obtain the necessary
15 medical information direct from the treating physician; that
16 much litigation is occasioned in this state because of a lack of
17 medical information having been received by the employer as
18 to the continuing disability of a claimant; and that detailed
19 narrative reports from the treating physician are often necessary
20 in order for the commission, the claimant's representatives and

21 the employer to evaluate a claim and determine whether
22 additional or different treatment is indicated.

23 (b) In view of the foregoing findings, a claimant irrevoca-
24 bly agrees by the filing of his or her application for benefits that
25 any physician may release to and orally discuss with the
26 claimant's employer, or its representative, or with a representa-
27 tive of the commission, successor to the commission, other
28 private carrier or self-insured employer, whichever is applica-
29 ble, from time to time, the claimant's medical history and any
30 medical reports pertaining to the occupational injury or disease
31 and to any prior injury or disease of the portion of the claim-
32 ant's body to which a medical impairment is alleged containing
33 detailed information as to the claimant's condition, treatment,
34 prognosis and anticipated period of disability and dates as to
35 when the claimant will reach or has reached his or her maxi-
36 mum degree of improvement or will be or was released to
37 return to work. For the exclusive purposes of this chapter, the
38 patient-physician privilege of confidentiality is waived with
39 regard to the physician's providing this medical information to
40 the commission, the employer or to the employer's representa-
41 tive. Whenever a copy of any medical report is obtained by the
42 employer or its representative and the physician has not also
43 forwarded a copy of the medical report to the commission,
44 successor to the commission, other private carrier or self-
45 insured employer, whichever is applicable, the employer shall
46 forward a copy of the medical report to the commission,
47 successor to the commission, other private carrier or self-
48 insured employer, whichever is applicable, within ten days from
49 the date the employer received the medical report from the
50 physician.

§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority; suspension of benefits.

1 (a) The Legislature hereby finds and declares that injured
2 claimants should receive the type of treatment needed as
3 promptly as possible; that overpayments of benefits with the
4 resultant hardship created by the requirement of repayment
5 should be minimized; and that to achieve these two objectives
6 it is essential that the commission establish and operate a
7 systematic program for the monitoring of injury claims where
8 the disability continues longer than might ordinarily be ex-
9 pected.

10 (b) In view of the foregoing findings, the commission, in
11 consultation with the health care advisory panel, shall establish
12 guidelines as to the anticipated period of disability for the
13 various types of injuries. Each injury claim in which temporary
14 total disability continues beyond the anticipated period of
15 disability established for the injury involved shall be reviewed
16 by the commission. If satisfied, after reviewing the medical
17 evidence, that the claimant would not benefit by an independent
18 medical evaluation, the commission shall mark the claim file
19 accordingly and shall diary the claim file as to the next date for
20 required review which shall not exceed sixty days. If the
21 commission concludes that the claimant might benefit by an
22 independent medical evaluation, the commission shall proceed
23 as specified in subsections (d) and (e) of this section.

24 (c) When the authorized treating physician concludes that
25 the claimant has either reached his or her maximum degree of
26 improvement or is ready for disability evaluation, or when the
27 claimant has returned to work, the authorized treating physician
28 may recommend a permanent partial disability award for
29 residual impairment relating to and resulting from the compen-
30 sable injury, and the following provisions govern and control:

31 (1) If the authorized treating physician recommends a
32 permanent partial disability award of fifteen percent or less, the
33 commission shall enter an award of permanent partial disability
34 benefits based upon the recommendation and all other available

35 information. The claimant's entitlement to temporary total
36 disability benefits ceases upon the entry of the award unless
37 previously terminated under the provisions of subsection (e) of
38 this section.

39 (2) If, however, the authorized treating physician recom-
40 mends a permanent partial disability award in excess of fifteen
41 percent, or recommends a permanent total disability award, the
42 claimant's entitlement to temporary total disability benefits
43 ceases upon the receipt by the commission, successor to the
44 commission, other private carrier or self-insured employer,
45 whichever is applicable, of the medical report. The commis-
46 sion, successor to the commission, other private carrier or self-
47 insured employer, whichever is applicable, shall refer the
48 claimant to a physician or physicians of its selection for
49 independent evaluation prior to the entry of a permanent
50 disability award: *Provided*, That unless the claimant has
51 returned to work, the claimant shall thereupon receive benefits
52 which shall be at the permanent partial disability rate as
53 provided in subdivision (e), section six of this article until the
54 entry of a permanent disability award or until the claimant
55 returns to work. The amount of benefits paid prior to the receipt
56 of the independent evaluation report shall be considered and
57 determined to be payment of the permanent disability award
58 granted, if any. In the event that benefits actually paid exceed
59 the amount granted by the permanent partial disability award,
60 the claimant is entitled to no further benefits by the award and
61 the excess paid shall be an overpayment. For all awards made
62 or nonawarded partial benefits paid the commission, successor
63 to the commission, other private carrier or self-insured em-
64 ployer, whichever is applicable, may only recover the amount
65 of overpaid benefits or expenses by withholding, in whole or in
66 part, future disability benefits payable to the individual in the
67 same or other claims and credit the amount against the overpay-
68 ment until it is repaid in full.

69 (d) When the commission, successor to the commission,
70 other private carrier or self-insured employer, whichever is
71 applicable, concludes that an independent medical evaluation
72 is indicated, or that a claimant may be ready for disability
73 evaluation in accordance with other provisions of this chapter,
74 the commission, successor to the commission, other private
75 carrier or self-insured employer, whichever is applicable, shall
76 refer the claimant to a physician or physicians of its selection
77 for examination and evaluation. If the physician or physicians
78 selected recommend continued, additional or different treat-
79 ment, the recommendation shall be relayed to the claimant and
80 the claimant's treating physician and the recommended
81 treatment may be authorized by the commission, successor to
82 the commission, other private carrier or self-insured employer,
83 whichever is applicable.

84 (e) Notwithstanding any provision in subsection (c) of this
85 section, the commission, successor to the commission, other
86 private carrier or self-insured employer, whichever is applica-
87 ble, shall enter a notice suspending the payment of temporary
88 total disability benefits but providing a reasonable period of
89 time during which the claimant may submit evidence justifying
90 the continued payment of temporary total disability benefits
91 when:

92 (1) The physician or physicians selected by the commission
93 conclude that the claimant has reached his or her maximum
94 degree of improvement;

95 (2) When the authorized treating physician advises the
96 commission, successor to the commission, other private carrier
97 or self-insured employer, whichever is applicable, that the
98 claimant has reached his or her maximum degree of improve-
99 ment or that he or she is ready for disability evaluation and
100 when the authorized treating physician has not made any
101 recommendation with respect to a permanent disability award
102 as provided in subsection (c) of this section;

103 (3) When other evidence submitted to the commission,
104 successor to the commission, other private carrier or self-
105 insured employer, whichever is applicable, justifies a finding
106 that the claimant has reached his or her maximum degree of
107 improvement; or

108 (4) When other evidence submitted or otherwise obtained
109 justifies a finding that the claimant has engaged or is engaging
110 in abuse, including, but not limited to, physical activities
111 inconsistent with his or her compensable workers' compensa-
112 tion injury.

113 In all cases, a finding by the commission, successor to the
114 commission, other private carrier or self-insured employer,
115 whichever is applicable, that the claimant has reached his or her
116 maximum degree of improvement terminates the claimant's
117 entitlement to temporary total disability benefits regardless of
118 whether the claimant has been released to return to work.
119 Under no circumstances shall a claimant be entitled to receive
120 temporary total disability benefits either beyond the date the
121 claimant is released to return to work or beyond the date he or
122 she actually returns to work.

123 In the event that the medical or other evidence indicates
124 that claimant has a permanent disability, unless he or she has
125 returned to work, the claimant shall thereupon receive benefits
126 which shall be at the permanent partial disability rate as
127 provided in subdivision (e), section six of this article until entry
128 of a permanent disability award, pursuant to an evaluation by a
129 physician or physicians selected by the commission, successor
130 to the commission, other private carrier or self-insured em-
131 ployer, whichever is applicable, or until the claimant returns to
132 work. The amount of benefits shall be considered and deter-
133 mined to be payment of the permanent disability award granted,
134 if any. In the event that benefits actually paid exceed the
135 amount granted under the permanent disability award, the
136 claimant is entitled to no further benefits by the order.

137 (f) Notwithstanding the anticipated period of disability
138 established pursuant to the provisions of subsection (b) of this
139 section, whenever in any claim temporary total disability
140 continues longer than one hundred twenty days from the date of
141 injury (or from the date of the last preceding examination and
142 evaluation pursuant to the provisions of this subsection or
143 pursuant to the directions of the commission under other
144 provisions of this chapter), the commission, successor to the
145 commission, other private carrier or self-insured employer,
146 whichever is applicable, shall refer the claimant to a physician
147 or physicians of the commission's selection for examination
148 and evaluation in accordance with the provisions of subsection
149 (d) of this section and the provisions of subsection (e) of this
150 section are fully applicable: *Provided*, That the requirement of
151 mandatory examinations and evaluations pursuant to the
152 provisions of this subsection shall not apply to any claimant
153 who sustained a brain stem or spinal cord injury with resultant
154 paralysis or an injury which resulted in an amputation necessi-
155 tating a prosthetic appliance.

156 (g) The provisions of this section are in addition to and in
157 no way in derogation of the power and authority vested in the
158 commission, successor to the commission, other private carrier
159 or self-insured employer, whichever is applicable, by other
160 provisions of this chapter or vested in the employer to have a
161 claimant examined by a physician or physicians of the em-
162 ployer's selection and at the employer's expense, or vested in
163 the claimant or employer to file a protest, under other provi-
164 sions of this chapter.

165 (h) All evaluations and examinations performed by physi-
166 cians shall be performed in accordance with the protocols and
167 procedures established by the health care advisory panel
168 pursuant to section three-b of this article: *Provided*, That the
169 physician may exceed these protocols when additional evalua-
170 tion is medically necessary.

171 (i) The commission, successor to the commission, other
172 private carrier or self-insured employer, whichever is applica-
173 ble, may suspend benefits being paid to a claimant if the
174 claimant refuses, without good cause, to undergo the examina-
175 tions or needed treatments provided for in this section until the
176 claimant submits to the examination or needed treatments. The
177 executive director shall propose rules for approval by the
178 commission to implement the provisions of this subsection.

§23-4-7b. Trial return to work.

1 (a) The Legislature hereby finds and declares that it is in the
2 interest of employees, employers and the commission that
3 injured employees be encouraged to return to work as quickly
4 as possible after an injury and that appropriate protections be
5 afforded to injured employees who return to work on a trial
6 basis.

7 (b) Notwithstanding any other provisions of this chapter to
8 the contrary, the injured employee shall not have his or her
9 eligibility to receive temporary total disability benefits termi-
10 nated when he or she returns to work on a trial basis as set forth
11 in this section. An employee is eligible to return to work on a
12 trial basis when he or she is released to work on a trial basis by
13 the treating physician.

14 (c) When an injured employee returns to work on a trial
15 basis, the employer shall provide a trial return-to-work notifica-
16 tion to the commission. Upon receipt of the notification, the
17 commission shall note the date of the first day of work pursuant
18 to the trial return and shall continue the claimant's eligibility
19 for temporary total disability benefits, but shall temporarily
20 suspend the payment of temporary total disability benefits
21 during the period actually worked by the injured employee.
22 The claim shall be closed on a temporary total disability basis
23 either when the injured employee or the authorized treating
24 physician notifies the commission, successor to the commis-
25 sion, other private carrier or self-insured employer, whichever

26 is applicable, that the injured employee is able to perform his or
27 her job or automatically at the end of a period of three months
28 from the date of the first day of work unless the employee
29 notifies the commission, successor to the commission, other
30 private carrier or self-insured employer, whichever is applica-
31 ble, that he or she is unable to perform the duties of the job,
32 whichever occurs first. If the injured employee is unable to
33 continue working due to the compensable injury for a three-
34 month period, the injured employee shall provide notice and
35 temporary total disability benefits shall be reinstated immedi-
36 ately and he or she shall be referred for a rehabilitation evalua-
37 tion as provided in section nine of this article. No provision of
38 this section shall be construed to prohibit the commission,
39 successor to the commission, other private carrier or self-
40 insured employer, whichever is applicable, from referring the
41 injured employee for any permanent disability evaluation
42 required or permitted by any other provision of this article.

43 (d) Nothing in this section shall prevent the employee from
44 returning to work without a trial return-to-work period.

45 (e) Nothing in this section shall be construed to require an
46 injured employee to return to work on a trial basis.

47 (f) The provisions of this section shall be terminated and be
48 of no further force and effect on the first day of July, two
49 thousand seven.

§23-4-8. Physical examination of claimant.

1 The commission, successor to the commission, other
2 private carrier or self-insured employer, whichever is applica-
3 ble, may, after due notice to the employer and claimant,
4 whenever in its opinion it is necessary, order a claimant of
5 compensation for a personal injury other than occupational
6 pneumoconiosis to appear for examination before a medical
7 examiner or examiners selected by the commission, successor
8 to the commission, other private carrier or self-insured em-

9 ployer, whichever is applicable; and the claimant and employer,
10 respectively, each have the right to select a physician of the
11 claimant's or the employer's own choosing and at the claim-
12 ant's or the employer's own expense to participate in the
13 examination. All examinations shall be performed in accor-
14 dance with the protocols and procedures established by the
15 health care advisory panel pursuant to section three-b of this
16 article: *Provided*, That the physician may exceed these proto-
17 cols when additional evaluation is medically necessary. The
18 claimant and employer shall, respectively, be furnished with a
19 copy of the report of examination made by the medical exam-
20 iner or examiners selected by the commission, successor to the
21 commission, other private carrier or self-insured employer,
22 whichever is applicable. The respective physicians selected by
23 the claimant and employer have the right to concur in any
24 report made by the medical examiner or examiners selected by
25 the commission, or each may file with the commission,
26 successor to the commission, other private carrier or self-
27 insured employer, whichever is applicable, a separate report,
28 which separate report shall be considered by the commission in
29 passing upon the claim. If the compensation claimed is for
30 occupational pneumoconiosis, the commission, successor to the
31 commission, other private carrier or self-insured employer,
32 whichever is applicable, may, after due notice to the employer,
33 and whenever in the commission's opinion it is necessary, order
34 a claimant to appear for examination before the occupational
35 pneumoconiosis board provided for in section eight-a of this
36 article. In any case the claimant is entitled to reimbursement
37 for loss of wages, and to reasonable traveling and other ex-
38 penses necessarily incurred by him or her in obeying the order.

39 Where the claimant is required to undergo a medical
40 examination or examinations by a physician or physicians
41 selected by the employer, as aforesaid or in connection with any
42 claim which is in litigation, the employer shall reimburse the
43 claimant for loss of wages, and reasonable traveling and other
44 expenses in connection with the examination or examinations,

45 not to exceed the expenses paid when a claimant is examined by
46 a physician or physicians selected by the commission, successor
47 to the commission, other private carrier or self-insured em-
48 ployer, whichever is applicable.

**§23-4-8a. Occupational pneumoconiosis board; composition;
term of office; duties; quorum; remuneration.**

1 The occupational pneumoconiosis board shall consist of
2 five licensed physicians who shall be appointed by the execu-
3 tive director. Effective upon termination of the commission,
4 the physicians shall be appointed by the insurance commis-
5 sioner: *Provided*, That those physicians serving as of the
6 termination of the commission shall continue to serve until
7 replaced. No person shall be appointed as a member of the
8 board, or as a consultant thereto, who has not by special study
9 or experience, or both, acquired special knowledge of pulmo-
10 nary diseases. All members of the occupational pneumoconio-
11 sis board shall be physicians of good professional standing
12 admitted to practice medicine and surgery in this state. Two
13 members shall be roentgenologists. One member of the board
14 shall be designated annually as chairman by the executive
15 director. The term of office of each member of the board shall
16 be six years. The five members of the existing board in office
17 on the effective date of this section shall continue to serve until
18 their terms expire and until their successors have been ap-
19 pointed and have qualified. Any member of the board may be
20 appointed to any number of terms. The function of the board is
21 to determine all medical questions relating to cases of compen-
22 sation for occupational pneumoconiosis under the direction and
23 supervision of the executive director and, effective upon
24 termination of the commission, the insurance commissioner.
25 Any three members of the board constitute a quorum for the
26 transaction of its business if at least one of the members present
27 is a roentgenologist. The executive director and, effective upon
28 termination of the commission, the insurance commissioner,
29 shall, from time to time, fix the compensation to be paid each

30 member of the board. Members are also entitled to reasonable
31 and necessary traveling and other expenses incurred while
32 actually engaged in the performance of their duties. In fixing
33 the compensation of board members, the executive director or
34 the insurance commissioner shall take into consideration the
35 number of claimants a member of the board actually examines,
36 the actual time spent by members in discharging their duties
37 and the recommendation of the board of managers and governor
38 as to reasonable reimbursement per unit of time expended based
39 on comparative data for physicians within the state in the same
40 medical specialties.

**§23-4-8b. Occupational pneumoconiosis board; procedure;
autopsy.**

1 The occupational pneumoconiosis board, upon reference to
2 it by an appropriate party of a case of occupational pneumoco-
3 niosis, shall notify the employee, or in case he or she is dead,
4 the claimant, and the employer, successor to the commission,
5 other private carrier or self-insured employer, whichever is
6 applicable, to appear before the board at a time and place stated
7 in the notice. If the employee is living, he or she shall appear
8 before the board at the time and place specified and submit to
9 the examination, including clinical and X-ray examinations,
10 required by the board. If a physician licensed to practice
11 medicine in the state makes an affidavit that the employee is
12 physically unable to appear at the time and place designated by
13 the board, the board shall, on notice to the proper parties,
14 change the place and time as may reasonably facilitate the
15 hearing or examination of the employee or may appoint a
16 qualified specialist in the field of respiratory disease to examine
17 the claimant on behalf of the board. The employee, or in case
18 he or she is dead, the claimant, and employer shall also produce
19 as evidence to the board all reports of medical and X-ray
20 examinations which may be in their respective possession or
21 control, showing the past or present condition of the employee.
22 If the employee is dead, the notice of the board shall further

23 require that the claimant produce necessary consents and
24 permits so that an autopsy may be performed, if the board so
25 directs. When in the opinion of the board an autopsy is
26 considered necessary accurately and scientifically to ascertain
27 and determine the cause of death, the autopsy examination shall
28 be ordered by the board, which shall designate a duly licensed
29 physician, a pathologist or any other specialists determined
30 necessary by the board, to make the examination and tests to
31 determine the cause of death and certify his or her or their
32 written findings, in triplicate, to the board. The findings shall
33 be public records. In the event that a claimant for compensation
34 for the death refuses to consent and permit the autopsy to be
35 made, all rights for compensation are forfeited.

36 The employee, or if he or she be dead, the claimant, and the
37 employer, shall be entitled to be present at all examinations
38 conducted by the board and to be represented by attorneys and
39 physicians.

**§23-4-8c. Occupational pneumoconiosis board; reports and
distribution thereof; presumption; findings re-
quired of board; objection to findings; procedure
thereon; limitations on refilings; consolidation of
claims.**

1 (a) The occupational pneumoconiosis board, as soon as
2 practicable, after it has completed its investigation, shall make
3 its written report, to the commission, successor to the commis-
4 sion, other private carrier or self-insured employer, whichever
5 is applicable, of its findings and conclusions on every medical
6 question in controversy and the commission shall send one
7 copy of the report to the employee or claimant and one copy to
8 the employer. The board shall also return to and file with the
9 commission all the evidence as well as all statements under
10 oath, if any, of the persons who appeared before it on behalf of
11 the employee or claimant, or employer, and also all medical
12 reports and X-ray examinations produced by or on behalf of the
13 employee or claimant, or employer.

14 (b) If it can be shown that the claimant or deceased em-
15 ployee has been exposed to the hazard of inhaling minute
16 particles of dust in the course of and resulting from his or her
17 employment for a period of ten years during the fifteen years
18 immediately preceding the date of his or her last exposure to
19 such hazard and that the claimant or deceased employee has
20 sustained a chronic respiratory disability, it shall be presumed
21 that the claimant is suffering or the deceased employee was
22 suffering at the time of his or her death from occupational
23 pneumoconiosis which arose out of and in the course of his or
24 her employment. This presumption is not conclusive.

25 (c) The findings and conclusions of the board shall set
26 forth, among other things, the following:

27 (1) Whether or not the claimant or the deceased employee
28 has contracted occupational pneumoconiosis and, if so, the
29 percentage of permanent disability resulting therefrom;

30 (2) Whether or not the exposure in the employment was
31 sufficient to have caused the claimant's or deceased employee's
32 occupational pneumoconiosis or to have perceptibly aggravated
33 an existing occupational pneumoconiosis or other occupational
34 disease; and

35 (3) What, if any, physician appeared before the board on
36 behalf of the claimant or employer and what, if any, medical
37 evidence was produced by or on behalf of the claimant or
38 employer.

39 (d) If either party objects to the whole or any part of the
40 findings and conclusions of the board, the party shall file with
41 the commission or, on or after the first day of July, one thou-
42 sand nine hundred ninety-one, with the office of judges, within
43 thirty days from receipt of the copy to that party, unless for
44 good cause shown the commission or chief administrative law
45 judge extends the time, the party's objections to the findings
46 and conclusions of the board in writing, specifying the particu-

47 lar statements of the board's findings and conclusions to which
48 such party objects. The filing of an objection within the time
49 specified is a condition of the right to litigate the findings and
50 therefore jurisdictional. After the time has expired for the filing
51 of objections to the findings and conclusions of the board, the
52 commission or administrative law judge shall proceed to act as
53 provided in this chapter. If after the time has expired for the
54 filing of objections to the findings and conclusions of the board
55 no objections have been filed, the report of a majority of the
56 board of its findings and conclusions on any medical question
57 shall be taken to be plenary and conclusive evidence of the
58 findings and conclusions stated in the report. If objection has
59 been filed to the findings and conclusions of the board, notice
60 of the objection shall be given to the board, and the members of
61 the board joining in the findings and conclusions shall appear
62 at the time fixed by the commission or office of judges for the
63 hearing to submit to examination and cross-examination in
64 respect to the findings and conclusions. At the hearing,
65 evidence to support or controvert the findings and conclusions
66 of the board shall be limited to examination and cross-examina-
67 tion of the members of the board and to the taking of testimony
68 of other qualified physicians and roentgenologists.

69 (e) In the event that a claimant receives a final decision that
70 he or she has no evidence of occupational pneumoconiosis, the
71 claimant is barred for a period of three years from the date of
72 the occupational pneumoconiosis board's decision or until his
73 or her employment with the employer who employed the
74 claimant at the time designated as the claimant's last date of
75 exposure in the denied claim has terminated, whichever is
76 sooner, from filing a new claim or pursuing a previously filed,
77 but unruled upon, claim for occupational pneumoconiosis or
78 requesting a modification of any prior ruling finding him or her
79 not to be suffering from occupational pneumoconiosis. For the
80 purposes of this subsection, a claimant's employment shall be
81 considered to be terminated if, for any reason, he or she has not
82 worked for that employer for a period in excess of ninety days.

83 Any previously filed, but unruled upon, claim shall be consoli-
84 dated with the claim in which the board's decision is made and
85 shall be denied together with the decided claim. The provisions
86 of this subsection shall not be applied in any claim where doing
87 so would, in and of itself, later cause a claimant's claim to be
88 forever barred by the provisions of section fifteen of this article.

89 (f) Effective upon termination of the commission, the
90 insurance commissioner shall assume all administrative powers
91 and responsibilities necessary to administer sections eight-a,
92 eight-b and eight-c of this article.

§23-4-9. Physical and vocational rehabilitation.

1 (a) The Legislature hereby finds that it is a goal of the
2 workers' compensation program to assist employees to return
3 to suitable gainful employment after an injury. In order to
4 encourage workers to return to employment and to encourage
5 and assist employers in providing suitable employment to
6 injured employees, it is a priority of the commission, successor
7 to the commission, other private carrier or self-insured em-
8 ployer, whichever is applicable, to achieve early identification
9 of individuals likely to need rehabilitation services and to assess
10 the rehabilitation needs of these injured employees. It is the
11 goal of rehabilitation to return injured employees to employ-
12 ment which is comparable in work and pay to that which the
13 individual performed prior to the injury. If a return to compara-
14 ble work is not possible, the goal of rehabilitation is to return
15 the individual to alternative suitable employment, using all
16 possible alternatives of job modification, restructuring, reas-
17 signment and training, so that the individual will return to
18 productivity with his or her employer or, if necessary, with
19 another employer. The Legislature further finds that it is the
20 shared responsibility of the employer, the employee, the
21 physician and the commission to cooperate in the development
22 of a rehabilitation process designed to promote reemployment
23 for the injured employee.

24 (b) In cases where an employee has sustained a permanent
25 disability, or has sustained an injury likely to result in tempo-
26 rary disability as determined by the commission, successor to
27 the commission, other private carrier or self-insured employer,
28 whichever is applicable, the commission, successor to the
29 commission, other private carrier or self-insured employer,
30 whichever is applicable, shall at the earliest possible time
31 determine whether the employee would be assisted in returning
32 to remunerative employment with the provision of rehabilita-
33 tion services and if it is determined that the employee can be
34 physically and vocationally rehabilitated and returned to
35 remunerative employment by the provision of rehabilitation
36 services including, but not limited to, vocational or on-the-job
37 training, counseling, assistance in obtaining appropriate
38 temporary or permanent work site, work duties or work hours
39 modification, by the provision of crutches, artificial limbs or
40 other approved mechanical appliances, or medicines, medical,
41 surgical, dental or hospital treatment or other services which the
42 commission, successor to the commission, other private carrier
43 or self-insured employer, whichever is applicable, in its sole
44 discretion determines will directly assist the employee's return
45 to employment, the commission, successor to the commission,
46 other private carrier or self-insured employer, whichever is
47 applicable, shall immediately develop a rehabilitation plan for
48 the employee and, after due notice to the employer, expend an
49 amount necessary for that purpose: *Provided*, That the expendi-
50 ture for vocational rehabilitation shall not exceed twenty
51 thousand dollars for any one injured employee: *Provided*,
52 *however*, That no payment shall be made for such vocational
53 rehabilitation purposes as provided in this section unless
54 authorized by the commission, successor to the commission,
55 other private carrier or self-insured employer, whichever is
56 applicable, prior to the rendering of the physical or vocational
57 rehabilitation, except that payments shall be made for reason-
58 able medical expenses without prior authorization if sufficient
59 evidence exists which would relate the treatment to the injury

60 and the attending physician or physicians have requested
61 authorization prior to the rendering of the treatment: *Provided*
62 *further*, That payment for physical rehabilitation, including the
63 purchase of prosthetic devices and other equipment and training
64 in use of the devices and equipment, are considered expenses
65 within the meaning of section three of this article and are
66 subject to the provisions of sections three, three-b and three-c
67 of this article. The provision of any rehabilitation services may
68 be pursuant to a rehabilitation plan to be developed and
69 monitored by a rehabilitation professional for each injured
70 employee or by such other provider as determined by the
71 commission, successor to the commission, other private carrier
72 or self-insured employer, whichever is applicable. Notwith-
73 standing any other provision of this section to the contrary, the
74 commission may determine under rules promulgated by the
75 board of managers that a rehabilitation plan or any component
76 thereof is not appropriate for an injured employee.

77 (c) In every case in which the commission, successor to the
78 commission, other private carrier or self-insured employer,
79 whichever is applicable, orders physical or vocational rehabili-
80 tation of a claimant as provided in this section, the claimant
81 shall, during the time he or she is receiving any vocational
82 rehabilitation or rehabilitative treatment that renders him or her
83 totally disabled during the period of rehabilitation, be compen-
84 sated on a temporary total disability basis for that period.

85 (d) In every case in which the claimant returns to gainful
86 employment as part of a rehabilitation plan, and the employee's
87 average weekly wage earnings are less than the average weekly
88 wage earnings earned by the injured employee at the time of the
89 injury, he or she shall receive temporary partial rehabilitation
90 benefits calculated as follows: The temporary partial rehabilita-
91 tion benefit shall be seventy percent of the difference between
92 the average weekly wage earnings earned at the time of the
93 injury and the average weekly wage earnings earned at the new
94 employment, both to be calculated as provided in sections six,

95 six-d and fourteen of this article as the calculation is performed
96 for temporary total disability benefits, subject to the following
97 limitations: In no event are the benefits subject to the minimum
98 benefit amounts required by the provisions of subdivision (b),
99 section six of this article, nor may the benefits exceed the
100 temporary total disability benefits to which the injured em-
101 ployee would be entitled pursuant to sections six, six-d and
102 fourteen of this article during any period of temporary total
103 disability resulting from the injury in the claim: *Provided*, That
104 no temporary total disability benefits shall be paid for any
105 period for which temporary partial rehabilitation benefits are
106 paid: *Provided, however*, That the aggregate award of tempo-
107 rary total rehabilitation or temporary partial rehabilitation
108 benefits for a single injury for which an award of temporary
109 total rehabilitation or temporary partial rehabilitation benefits
110 is made on or after the effective date of the amendment and
111 reenactment of this section in the year two thousand three shall
112 be for a period not exceeding fifty-two weeks unless the
113 payment of temporary total rehabilitation disability benefits is
114 in conjunction with an approved vocational rehabilitation plan
115 for retraining, in which event the payment period of temporary
116 total rehabilitation disability benefits may be extended for a
117 period not to exceed a total of one hundred four weeks. The
118 amount of temporary partial rehabilitation benefits payable
119 under this subsection shall be reviewed every ninety days to
120 determine whether the injured employee's average weekly wage
121 in the new employment has changed and, if the change has
122 occurred, the amount of benefits payable under this subsection
123 shall be adjusted prospectively. Temporary partial rehabilita-
124 tion benefits shall only be payable when the injured employee
125 is receiving vocational rehabilitation services in accordance
126 with a rehabilitation plan developed under this section and no
127 payment of temporary partial rehabilitation benefits shall be
128 made after the claimant has received the vocational training
129 provided under the rehabilitation plan.

130 (e) The executive director, in consultation with the board of
131 managers, shall propose for promulgation rules for the purpose
132 of developing a comprehensive rehabilitation program which
133 will assist injured workers to return to suitable gainful employ-
134 ment after an injury in a manner consistent with the provisions
135 and findings of this section. The rules shall provide definitions
136 for rehabilitation facilities and rehabilitation services pursuant
137 to this section. Notwithstanding any other provision of this
138 chapter to the contrary, and in addition to the provisions of
139 section three of this article authorizing employers to participate
140 in a managed health care plan, including a managed health care
141 plan that provides physical and vocational rehabilitation
142 services, an employer may contract directly with one or more
143 providers of vocational rehabilitation services to be the em-
144 ployer's preferred provider of vocational rehabilitation services
145 for its employees who receive injuries compensable under the
146 provisions of this chapter and the rules promulgated under this
147 section may require those employees to use the preferred
148 providers.

§23-4-10. Classification of death benefits; "dependent" defined.

1 In case a personal injury, other than occupational pneumo-
2 coniosis or other occupational disease, suffered by an employee
3 in the course of and resulting from his or her employment,
4 causes death, and disability is continuous from the date of the
5 injury until the date of death, or if death results from occupa-
6 tional pneumoconiosis or from any other occupational disease,
7 the benefits shall be in the amounts and to the persons as
8 follows:

9 (a) If there are no dependents, the disbursements shall be
10 limited to the expense provided for in sections three and four of
11 this article;

12 (b) If there are dependents as defined in subdivision (d) of
13 this section, the dependents shall be paid for as long as their

14 dependency continues in the same amount that was paid or
15 would have been paid the deceased employee for total disability
16 had he or she lived. The order of preference of payment and
17 length of dependence shall be as follows:

18 (1) A dependent widow or widower until death or remar-
19 riage of the widow or widower, and any child or children
20 dependent upon the decedent until each child reaches eighteen
21 years of age or where the child after reaching eighteen years of
22 age continues as a full-time student in an accredited high
23 school, college, university, business or trade school, until the
24 child reaches the age of twenty-five years, or if an invalid child,
25 to continue as long as the child remains an invalid. All persons
26 are jointly entitled to the amount of benefits payable as a result
27 of employee's death;

28 (2) A wholly dependent father or mother until death; and

29 (3) Any other wholly dependent person for a period of six
30 years after the death of the deceased employee;

31 (c) If the deceased employee leaves no wholly dependent
32 person, but there are partially dependent persons at the time of
33 death, the payment shall be fifty dollars a month to continue for
34 the portion of the period of six years after the death, determined
35 by the commission, successor to the commission, other private
36 carrier or self-insured employer, whichever is applicable, but no
37 partially dependent person shall receive compensation pay-
38 ments as a result of the death of more than one employee.

39 Compensation under this subdivision and subdivision (b) of
40 this section shall, except as may be specifically provided to the
41 contrary in those subdivisions, cease upon the death of the
42 dependent, and the right to the compensation shall not vest in
43 his or her estate.

44 (d) "Dependent", as used in this chapter, means a widow,
45 widower, child under eighteen years of age, or under twenty-

46 five years of age when a full-time student as provided in this
47 section, invalid child or posthumous child, who, at the time of
48 the injury causing death, is dependent, in whole or in part, for
49 his or her support upon the earnings of the employee, stepchild
50 under eighteen years of age, or under twenty-five years of age
51 when a full-time student as provided in this section, child under
52 eighteen years of age legally adopted prior to the injury causing
53 death, or under twenty-five years of age when a full-time
54 student as provided in this section, father, mother, grandfather
55 or grandmother, who, at the time of the injury causing death, is
56 dependent, in whole or in part, for his or her support upon the
57 earnings of the employee; and invalid brother or sister wholly
58 dependent for his or her support upon the earnings of the
59 employee at the time of the injury causing death; and

60 (e) If a person receiving permanent total disability benefits
61 dies from a cause other than a disabling injury leaving any
62 dependents as defined in subdivision (d) of this section, an
63 award shall be made to the dependents in an amount equal to
64 one hundred four times the weekly benefit the worker was
65 receiving at the time of his or her death and be paid either as a
66 lump sum or in periodic payments, at the option of the depend-
67 ent or dependents.

§23-4-11. To whom death benefits paid.

1 The benefits, in case of death, shall be paid to one or more
2 dependents of the decedent, or to any other persons, for the
3 benefit of all of the dependents, as may be determined by the
4 commission, successor to the commission, other private carrier
5 or self-insured employer, whichever is applicable, who may
6 apportion the benefits among the dependents in the manner as
7 they consider just and equitable. Payment to a dependent
8 subsequent in right may be made if the commission considers
9 proper and it operates to discharge all other claims for the
10 benefits.

§23-4-12. Application of benefits.

1 The dependent or person to whom benefits are paid shall
2 apply the benefits to the use of the several beneficiaries of the
3 benefits according to their respective claims upon the decedent
4 for support, in compliance with the finding and direction of the
5 commission, successor to the commission, other private carrier
6 or self-insured employer, whichever is applicable.

§23-4-14. Computation of benefits.

1 (a) The average weekly wage earnings, wherever earned, of
2 the injured person at the date of injury and the average weekly
3 wage in West Virginia as determined by the commission, and,
4 effective the first day of January, two thousand six, the
5 insurance commissioner, in effect at the date of injury, shall be
6 taken as the basis upon which to compute the benefits.

7 (1) In cases involving occupational pneumoconiosis or
8 other occupational diseases, the "date of injury" is the date of
9 the last exposure to the hazards of occupational pneumoconiosis
10 or other occupational diseases.

11 (2) In computing benefits payable on account of occupa-
12 tional pneumoconiosis, the commission, successor to the
13 commission, other private carrier or self-insured employer,
14 whichever is applicable, shall deduct the amount of all prior
15 workers' compensation benefits paid to the same claimant on
16 account of silicosis, but a prior silicosis award shall not, in any
17 event, preclude an award for occupational pneumoconiosis
18 otherwise payable under this article.

19 (b)(1) Until the first day of July, one thousand nine hundred
20 ninety-four, the expression "average weekly wage earnings,
21 wherever earned, of the injured person, at the date of injury",
22 within the meaning of this chapter, shall be computed based
23 upon the daily rate of pay at the time of the injury or upon the
24 average pay received during the two months, six months or
25 twelve months immediately preceding the date of the injury,
26 whichever is most favorable to the injured employee, except for

27 the purpose of computing temporary total disability benefits for
28 part-time employees pursuant to the provisions of section six-d
29 of this article.

30 (2) On and after the first day of July, one thousand nine
31 hundred ninety-four, the expression "average weekly wage
32 earnings, wherever earned, of the injured person, at the date of
33 injury", within the meaning of this chapter, shall be computed
34 based upon the daily rate of pay at the time of the injury or
35 upon the weekly average derived from the best quarter of wages
36 out of the preceding four quarters of wages as reported to the
37 commission pursuant to subsection (b), section two, article two
38 of this chapter, whichever is most favorable to the injured
39 employee, except for the purpose of computing temporary total
40 disability benefits for part-time employees pursuant to the
41 provisions of section six-d of this article.

42 (c) The expression "average weekly wage in West Vir-
43 ginia", within the meaning of this chapter, is the average
44 weekly wage in West Virginia as determined by the commis-
45 sioner of the bureau of employment programs in accordance
46 with the provisions of sections ten and eleven, article six,
47 chapter twenty-one-a of this code and other applicable provi-
48 sions of said chapter.

49 (d) In any claim for injuries, including occupational
50 pneumoconiosis and other occupational diseases, occurring on
51 or after the first day of July, one thousand nine hundred
52 seventy-one, any award for temporary total, permanent partial
53 or permanent total disability benefits or for dependent benefits
54 shall be paid at the weekly rates or in the monthly amount in the
55 case of dependent benefits applicable to the claimant in effect
56 on the date of the injury. In no event shall an award for
57 permanent total disability be subject to annual adjustments
58 resulting from changes in the average weekly wage in West
59 Virginia.

§23-4-15. Application for benefits.

1 (a) To entitle any employee or dependent of a deceased
2 employee to compensation under this chapter, other than for
3 occupational pneumoconiosis or other occupational disease, the
4 application for compensation shall be made on the form or
5 forms prescribed by the commission and, effective upon
6 termination of the commission, the insurance commissioner,
7 and filed with the commission, successor to the commission,
8 other private carrier or self-insured employer, whichever is
9 applicable, within six months from and after the injury or death,
10 as the case may be, and unless filed within the six months
11 period, the right to compensation under this chapter is forever
12 barred, such time limitation being hereby declared to be a
13 condition of the right and hence jurisdictional, and all proofs of
14 dependency in fatal cases must also be filed with the commis-
15 sion within six months from and after the death. In case the
16 employee is mentally or physically incapable of filing the
17 application, it may be filed by his or her attorney or by a
18 member of his or her family.

19 (b) To entitle any employee to compensation for occupa-
20 tional pneumoconiosis under the provisions of this subsection,
21 the application for compensation shall be made on the form or
22 forms prescribed by the commission and effective upon
23 termination of the commission, the insurance commissioner,
24 and filed with the commission, successor to the commission,
25 other private carrier or self-insured employer, whichever is
26 applicable, within three years from and after the last day of the
27 last continuous period of sixty days or more during which the
28 employee was exposed to the hazards of occupational pneumo-
29 coniosis or within three years from and after a diagnosed
30 impairment due to occupational pneumoconiosis was made
31 known to the employee by a physician and unless filed within
32 the three-year period, the right to compensation under this
33 chapter is forever barred, such time limitation being hereby
34 declared to be a condition of the right and hence jurisdictional,
35 or, in the case of death, the application shall be filed by the
36 dependent of the employee within one year from and after the

37 employee's death, and such time limitation is a condition of the
38 right and hence jurisdictional.

39 (c) To entitle any employee to compensation for occupa-
40 tional disease other than occupational pneumoconiosis under
41 the provisions of this section, the application for compensation
42 shall be made on the form or forms prescribed by the commis-
43 sion and, effective upon termination of the commission, the
44 insurance commissioner, and filed with the commission,
45 successor to the commission, other private carrier or self-
46 insured employer, whichever is applicable, within three years
47 from and after the day on which the employee was last exposed
48 to the particular occupational hazard involved or within three
49 years from and after the employee's occupational disease was
50 made known to him or her by a physician or which he or she
51 should reasonably have known, whichever last occurs, and
52 unless filed within the three-year period, the right to compensa-
53 tion under this chapter shall be forever barred, such time
54 limitation being hereby declared to be a condition of the right
55 and therefore jurisdictional, or, in case of death, the application
56 shall be filed as aforesaid by the dependent of the employee
57 within one year from and after the employee's death, and such
58 time limitation is a condition of the right and hence jurisdic-
59 tional.

§23-4-15a. Nonresident alien beneficiaries.

1 Notwithstanding any other provisions of this chapter,
2 nonresident alien beneficiaries are entitled to the same benefits
3 as citizens of the United States: *Provided*, That the commission,
4 successor to the commission, other private carrier or self-
5 insured employer, whichever is applicable, in its discretion may
6 make, and the beneficiary shall accept, commutation of the
7 benefits into a lump sum settlement and payment. Nonresident
8 alien beneficiaries within the meaning of this section means
9 persons not citizens of the United States residing outside of the
10 territorial limits of the United States at the time of the injury
11 with respect to which benefits are awarded.

§23-4-15b. Determination of nonmedical questions by commission; claims for occupational pneumoconiosis; hearing.

1 (a) If a claim for occupational pneumoconiosis benefits is
2 filed by an employee within three years from and after the last
3 day of the last continuous period of sixty days' exposure to the
4 hazards of occupational pneumoconiosis, the commission shall
5 determine whether the claimant was exposed to the hazards of
6 occupational pneumoconiosis for a continuous period of not
7 less than sixty days while in the employ of the employer within
8 three years prior to the filing of his or her claim, whether in the
9 state of West Virginia the claimant was exposed to such hazard
10 over a continuous period of not less than two years during the
11 ten years immediately preceding the date of his or her last
12 exposure to the hazard and whether the claimant was exposed
13 to the hazard over a period of not less than ten years during the
14 fifteen years immediately preceding the date of his or her last
15 exposure to the hazard. If a claim for occupational pneumoco-
16 niosis benefits is filed by an employee within three years from
17 and after the employee's occupational pneumoconiosis was
18 made known to the employee by a physician, the commission
19 shall determine whether the claimant filed his or her application
20 within that period and whether in the state of West Virginia the
21 claimant was exposed to the hazard over a continuous period of
22 not less than two years during the ten years immediately
23 preceding the date of last exposure to the hazard and whether
24 the claimant was exposed to the hazard over a period of not less
25 than ten years during the fifteen years immediately preceding
26 the date of last exposure to the hazard. If a claim for occupa-
27 tional pneumoconiosis benefits is filed by a dependent of a
28 deceased employee, the commission shall determine whether
29 the deceased employee was exposed to the hazards of occupa-
30 tional pneumoconiosis for a continuous period of not less than
31 sixty days while in the employ of the employer within ten years
32 prior to the filing of the claim, whether in the state of West
33 Virginia the deceased employee was exposed to the hazard over

34 a continuous period of not less than two years during the ten
35 years immediately preceding the date of his or her last exposure
36 to the hazard and whether the claimant was exposed to the
37 hazard over a period of not less than ten years during the fifteen
38 years immediately preceding the date of his or her last exposure
39 to the hazard. The commission shall also determine other
40 nonmedical facts that, in the commission's opinion, are
41 pertinent to a decision on the validity of the claim.

42 The commission shall enter an order with respect to
43 nonmedical findings within ninety days following receipt by the
44 commission of both the claimant's application for occupational
45 pneumoconiosis benefits and the physician's report filed in
46 connection with the claimant's application and shall give each
47 interested party notice in writing of these findings with respect
48 to all the nonmedical facts. The findings and actions of the
49 commission are final unless the employer, employee, claimant
50 or dependent, within thirty days after receipt of the notice,
51 objects to the findings, and unless an objection is filed within
52 the thirty-day period, the findings are forever final, the time
53 limitation is a condition of the right to litigate the findings and
54 therefor jurisdictional. Upon receipt of an objection, the chief
55 administrative law judge shall set a hearing as provided in
56 section nine, article five of this chapter. In the event of an
57 objection to the findings by the employer, the claim shall,
58 notwithstanding the fact that one or more hearings may be held
59 with respect to the objection, mature for reference to the
60 occupational pneumoconiosis board with like effect as if the
61 objection had not been filed. If the administrative law judge
62 concludes after the protest hearings that the claim should be
63 dismissed, a final order of dismissal shall be entered. The final
64 order is subject to appeal in accordance with the provisions of
65 sections ten and twelve, article five of this chapter. If the
66 administrative law judge concludes after the protest hearings
67 that the claim should be referred to the occupational pneumoco-
68 niosis board for its review, the order entered shall be interlocu-
69 tory only and may be appealed only in conjunction with an

70 appeal from a final order with respect to the findings of the
71 occupational pneumoconiosis board.

72 (b) The administrative duties required to be performed by
73 the commission pursuant to section fifteen-b of this article, and
74 all applicable exempt legislative rules shall transfer from the
75 commission to the insurance commissioner effective upon
76 termination of the commission.

**§23-4-16. Jurisdiction over case continuous; modification of
finding or order; time limitation on awards; reim-
bursement of claimant for expenses; reopening
cases involving permanent total disability; promul-
gation of rules.**

1 (a) The power and jurisdiction of the commission, succes-
2 sor to the commission, other private carrier or self-insured
3 employer, whichever is applicable, over each case is continuing
4 and the commission, successor to the commission, other private
5 carrier or self-insured employer, whichever is applicable, may,
6 in accordance with the provisions of this section and after due
7 notice to the employer, make modifications or changes with
8 respect to former findings or orders that are justified. Upon and
9 after the second day of February, one thousand nine hundred
10 ninety-five, the period in which a claimant may request a
11 modification, change or reopening of a prior award that was
12 entered either prior to or after that date shall be determined by
13 the following subdivisions of this subsection. Any request that
14 is made beyond that period shall be refused.

15 (1) Except as provided in section twenty-two of this article,
16 in any claim which was closed without the entry of an order
17 regarding the degree, if any, of permanent disability that a
18 claimant has suffered, or in any case in which no award has
19 been made, any request must be made within five years of the
20 closure. During that time period, only two requests may be
21 filed.

22 (2) Except as stated below, in any claim in which an award
23 of permanent disability was made, any request must be made
24 within five years of the date of the initial award. During that
25 time period, only two requests may be filed. With regard to
26 those occupational diseases, including occupational pneumoco-
27 niosis, which are medically recognized as progressive in nature,
28 if any such request is granted by the commission, successor to
29 the commission, other private carrier or self-insured employer,
30 whichever is applicable, a new five-year period begins upon the
31 date of the subsequent award. With the advice of the health
32 care advisory panel, the executive director and the board of
33 managers shall by rule designate those progressive diseases
34 which are customarily the subject of claims.

35 (3) No further award may be made in fatal cases except
36 within two years after the death of the employee.

37 (4) With the exception of the items set forth in subsection
38 (d), section three of this article, in any claim in which medical
39 or any type of rehabilitation service has not been rendered or
40 durable medical goods or other supplies have not been received
41 for a period of five years, no request for additional medical or
42 any type of rehabilitation benefits shall be granted nor shall any
43 medical or any type of rehabilitation benefits or any type of
44 goods or supplies be paid for by the commission, successor to
45 the commission, other private carrier or self-insured employer,
46 whichever is applicable, if they were provided without a prior
47 request. For the exclusive purposes of this subdivision, medical
48 services and rehabilitation services shall not include any
49 encounter in which significant treatment was not performed.

50 (b) In any claim in which an injured employee makes
51 application for a further period of temporary total disability, if
52 the application is in writing and filed within the applicable time
53 limit stated above, the commission, successor to the commis-
54 sion, other private carrier or self-insured employer, whichever
55 is applicable, shall pass upon the request within thirty days of

56 the receipt of the request. If the decision is to grant the request,
57 the order shall provide for the receipt of temporary total
58 disability benefits. In any case in which an injured employee
59 makes application for a further award of permanent partial
60 disability benefits or for an award of permanent total disability
61 benefits, if the application is in writing and filed within the
62 applicable time limit as stated above, the commission, succes-
63 sor to the commission, other private carrier or self-insured
64 employer, whichever is applicable, shall pass upon the request
65 within thirty days of its receipt and, if the commission deter-
66 mines that the claimant may be entitled to an award, the
67 commission, successor to the commission, other private carrier
68 or self-insured employer, whichever is applicable, shall refer
69 the claimant for further examinations that are necessary.

70 (c) If the application is based on a report of any medical
71 examination made of the claimant and submitted by the
72 claimant to the commission, successor to the commission, other
73 private carrier or self-insured employer, whichever is applica-
74 ble, in support of his or her application and the claim is opened
75 for further consideration and additional award is later made, the
76 claimant shall be reimbursed for the expenses of the examina-
77 tion. The reimbursement shall be made by the commission,
78 successor to the commission, other private carrier or self-
79 insured employer, whichever is applicable, to the claimant, in
80 addition to all other benefits awarded, upon due proof of the
81 amount thereof being furnished by the claimant, but shall in no
82 case exceed the sum fixed pursuant to the applicable schedule
83 of maximum reasonable fees.

84 (d) The commission, successor to the commission, other
85 private carrier or self-insured employer, whichever is applica-
86 ble, has continuing power and jurisdiction over claims in which
87 permanent total disability awards have been made after the
88 eighth day of April, one thousand nine hundred ninety-three.

89 (1) The commission, successor to the commission, other
90 private carrier or self-insured employer, whichever is applica-
91 ble, shall continuously monitor permanent total disability
92 awards and may, from time to time, after due notice to the
93 claimant, reopen a claim for reevaluation of the continuing
94 nature of the disability and possible modification of the award.
95 At such times as the commission may determine, the commis-
96 sion may require the claimant to provide documents and other
97 information to the commission, successor to the commission,
98 other private carrier or self-insured employer, whichever is
99 applicable, including, but not limited to, tax returns, financial
100 records and affidavits demonstrating level of income, recre-
101 ational activities, work activities, medications used and
102 physicians or other medical or rehabilitation providers treating
103 or prescribing medication or other services for the claimant;
104 require the claimant to appear under oath before the commis-
105 sion, successor to the commission, other private carrier or self-
106 insured employer, whichever is applicable, or its duly autho-
107 rized representative and answer questions; and suspend or
108 terminate any benefits of a claimant who willfully fails to
109 provide the information or appear as required: *Provided*, That
110 the commission shall develop, implement and complete a
111 program as soon as reasonably possible that requires each
112 person receiving permanent total disability benefits on the
113 effective date of the amendment and reenactment of this section
114 in the year two thousand three, and each person who is awarded
115 those benefits thereafter, to submit the tax returns and the
116 affidavit described herein at least once: *Provided, however*,
117 That this requirement does not restrict the commission's
118 authority to require the information that may be required herein
119 at such other times as the commission may determine. The
120 commission, successor to the commission, other private carrier
121 or self-insured employer, whichever is applicable, may reopen
122 a claim for reevaluation when, in its sole discretion, it con-
123 cludes that there exists good cause to believe that the claimant
124 no longer meets the eligibility requirements under subdivision
125 (n), section six of this article. The eligibility requirements,

126 including any vocational standards, shall be applied as those
127 requirements are stated at the time of a claim's reopening.

128 (2) Upon reopening a claim under this subsection, the
129 commission, successor to the commission, other private carrier
130 or self-insured employer, whichever is applicable, may take
131 evidence, have the claimant evaluated, make findings of fact
132 and conclusions of law and shall vacate, modify or affirm the
133 original permanent total disability award as the record requires.
134 The claimant's former employer shall not be a party to the
135 reevaluation, but shall be notified of the reevaluation and may
136 submit any information as the employer may elect. In the event
137 the claimant retains his or her award following the reevaluation,
138 the claimant's reasonable attorneys' fees incurred in defending
139 the award shall be paid by the workers' compensation commis-
140 sion, successor to the commission, other private carrier or self-
141 insured employer, whichever is applicable. In addition, the
142 workers' compensation commission, successor to the commis-
143 sion, other private carrier or self-insured employer, whichever
144 is applicable, shall reimburse a prevailing claimant for his or
145 her costs in obtaining one evaluation on each issue during the
146 course of the reevaluation with the reimbursement being made
147 from the fund. The board of managers shall adopt criteria for
148 the determination of reasonable attorneys' fees.

149 (3) This subsection shall not be applied to awards made
150 under the provisions of subdivision (m), section six of this
151 article. The claimant may seek review of the final order as
152 otherwise provided in article five of this chapter for review of
153 orders granting or denying permanent disability awards.

154 (4) The commission shall establish by rule criteria for
155 review, reopening and reevaluating a claim under this subsec-
156 tion. The commission shall at least quarterly provide a report
157 of the exercise of its authority to continuously monitor perma-
158 nent total disability awards under this section to the joint
159 committee on government and finance and the joint commission
160 on economic development.

161 (e) A claimant may have only one active request for a
162 permanent disability award pending in a claim at any one time.
163 Any new request that is made while another is pending shall be
164 consolidated into the former request.

§23-4-16a. Interest on benefits.

1 Whenever any award of temporary total, permanent partial
2 or permanent total disability benefits or dependent benefits is
3 made on or after the first day of July, one thousand nine
4 hundred seventy-one, and a protest is filed to the award or an
5 appeal is taken from the award by an employer only and not by
6 the claimant or dependent and the award is not ultimately
7 denied or reduced following the protest or appeal, the commis-
8 sion, successor to the commission, other private carrier or self-
9 insured employer, whichever is applicable, shall add interest to
10 the award at the simple rate of six percent per annum from the
11 date the award would have been payable had the protest or
12 appeal not been filed or taken, exclusive of any period for
13 which a continuance was granted upon motion of any party
14 other than the protesting or appealing employer. Any interest
15 payable shall be charged to the account of the protesting or
16 appealing employer to the extent that the benefits upon which
17 such interest is computed are charged to the account of the
18 employer.

§23-4-17. Commutation of periodical benefits.

1 The commission, successor to the commission, other
2 private carrier or self-insured employer, whichever is applica-
3 ble, under special circumstances and when it is considered
4 advisable, may commute periodical benefits to one or more
5 lump-sum payments. Upon the application of any claimant who
6 has received an award of partial or total disability, who is not a
7 citizen of the United States and desires to reside permanently
8 beyond the territorial limits of the United States, or upon the
9 application of an alien dependent of a deceased employee with
10 respect of whose death award of compensation has been made,

11 the dependent residing in the territorial limits of the United
12 States at the time of the decedent's death, and desiring to reside
13 permanently beyond the territorial limits of the United States,
14 the commission, successor to the commission, other private
15 carrier or self-insured employer, whichever is applicable, may
16 commute into one lump-sum payment the periodical payments
17 to which the claimant or dependent would be entitled, but at the
18 rate of one-half the amount that would be payable to a citizen
19 of the United States under like circumstances. The lump-sum
20 payment at the rate specified in this section discharges all
21 liability with respect to the award, but in no event shall the
22 award be paid until the claimant or dependent has actually
23 arrived and domiciled himself or herself outside the territorial
24 limits of the United States, except a sufficient portion of the
25 award to pay transportation and other necessary expenses.

§23-4-20. Postmortem examinations.

1 The commission, successor to the commission, other
2 private carrier or self-insured employer, whichever is applica-
3 ble, may, after due notice to the employer and claimant,
4 whenever it considers it necessary, order an autopsy and may
5 designate a duly licensed physician to make the postmortem
6 examination or examinations that are necessary to determine
7 the cause of the deceased employee's death. The physician
8 shall file with the commission a written report of his or her
9 findings. The claimant and the employer, respectively, have the
10 right to select a physician of his, her or its own choosing and,
11 at his or her or its own expense, to participate in the postmor-
12 tem examination. The respective physicians selected by the
13 claimant and the employer have the right to concur in any
14 report made by the physician selected by the commission,
15 successor to the commission, other private carrier or self-
16 insured employer, whichever is applicable, or each may file
17 with the commission, successor to the commission, other
18 private carrier or self-insured employer, whichever is applica-
19 ble, a separate report. In any case, including silicosis cases, in

20 which either the employer or a claimant requests that an
21 autopsy be performed, the autopsy shall be directed as provided
22 in this section. In the event that a claimant for compensation
23 for the death refuses to consent and permit the autopsy to be
24 made all rights to compensation shall be forfeited.

**§23-4-24. Permanent total disability awards; retirement age;
limitations on eligibility and the introduction of
evidence; effects of other types of awards; proce-
dures; requests for awards; jurisdiction.**

1 (a) Notwithstanding any provision of this chapter to the
2 contrary, except as stated below, no claimant shall be awarded
3 permanent total disability benefits arising under subdivision (d)
4 or (n), section six of this article or section eight-c of this article
5 who terminates active employment and is receiving full old-age
6 retirement benefits under the Social Security Act, 42 U.S.C.
7 §401 and 402. Any claimant shall be evaluated only for the
8 purposes of receiving a permanent partial disability award
9 premised solely upon the claimant's impairments. This
10 subsection is not applicable in any claim in which the claimant
11 has completed the submission of his or her evidence on the
12 issue of permanent total disability prior to the later of the
13 following: Termination of active employment or the initial
14 receipt of full old-age retirement benefits under the Social
15 Security Act. Once the claimant has terminated active employ-
16 ment and has begun to receive full old-age social security
17 retirement benefits, the claimant may not produce additional
18 evidence of permanent total disability nor shall the claim be
19 remanded for the production of the evidence.

20 (b) The workers' compensation commission, successor to
21 the commission, other private carrier or self-insured employer,
22 whichever is applicable, has the sole and exclusive jurisdiction
23 to initially hear and decide any claim or request pertaining, in
24 whole or in part, to subdivision (d) or (n), section six of this
25 article. Any claim or request for permanent total disability

26 benefits arising under said subdivisions shall first be presented
27 to the commission as part of the initial claim filing or by way
28 of an application for modification or adjustment pursuant to
29 section sixteen of this article. The office of judges may
30 consider a claim only after the commission, successor to the
31 commission, other private carrier or self-insured employer,
32 whichever is applicable, has entered an appropriate order.

§23-4-25. Permanent total disability benefits; reduction of disability benefits for wages earned by claimant.

1 (a) After the eighth day of April, one thousand nine
2 hundred ninety-three, a reduction in the amount of benefits as
3 specified in subsection (b) of this section shall be made
4 whenever benefits are being paid for a permanent total disability
5 award regardless of when the benefits were awarded. This
6 section is not applicable to the receipt of medical benefits or the
7 payment for medical benefits, the receipt of permanent partial
8 disability benefits, the receipt of benefits by partially or wholly
9 dependent persons, or to the receipt of benefits pursuant to the
10 provisions of subsection (e), section ten of this article. Prior to
11 the application of this section to any claimant, the commission,
12 successor to the commission, other private carrier or self-
13 insured employer, whichever is applicable, shall give the
14 claimant notice of the effect of this section upon a claimant's
15 award if and when the claimant later earns wages.

16 (b) Whenever applicable benefits are paid to a claimant
17 with respect to the same time period in which the claimant has
18 earned wages as a result of his or her employment, the following
19 reduction in applicable benefits shall be made. The claimant's
20 applicable monthly benefits and monthly net wages
21 received from the current employment shall be added together.
22 If the total exceeds by more than one hundred twenty percent of
23 the amount of the claimant's monthly net wages earned during
24 his or her last employment prior to the award of permanent total
25 disability benefits, the excess shall be reduced by one dollar for

26 each two dollars that the claimant's monthly benefits and
27 monthly net wages exceed the one hundred twenty percent
28 level: *Provided*, That in no event shall applicable benefits be
29 reduced below the minimum weekly benefits as provided in
30 subdivisions (b) and (d), section six of this article.

ARTICLE 4A. DISABLED WORKERS' RELIEF FUND.

§23-4A-1. Disabled workers' relief fund created.

§23-4A-4. Mode of payment.

§23-4A-9. Transfer of authority to the insurance commissioner.

§23-4A-1. Disabled workers' relief fund created.

1 (a) For the relief of persons who are receiving benefits
2 pursuant to a permanent total disability award in amounts less
3 than thirty-three and one-third percent of the average weekly
4 wage for the state of West Virginia per month, and for the relief
5 of widows who are receiving benefits on account of the death
6 of an employee in amounts less than thirty-three and one-third
7 percent of the average weekly wage in the state of West
8 Virginia per month, and for the relief of children of employees
9 deceased before one thousand nine hundred sixty-seven, who
10 are under the age of twenty-three and who are full-time
11 students, and for the relief of other persons who are receiving
12 dependents' benefits on account of the death of an employee in
13 amounts less than the specific monetary amounts set forth in
14 section ten, article four of this chapter and in effect as of the
15 first day of July, one thousand nine hundred seventy-three,
16 there is continued a separate fund, heretofore known as the
17 "Disabled Workmen's Relief Fund", and which shall hereafter
18 be known as the "Disabled Workers' Relief Fund", which shall
19 consist of any sums that are, from time to time, made available
20 to carry out the objects and purposes of this article. The fund
21 shall be in the custody of the state treasurer and disbursements
22 from the fund shall be made upon requisition signed by the
23 executive director to those persons entitled to participate in the
24 fund and in such amounts to each participant that are provided
25 in section three of this article.

26 (b) Effective upon termination of the commission, the
27 "Disabled Workers' Relief Fund" shall be administered by the
28 successor to the commission and the administrative duties
29 assigned to the executive director shall be transferred to the
30 chief executive officer of the successor to the commission.

§23-4A-4. Mode of payment.

1 Payments to an individual entitled to participate in the
2 disabled workers' relief fund may be made from said fund by
3 separate check or may be made from said fund and from the
4 workers' compensation fund and, effective upon termination of
5 the commission, the old fund, by one check, but each such
6 check drawn on the two funds shall be so written as to show
7 plainly the payments made from each fund. No disbursements
8 shall be made from the workers' compensation fund or the old
9 fund on account of any provisions of this article.

§23-4A-9. Transfer of authority to the insurance commissioner.

1 Effective upon termination of the commission, the authority
2 to make the annual transfer as required in section eight of this
3 article shall transfer to the insurance commissioner.

ARTICLE 4B. COAL-WORKERS' PNEUMOCONIOSIS FUND.

§23-4B-9. Novation to the successor of the commission.

1 Upon the termination of the commission, all assets,
2 obligations and liabilities resulting from this article are trans-
3 ferred to the successor of the commission. The state treasurer
4 and all other departments, agencies and boards shall cooperate
5 to ensure this novation occurs in a expedient and orderly
6 fashion. Thereafter, the company shall offer insurance to
7 provide for the benefits required by this article until at least the
8 thirtieth day of June, two thousand eight.

ARTICLE 4C. EMPLOYERS' EXCESS LIABILITY FUND.

§23-4C-5. Administration.

§23-4C-6. Novation to the successor of the commission.

§23-4C-5. Administration.

1 Until the termination of the commission, the employers'
2 excess liability fund shall be administered by the executive
3 director, who shall employ any employees that are necessary to
4 discharge his or her duties and responsibilities under this
5 article. All payments of salaries and expenses of the employees
6 and all expenses peculiar to the administration of this article
7 shall be made by the state treasurer from the employers' excess
8 liability fund upon requisitions signed by the executive director.

§23-4C-6. Novation to the successor of the commission.

1 Upon the termination of the commission, all assets,
2 obligations and liabilities resulting from this article are trans-
3 ferred to the successor of the commission. Thereafter, the
4 company shall offer insurance to provide for the benefits
5 required by this article until at least the thirtieth day of June,
6 two thousand eight. The state treasurer and all other depart-
7 ments, agencies and boards shall cooperate to ensure this
8 novation occurs in an expedient and orderly fashion.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing.

§23-5-2. Application by employee for further adjustment of claim; objection to modification; hearing.

§23-5-3. Refusal to reopen claim; notice; objection.

§23-5-4. Application by employer for modification of award; objection to modification; hearing.

§23-5-5. Refusal of modification; notice; objection.

§23-5-7. Compromise and settlement.

§23-5-8. Designation of office of administrative law judges; powers of chief administrative law judge.

§23-5-9. Hearings on objections to commission or self-insured employer decisions; mediation; remand.

§23-5-10. Appeal from administrative law judge decision to appeal board.

§23-5-11. Workers' compensation board of review generally.

§23-5-12. Appeal to board; procedure; remand and supplemental hearing.

§23-5-15. Appeals from final decisions of board to supreme court of appeals; procedure; costs.

§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing.

1 (a) The workers' compensation commission, the successor
2 to the commission, other private insurance carriers and self-
3 insured employers may hear and determine all questions within
4 their jurisdiction. In matters arising under articles three and
5 four of this chapter, the commission, the successor to the
6 commission, other private insurance carriers and self-insured
7 employers shall promptly review and investigate all claims.
8 The parties to a claim shall file the information in support of
9 their respective positions as they consider proper. In addition,
10 the commission, the successor to the commission, other private
11 insurance carriers and self-insured employers may develop
12 additional information that it considers to be necessary in the
13 interests of fairness to the parties and in keeping with their
14 fiduciary obligations. With regard to any issue which is ready
15 for a decision, the commission, the successor to the commis-
16 sion, other private insurance carriers and self-insured employers
17 shall explain the basis of its decisions.

18 (b) Except with regard to interlocutory matters and those
19 matters set forth in subsection (d) of this section, upon making
20 any decision, upon making or refusing to make any award or
21 upon making any modification or change with respect to former
22 findings or orders, as provided by section sixteen, article four
23 of this chapter, the commission, the successor to the commis-
24 sion, other private insurance carriers and self-insured employers
25 shall give notice, in writing, to the employer, employee,
26 claimant or dependant as the case may be, of its action. The
27 notice shall state the time allowed for filing an objection to the
28 finding. The action of the commission, the successor to the
29 commission, other private insurance carriers and self-insured

30 employers is final unless the employer, employee, claimant or
31 dependant shall, within thirty days after the receipt of the
32 notice, object in writing, to the finding. Unless an objection is
33 filed within the thirty-day period, the finding or action is final.
34 This time limitation is a condition of the right to litigate the
35 finding or action and hence jurisdictional. Any objection shall
36 be filed with the office of judges with a copy served upon the
37 commission, the successor to the commission, other private
38 insurance carriers and self-insured employers, whichever is
39 applicable, and other parties in accordance with the procedures
40 set forth in sections eight and nine of this article. In all
41 instances where a private carrier, self-insured employer or a
42 third-party administrator has made claims decisions as autho-
43 rized in this chapter, they shall provide claimants notice of all
44 claims decisions as provided by rules for self-administration
45 promulgated by the board of managers and shall be bound by
46 each requirement imposed upon the commission by this article.

47 (c) Where a finding or determination of the commission,
48 the successor to the commission, other private insurance
49 carriers and self-insured employers, whichever is applicable, is
50 protested only by the employer, and the employer does not
51 prevail in its protest, and in the event the claimant is required
52 to attend a hearing by subpoena or agreement of counsel or at
53 the express direction of the commission or office of judges,
54 then the claimant in addition to reasonable traveling and other
55 expenses shall be reimbursed for loss of wages incurred by the
56 claimant in attending the hearing.

57 (d) The commission, the successor to the commission, other
58 private insurance carriers and self-insured employers, which-
59 ever is applicable may amend, correct or set aside any order or
60 decision on any issue entered by it which, at the time of
61 issuance or any time thereafter, is discovered to be defective or
62 clearly erroneous or the result of mistake, clerical error or
63 fraud, or otherwise not supported by the evidence. Jurisdiction
64 to take this action continues until the expiration of two years

65 from the date of entry of an order unless the order is sooner
66 affected by appellate action: *Provided*, That corrective actions
67 in the case of fraud may be taken at any time.

68 (e) All objections to orders of the commission, the succes-
69 sor to the commission, other private insurance carriers and self-
70 insured employers, whichever is applicable shall be styled in
71 the name of the issuing entity. All appeals prosecuted from the
72 office of judges shall be in the name of the issuing party. In all
73 actions under this article, the workers' compensation commis-
74 sion shall be the party in interest unless the parties to the appeal
75 are limited to a claimant and a self-insured employer.

§23-5-2. Application by employee for further adjustment of claim; objection to modification; hearing.

1 In any case where an injured employee makes application
2 in writing for a further adjustment of his or her claim under the
3 provisions of section sixteen, article four of this chapter and the
4 application discloses cause for a further adjustment, the
5 commission shall, after due notice to the employer, make the
6 modifications, or changes with respect to former findings or
7 orders in the claim that are justified. Any party dissatisfied
8 with any modification or change made by the commission, the
9 successor to the commission, other private insurance carriers
10 and self-insured employers, whichever is applicable, is, upon
11 proper and timely objection, entitled to a hearing, as provided
12 in section nine of this article.

§23-5-3. Refusal to reopen claim; notice; objection.

1 If it appears to the commission, the successor to the
2 commission, other private insurance carriers and self-insured
3 employers, whichever is applicable, that an application filed
4 under section two of this article fails to disclose a progression
5 or aggravation in the claimant's condition, or some other fact or
6 facts which were not previously considered in its former
7 findings and which would entitle the claimant to greater

8 benefits than the claimant has already received, the commis-
9 sion, the successor to the commission, other private insurance
10 carriers and self-insured employers, whichever is applicable,
11 shall, within a reasonable time, notify the claimant and the
12 employer that the application fails to establish a prima facie
13 cause for reopening the claim. The notice shall be in writing
14 stating the reasons for denial and the time allowed for objection
15 to the decision of the commission. The claimant may, within
16 thirty days after receipt of the notice, object in writing to the
17 finding. Unless the objection is filed within the thirty-day
18 period, no objection shall be allowed. This time limitation is a
19 condition of the right to objection and hence jurisdictional.
20 Upon receipt of an objection, the office of judges shall afford
21 the claimant an evidentiary hearing as provided in section nine
22 of this article.

**§23-5-4. Application by employer for modification of award;
objection to modification; hearing.**

1 In any case in which an employer makes application in
2 writing for a modification of any award previously made to an
3 employee of the employer, the commission, the successor to the
4 commission, other private insurance carriers and self-insured
5 employers, whichever is applicable, shall make a decision upon
6 the application. If the application discloses cause for a further
7 adjustment, the commission, the successor to the commission,
8 other private insurance carriers and self-insured employers,
9 whichever is applicable, shall, after due notice to the employee,
10 make the modifications or changes with respect to former
11 findings or orders that are justified. Any party dissatisfied with
12 any modification or change made or by the denial of an
13 application for modification is, upon proper and timely objec-
14 tion, entitled to a hearing as provided in section nine of this
15 article.

§23-5-5. Refusal of modification; notice; objection.

1 If in any case it appears to the commission, the successor to
2 the commission, other private insurance carriers and self-
3 insured employers, whichever is applicable, that the application
4 filed pursuant to section four of this article fails to disclose
5 some fact or facts which were not previously considered by the
6 commission in its former findings, and which would entitle the
7 employer to any modification of the previous award, the
8 commission, the successor to the commission, other private
9 insurance carriers and self-insured employers, whichever is
10 applicable, shall, within sixty days from the receipt of the
11 application, notify the claimant and employer that the applica-
12 tion fails to establish a just cause for modification of the award.
13 The notice shall be in writing stating the reasons for denial and
14 the time allowed for objection to the decision of the commis-
15 sion, the successor to the commission, other private insurance
16 carriers and self-insured employers, whichever is applicable.
17 The employer may, within thirty days after receipt of the notice,
18 object in writing to the decision. Unless the objection is filed
19 within the thirty-day period, no objection shall be allowed.
20 This time limitation is a condition of the right to objection and
21 hence jurisdictional. Upon receipt of the objection, the office
22 of judges shall afford the employer an evidentiary hearing as
23 provided in section nine of this article.

§23-5-7. Compromise and settlement.

1 With the exception of medical benefits for nonorthopedic
2 occupational disease claims, the claimant, the employer and the
3 workers' compensation commission, the successor to the
4 commission, other private insurance carriers and self-insured
5 employers, whichever is applicable, may negotiate a final
6 settlement of any and all issues in a claim wherever the claim
7 is in the administrative or appellate processes. If the employer
8 is not active in the claim, the commission, the successor to the
9 commission, other private insurance carriers and self-insured
10 employers, whichever is applicable, may negotiate a final
11 settlement of any and all issues in a claim except for medical

12 benefits for nonorthopedic occupational disease claims with the
13 claimant and said settlement shall be made a part of the claim
14 record. Except in cases of fraud, no issue that is the subject of
15 an approved settlement agreement may be reopened by any
16 party, including the commission, the successor to the commis-
17 sion, other private insurance carriers and self-insured employ-
18 ers, whichever is applicable. Any settlement agreement may
19 provide for a lump-sum payment or a structured payment plan,
20 or any combination thereof, or any other basis as the parties
21 may agree. If a self-insured employer later fails to make the
22 agreed-upon payment, the commission shall assume the
23 obligation to make the payments and shall recover the amounts
24 paid or to be paid from the self-insurer employer and its sureties
25 or guarantors or both as provided in section five and five-a,
26 article two of this chapter.

27 Each settlement agreement shall provide the toll free
28 number of the West Virginia State Bar Association and shall
29 provide the injured worker with five business days to revoke the
30 executed agreement. The insurance commissioner may void
31 settlement agreements entered into by an unrepresented injured
32 worker which are determined to be unconscionable pursuant to
33 criteria established by rule of the commissioner.

34 The amendments to this section enacted during the regular
35 session of the Legislature in the year one thousand nine hundred
36 ninety-nine shall apply to all settlement agreements executed
37 after the effective date.

**§23-5-8. Designation of office of administrative law judges;
powers of chief administrative law judge.**

1 (a) The workers' compensation office of administrative law
2 judges previously created pursuant to chapter twelve, acts of the
3 Legislature, one thousand nine hundred ninety, second extraor-
4 dinary session, is hereby continued and designated to be an
5 integral part of the workers' compensation system of this state.
6 The office of judges shall be under the supervision of a chief

7 administrative law judge who shall be appointed by the gover-
8 nor with the advice and consent of the Senate.

9 (b) The chief administrative law judge shall be a person
10 who has been admitted to the practice of law in this state and
11 shall also have had at least four years of experience as an
12 attorney. The chief administrative law judge's salary shall be
13 set by the workers' compensation board of managers. The
14 salary shall be within the salary range for comparable chief
15 administrative law judges as determined by the state personnel
16 board created by section six, article six, chapter twenty-nine of
17 this code. The chief administrative law judge may only be
18 removed by a vote of two-thirds of the members of the workers'
19 compensation board of managers. Upon transfer of the office
20 of judges to the insurance commissioner, the chief administra-
21 tive law judge shall continue to serve as chief administrative
22 law judge until the thirty-first day of December, two thousand
23 seven. Thereafter, appointments of the chief administrative law
24 judge shall be for terms of four years beginning the first day of
25 January, two thousand eight, and the chief administrative law
26 judge may be removed only for cause by the vote of four
27 members of the Industrial Council. No other provision of this
28 code purporting to limit the term of office of any appointed
29 official or employee or affecting the removal of any appointed
30 official or employee is applicable to the chief administrative
31 law judge.

32 (c) The chief administrative law judge shall employ
33 administrative law judges and other personnel that are neces-
34 sary for the proper conduct of a system of administrative review
35 of orders issued by the workers' compensation commission
36 which orders have been objected to by a party. The employees
37 shall be in the classified service of the state. Qualifications,
38 compensation and personnel practice relating to the employees
39 of the office of judges, other than the chief administrative law
40 judge, shall be governed by the provisions of this code and rules
41 of the classified service pursuant to article six, chapter twenty-

42 nine of this code. All additional administrative law judges shall
43 be persons who have been admitted to the practice of law in this
44 state and shall also have had at least two years of experience as
45 an attorney. The chief administrative law judge shall supervise
46 the other administrative law judges and other personnel which
47 collectively shall be referred to in this chapter as the office of
48 judges.

49 (d) The administrative expense of the office of judges shall
50 be included within the annual budget of the workers' compensa-
51 tion commission and, upon termination of the commission, the
52 insurance commissioner.

53 (e) The office of judges shall, from time to time, promul-
54 gate rules of practice and procedure for the hearing and
55 determination of all objections to findings or orders of the
56 workers' compensation commission. The office of judges shall
57 not have the power to initiate or to promulgate legislative rules
58 as that phrase is defined in article three, chapter twenty-nine-a
59 of this code. Any rules adopted pursuant to this section which
60 are applicable to the provisions of this article are not subject to
61 sections nine through sixteen, inclusive, article three, chapter
62 twenty-nine-a of this code. The office of judges shall follow
63 the remaining provisions of said chapter for giving notice to the
64 public of its actions and the holding of hearings or receiving of
65 comments on the rules.

66 (f) The chief administrative law judge has the power to hear
67 and determine all disputed claims in accordance with the
68 provisions of this article, establish a procedure for the hearing
69 of disputed claims, take oaths, examine witnesses, issue
70 subpoenas, establish the amount of witness fees, keep records
71 and make reports that are necessary for disputed claims and
72 exercise any additional powers, including the delegation of
73 powers to administrative law judges or hearing examiners that
74 are necessary for the proper conduct of a system of administra-
75 tive review of disputed claims. The chief administrative law

76 judge shall make reports that are requested of him or her by the
77 workers' compensation board of managers.

78 (g) Effective upon termination of the commission, the
79 office of judges and the board of review shall be transferred to
80 the insurance commissioner, which shall have the oversight
81 and administrative authority heretofore provided to the execu-
82 tive director and the board of managers.

**§23-5-9. Hearings on objections to commission or self-insured
employer decisions; mediation; remand.**

1 (a) Objections to a decision of the workers' compensation
2 commission, the successor to the commission, other private
3 insurance carriers and self-insured employers, whichever is
4 applicable, made pursuant to the provisions of section one of
5 this article shall be filed with the office of judges. Upon receipt
6 of an objection, the office of judges shall notify the commis-
7 sion, the successor to the commission, other private insurance
8 carriers and self-insured employers, whichever is applicable,
9 and all other parties of the filing of the objection. The office of
10 judges shall establish by rule promulgated in accordance with
11 the provisions of subsection (e), section eight of this article an
12 adjudicatory process that enables parties to present evidence in
13 support of their positions and provides an expeditious resolution
14 of the objection. The employer, the claimant and the commis-
15 sion, the successor to the commission, other private insurance
16 carriers and self-insured employers, whichever is applicable,
17 shall be notified of any hearing at least ten days in advance.
18 The office of judges shall review and amend, or modify, as
19 necessary its procedural rules by the first day of July, two
20 thousand seven.

21 (b) The office of judges shall establish a program for
22 mediation to be conducted in accordance with the requirements
23 of rule twenty-five of the West Virginia trial court rules. The
24 parties may agree that the result of the mediation is binding. A

25 case may be referred to mediation by the administrative law
26 judge on his or her own motion, on motion of a party or by
27 agreement of the parties. Upon issuance of an order for media-
28 tion, the office of judges shall assign a mediator from a list of
29 qualified mediators maintained by the West Virginia state bar.

30 (c) The office of judges shall keep full and complete
31 records of all proceedings concerning a disputed claim. Subject
32 to the rules of practice and procedure promulgated pursuant to
33 section eight of this article, the record upon which the matter
34 shall be decided shall include any evidence submitted by a party
35 to the office of judges, evidence taken at hearings conducted by
36 the office of judges and any documents in the claim files which
37 relate to the subject matter of the objection. The record may
38 include evidence or documents submitted in electronic form or
39 other appropriate medium in accordance with the rules of
40 practice and procedure. The office of judges is not bound by
41 the usual common law or statutory rules of evidence.

42 (d) All hearings shall be conducted as determined by the
43 chief administrative law judge pursuant to the rules of practice
44 and procedure promulgated pursuant to section eight of this
45 article. Upon consideration of the designated record, the chief
46 administrative law judge or other authorized adjudicator within
47 the office of judges shall, based on the determination of the
48 facts of the case and applicable law, render a decision affirm-
49 ing, reversing or modifying the action protested. The decision
50 shall contain findings of fact and conclusions of law and shall
51 be mailed to all parties.

52 (e) The rule authorized by subsection (a) of this section
53 shall be promulgated on or before the first day of October, two
54 thousand three. Until the rule is promulgated, any rules
55 previously promulgated shall remain in full force and effect.

56 (f) The office of judges may remand a claim to the commis-
57 sion, the successor to the commission, other private insurance

58 carriers and self-insured employers, whichever is applicable, for
59 further development of the facts or administrative matters as, in
60 the opinion of the administrative law judge, may be necessary
61 for a full and complete disposition of the case. The administra-
62 tive law judge shall establish a time within which the commis-
63 sion, the successor to the commission, other private insurance
64 carriers and self-insured employers, whichever is applicable,
65 must report back to the administrative law judge.

66 (g) The decision of the workers' compensation office of
67 judges regarding any objections to a decision of the workers'
68 compensation commission, the successor to the commission,
69 other private insurance carriers and self-insured employers,
70 whichever is applicable, is final and benefits shall be paid or
71 denied in accordance with the decision unless the decision is
72 subsequently appealed and reversed in accordance with the
73 procedures set forth in this article.

**§23-5-10. Appeal from administrative law judge decision to
appeal board.**

1 The employer, claimant, workers' compensation commis-
2 sion, the successor to the commission, other private insurance
3 carriers and self-insured employers, whichever is applicable,
4 may appeal to the appeal board created in section eleven of this
5 article for a review of a decision by an administrative law
6 judge. No appeal or review shall lie unless application therefor
7 be made within thirty days of receipt of notice of the adminis-
8 trative law judge's final action or in any event within sixty days
9 of the date of such final action, regardless of notice and, unless
10 the application for appeal or review is filed within the time
11 specified, no such appeal or review shall be allowed, such time
12 limitation being hereby declared to be a condition of the right
13 of such appeal or review and hence jurisdictional.

§23-5-11. Workers' compensation board of review generally.

1 (a) On the thirty-first day of January, two thousand four, the
2 workers' compensation appeal board heretofore established in
3 this section is hereby abolished.

4 (b) There is hereby created the "workers' compensation
5 board of review", which may also be referred to as "the board
6 of review" or "the board". Effective the first day of February,
7 two thousand four, the board of review shall exercise exclusive
8 jurisdiction over all appeals from the workers' compensation
9 office judges including any and all appeals pending with the
10 board of appeals on the thirty-first day of January, two thousand
11 four.

12 (c) The board shall consist of three members.

13 (d) The governor shall appoint, from names submitted by
14 the "workers' compensation board of review nominating
15 committee", with the advice and consent of the Senate, three
16 qualified attorneys to serve as members of the board of review.
17 If the governor does not select a nominee for any vacant
18 position from the names provided by the nominating commit-
19 tee, he shall notify the nominating committee of that circum-
20 stance and the committee shall provide additional names for
21 consideration by the governor. A member of the board of
22 review may be removed by the governor for official miscon-
23 duct, incompetence, neglect of duty, gross immorality or
24 malfeasance and then only after notice and opportunity to
25 respond and present evidence. No more than two of the
26 members of the board may be of the same political party. The
27 members of the board of review shall be paid an annual salary
28 of eighty-five thousand dollars. Members are entitled to be
29 reimbursed for actual and necessary travel expenses incurred in
30 the discharge of official duties in a manner consistent with the
31 guidelines of the travel management office of the department of
32 administration.

33 (e) The nominating committee shall consist of the following
34 members: (1) The president of the West Virginia state bar who

35 will serve as the chairperson of the committee; (2) an active
36 member of the West Virginia state bar workers' compensation
37 committee selected by the major trade association representing
38 employers in this state; (3) an active member of the West
39 Virginia state bar workers' compensation committee selected
40 by the highest ranking officer of the major employee organiza-
41 tion representing workers in this state; (4) the dean of the West
42 Virginia university school of law; and (5) the chairman of the
43 judicial investigation committee.

44 (f) The nominating committee is responsible for reviewing
45 and evaluating candidates for possible appointment to the board
46 of review by the governor. In reviewing candidates, the
47 nominating committee may accept comments from and request
48 information from any person or source.

49 (g) Each member of the nominating committee may submit
50 up to three names of qualified candidates for each position on
51 the board of review: *Provided*, That the member of the nomi-
52 nating committee selected by the major trade organization
53 representing employers of this state shall submit at least one
54 name of a qualified candidate for each position on the board
55 who either is, or who represents, small business employers of
56 this state. After careful review of the candidates, the committee
57 shall select a minimum of one candidate for each position on
58 the board.

59 (h) No later than the first day of November, two thousand
60 three, the nominating committee shall present to the governor
61 its list of candidates for the initial board of review. The
62 governor shall appoint the initial board no later than the thirty-
63 first day of December, two thousand three: *Provided*, That upon
64 the thirty-first day of December, two thousand three, the
65 deadline for filling all positions of the board of review will be
66 extended, as necessary, if, on or before that date, the governor
67 has timely requested additional names from the nominating
68 committee. Thereafter, the nominating committee shall meet at

69 the request of the governor in order to make timely recommen-
70 dations to the governor for appointees to the board as the initial
71 and subsequent terms expire or become vacant. The recom-
72 mendations shall be submitted no later than thirty days prior to
73 the expiration of any term.

74 (i) Of the initial appointments, one member shall be
75 appointed for a term ending the thirty-first day of December,
76 two thousand six; one member shall be appointed for a term
77 ending the thirty-first day of December, two thousand eight;
78 and one member shall be appointed for a term ending the thirty-
79 first day of December, two thousand ten. Thereafter, the
80 appointments shall be for six-year terms.

81 (j) A member of the board of review must, at the time he or
82 she takes office and thereafter during his or her continuance in
83 office, be a resident of this state, be a member in good standing
84 of the West Virginia state bar, have a minimum of ten years'
85 experience as an attorney admitted to practice law in this state
86 prior to appointment and have a minimum of five years'
87 experience in preparing and presenting cases or hearing actions
88 and making decisions on the basis of the record of those
89 hearings before administrative agencies, regulatory bodies or
90 courts of record at the federal, state or local level.

91 (k) No member of the board of review may hold any other
92 office, or accept any appointment or public trust, nor may he or
93 she become a candidate for any elective public office or
94 nomination thereto. Violation of this subsection requires the
95 member to vacate his or her office. No member of the board of
96 review may engage in the practice of law during his or her term
97 of office.

98 (l) A vacancy occurring on the board other than by expira-
99 tion of a term shall be filled in the manner original appoint-
100 ments were made, for the unexpired portion of the term.

101 (m) The board shall designate one of its members in
102 rotation to be chairman of the board for as long as the board
103 may determine by order made and entered of record. In the
104 absence of the chairman, any other member designated by the
105 members present shall act as chairman.

106 (n) The board of review shall meet as often as necessary to
107 hold review hearings, at such times and places as the chairman
108 may determine. Two members shall be present in order to
109 conduct review hearings or other business. All decisions of the
110 board shall be determined by a majority of the members of the
111 board.

112 (o) The board of review shall make general rules regarding
113 the pleading, including the form of the petition and any
114 responsive pleadings, practice and procedure to be used by the
115 board.

116 (p) The board of review may hire a clerk and other profes-
117 sional and clerical staff necessary to carry out the requirements
118 of this article. It is the duty of the clerk of the board of review
119 to attend in person, or by deputy, all the sessions of the board,
120 to obey its orders and directions, to take care of and preserve in
121 an office, kept for the purpose, all records and papers of the
122 board and to perform other duties as prescribed by law or
123 required of him or her by the board. All employees of the board
124 shall serve at the will and pleasure of the board. The board's
125 employees are exempt from the salary schedule or pay plan
126 adopted by the division of personnel. All personnel of the
127 board of review shall be under the supervision of the chairman
128 of the board of review.

129 (q) If deemed necessary by the board, the board may,
130 through staffing or other resources, procure assistance in review
131 of medical portions of decisions.

132 (r) Upon the conclusion of any hearing, or prior thereto
133 with concurrence of the parties, the member shall promptly

134 determine the matter and make an award in accordance with his
135 or her determination.

136 (s) The award shall become a part of the commission file.
137 A copy of the award shall be sent forthwith by mail to all
138 parties in interest.

139 (t) The award is final when entered. The award shall
140 contain a statement explaining the rights of the parties to an
141 appeal to the board of review and the applicable time limita-
142 tions involved.

143 (u) The board shall submit a budget to the executive
144 director for inclusion in the budget for the workers' compensa-
145 tion commission sufficient to adequately provide for the
146 administrative and other operating expenses of the board.

147 (v) The board shall report monthly to the board of managers
148 on the status of all claims on appeal.

149 (w) Effective upon termination of the commission, the
150 board of review shall be transferred to the insurance commis-
151 sioner which shall have the oversight and administrative
152 authority heretofore provided to the executive director and the
153 board of managers.

§23-5-12. Appeal to board; procedure; remand and supplemental hearing.

1 (a) Any employer, employee, claimant or dependent, who
2 shall feel aggrieved at any final action of the administrative law
3 judge taken after a hearing held in accordance with the provi-
4 sions of section nine of this article, shall have the right to
5 appeal to the board created in section eleven of this article for
6 a review of such action. The workers' compensation commis-
7 sion, the successor to the commission, other private insurance
8 carriers and self-insured employers, whichever is applicable,
9 shall likewise have the right to appeal to the board any final

10 action taken by the administrative law judge. The aggrieved
11 party shall file a written notice of appeal with the office of
12 judges directed to the board, within thirty days after receipt of
13 notice of the action complained of, or in any event, regardless
14 of notice, within sixty days after the date of the action com-
15 plained of, and unless the notice of appeal is filed within the
16 time specified, no appeal shall be allowed, the time limitation
17 is a condition of the right to appeal and hence jurisdictional.
18 The office of judges shall notify the other parties immediately
19 upon the filing of a notice of appeal. The notice of appeal shall
20 state the ground for review and whether oral argument is
21 requested. The office of judges shall forthwith make up a
22 transcript of the proceedings before the office of judges and
23 certify and transmit it to the board. The certificate shall
24 incorporate a brief recital of the proceedings in the case and
25 recite each order entered and the date thereof.

26 (b) The board shall set a time and place for the hearing of
27 arguments on each claim and shall notify the interested parties
28 thereof. The review by the board shall be based upon the record
29 submitted to it and such oral argument as may be requested and
30 received. The board may affirm, reverse, modify or supplement
31 the decision of the administrative law judge and make such
32 disposition of the case as it determines to be appropriate. Briefs
33 may be filed by the interested parties in accordance with the
34 rules of procedure prescribed by the board. The board may
35 affirm the order or decision of the administrative law judge or
36 remand the case for further proceedings. It shall reverse, vacate
37 or modify the order or decision of the administrative law judge
38 if the substantial rights of the petitioner or petitioners have been
39 prejudiced because the administrative law judge's findings are:

40 (1) In violation of statutory provisions; or

41 (2) In excess of the statutory authority or jurisdiction of the
42 administrative law judge; or

43 (3) Made upon unlawful procedures; or

44 (4) Affected by other error of law; or

45 (5) Clearly wrong in view of the reliable, probative and
46 substantial evidence on the whole record; or

47 (6) Arbitrary or capricious or characterized by abuse of
48 discretion or clearly unwarranted exercise of discretion.

49 (c) After a review of the case, the board shall issue a written
50 decision to be filed with the commission and a copy thereof
51 sent by mail to the parties.

52 (1) All decisions, findings of fact and conclusions of law of
53 the board of review shall be in writing and state with specificity
54 the laws and facts relied upon to sustain, reverse or modify the
55 administrative law judge's decision.

56 (2) Decisions of the board of review shall be made by a
57 majority vote of the board of review.

58 (3) A decision of the board of review is binding upon the
59 executive director and the commission and the successor to the
60 commission, other private insurance carriers and self-insured
61 employers, whichever is applicable, with respect to the parties
62 involved in the particular appeal. The executive director, the
63 successor to the commission, other private insurance carriers
64 and self-insured employers, whichever is applicable, shall have
65 the right to seek judicial review of a board of review decision
66 irrespective of whether or not he or she appeared or participated
67 in the appeal to the board of review.

68 (d) Instead of affirming, reversing or modifying the
69 decision of the administrative law judge, the board may, upon
70 motion of any party or upon its own motion, for good cause
71 shown, to be set forth in the order of the board, remand the case
72 to the chief administrative law judge for the taking of such new,
73 additional or further evidence as in the opinion of the board
74 may be necessary for a full and complete development of the
75 facts of the case. In the event the board shall remand the case

76 to the chief administrative law judge for the taking of further
77 evidence, the administrative law judge shall proceed to take
78 new, additional or further evidence in accordance with any
79 instruction given by the board within thirty days after receipt of
80 the order remanding the case. The chief administrative law
81 judge shall give to the interested parties at least ten days'
82 written notice of the supplemental hearing, unless the taking of
83 evidence is postponed by agreement of parties, or by the
84 administrative law judge for good cause. After the completion
85 of a supplemental hearing, the administrative law judge shall,
86 within sixty days, render his or her decision affirming, revers-
87 ing or modifying the former action of the administrative law
88 judge. The decision shall be appealable to, and proceeded with
89 by the board of review in the same manner as other appeals. In
90 addition, upon a finding of good cause, the board may remand
91 the case to the workers' compensation commission, the
92 successor to the commission, other private insurance carriers
93 and self-insured employers, whichever is applicable, for further
94 development. Any decision made by the commission, the
95 successor to the commission, other private insurance carriers
96 and self-insured employers, whichever is applicable, following
97 a remand shall be subject to objection to the office of judges
98 and not to the board. The board may remand any case as often
99 as in its opinion is necessary for a full development and just
100 decision of the case.

101 (e) All appeals from the action of the administrative law
102 judge shall be decided by the board at the same session at which
103 they are heard, unless good cause for delay thereof be shown
104 and entered of record.

105 (f) In all proceedings before the board, any party may be
106 represented by counsel.

**§23-5-15. Appeals from final decisions of board to supreme court
of appeals; procedure; costs.**

1 (a) Review of any final decision of the board, including any
2 order of remand, may be prosecuted by either party or by the
3 workers' compensation commission, the successor to the
4 commission, other private insurance carriers and self-insured
5 employers, whichever is applicable, to the supreme court of
6 appeals within thirty days from the date of the final order by
7 filing a petition therefor with the court against the board and the
8 adverse party or parties as respondents. Unless the petition for
9 review is filed within the thirty-day period, no appeal or review
10 shall be allowed, such time limitation is a condition of the right
11 to such appeal or review and hence jurisdictional. The clerk of
12 the supreme court of appeals shall notify each of the respon-
13 dents and the workers' compensation commission, the succes-
14 sor to the commission, other private insurance carriers and self-
15 insured employers, whichever is applicable, of the filing of such
16 petition. The board shall, within ten days after receipt of the
17 notice, file with the clerk of the court the record of the proceed-
18 ings had before it, including all the evidence. The court or any
19 judge thereof in vacation may thereupon determine whether or
20 not a review shall be granted. If review is granted to a nonresi-
21 dent of this state, he or she shall be required to execute and file
22 with the clerk before an order or review shall become effective,
23 a bond, with security to be approved by the clerk, conditioned
24 to perform any judgment which may be awarded against him or
25 her. The board may certify to the court and request its decision
26 of any question of law arising upon the record, and withhold its
27 further proceeding in the case, pending the decision of court on
28 the certified question, or until notice that the court has declined
29 to docket the same. If a review is granted or the certified
30 question is docketed for hearing, the clerk shall notify the board
31 and the parties litigant or their attorneys and the workers'
32 compensation commission, the successor to the commission,
33 other private insurance carriers and self-insured employers,
34 whichever is applicable, of that fact by mail. If a review is
35 granted or the certified question docketed, the case shall be
36 heard by the court in the same manner as in other cases, except

37 that neither the record nor briefs need be printed. Every review
38 granted or certified question docketed prior to thirty days before
39 the beginning of the term, shall be placed upon the docket for
40 that term. The attorney general shall, without extra compensa-
41 tion, represent the board in such cases. The court shall deter-
42 mine the matter brought before it and certify its decision to the
43 board and to the commission. The cost of the proceedings on
44 petition, including a reasonable attorney's fee, not exceeding
45 thirty dollars to the claimant's attorney, shall be fixed by the
46 court and taxed against the employer if the latter is unsuccess-
47 ful. If the claimant, or the commission (in case the latter is the
48 applicant for review) is unsuccessful, the costs, not including
49 attorney's fees, shall be taxed against the commission, payable
50 out of the workers' compensation fund, or shall be taxed against
51 the claimant, in the discretion of the court. But there shall be
52 no cost taxed upon a certified question.

53 (b) In reviewing a decision of the board of review, the
54 supreme court of appeals shall consider the record provided by
55 the board and give deference to the board's findings, reasoning
56 and conclusions, in accordance with subsections (c) and (d) of
57 this section.

58 (c) If the decision of the board represents an affirmation of
59 a prior ruling by both the commission and the office of judges
60 that was entered on the same issue in the same claim, the
61 decision of the board may be reversed or modified by the
62 supreme court of appeals only if the decision is in clear
63 violation of constitutional or statutory provision, is clearly the
64 result of erroneous conclusions of law, or is based upon the
65 board's material misstatement or mischaracterization of
66 particular components of the evidentiary record. The court may
67 not conduct a de novo re-weighing of the evidentiary record. If
68 the court reverses or modifies a decision of the board pursuant
69 to this subsection, it shall state with specificity the basis for the
70 reversal or modification and the manner in which the decision
71 of the board clearly violated constitutional or statutory provi-

72 sions, resulted from erroneous conclusions of law, or was based
73 upon the board's material misstatement or mischaracterization
74 of particular components of the evidentiary record.

75 (d) If the decision of the board effectively represents a
76 reversal of a prior ruling of either the commission or the office
77 of judges that was entered on the same issue in the same claim,
78 the decision of the board may be reversed or modified by the
79 supreme court of appeals only if the decision is in clear
80 violation of constitutional or statutory provisions, is clearly the
81 result of erroneous conclusions of law, or is so clearly wrong
82 based upon the evidentiary record that even when all inferences
83 are resolved in favor of the board's findings, reasoning and
84 conclusions, there is insufficient support to sustain the decision.
85 The court may not conduct a de novo re-weighing of the
86 evidentiary record. If the court reverses or modifies a decision
87 of the board pursuant to this subsection, it shall state with
88 specificity the basis for the reversal or modification and the
89 manner in which the decision of the board clearly violated
90 constitutional or statutory provisions, resulted from erroneous
91 conclusions of law, or was so clearly wrong based upon the
92 evidentiary record that even when all inferences are resolved in
93 favor of the board's findings, reasoning and conclusions, there
94 is insufficient support to sustain the decision.

CHAPTER 29. MISCELLANEOUS

BOARDS AND OFFICERS.

ARTICLE 22A. RACETRACK VIDEO LOTTERY.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

§29-22A-10b. Distribution of excess net terminal income.

§29-22A-10. Accounting and reporting; commission to provide communications protocol data; distribution of net terminal income; remittance through electronic transfer of funds; establishment of accounts and nonpayment penalties; commission control of accounting for net terminal income; settlement of accounts; manual reporting and payment may be required; request for reports; examination of accounts and records.

1 (a) The commission shall provide to manufacturers, or
2 applicants applying for a manufacturer's permit, the protocol
3 documentation data necessary to enable the respective manufac-
4 turer's video lottery terminals to communicate with the com-
5 mission's central computer for transmitting auditing program
6 information and for activation and disabling of video lottery
7 terminals.

8 (b) The gross terminal income of a licensed racetrack shall
9 be remitted to the commission through the electronic transfer of
10 funds. Licensed racetracks shall furnish to the commission all
11 information and bank authorizations required to facilitate the
12 timely transfer of moneys to the commission. Licensed
13 racetracks must provide the commission thirty days' advance
14 notice of any proposed account changes in order to assure the
15 uninterrupted electronic transfer of funds. From the gross
16 terminal income remitted by the licensee to the commission, the
17 commission shall deduct an amount sufficient to reimburse the
18 commission for its actual costs and expenses incurred in
19 administering racetrack video lottery at the licensed racetrack,
20 and the resulting amount after the deduction is the net terminal
21 income. The amount deducted for administrative costs and
22 expenses of the commission may not exceed four percent of
23 gross terminal income: *Provided*, That any amounts deducted
24 by the commission for its actual costs and expenses that
25 exceeds its actual costs and expenses shall be deposited into the
26 state lottery fund. For all fiscal years beginning on or after the

27 first day of July, two thousand one, the commission shall not
28 receive an amount of gross terminal income in excess of the
29 amount of gross terminal income received during the fiscal year
30 ending on the thirtieth day of June, two thousand one, but four
31 percent of any amount of gross terminal income received in
32 excess of the amount of gross terminal income received during
33 the fiscal year ending on the thirtieth day of June, two thousand
34 one, shall be deposited into the fund established in section
35 eighteen-a, article twenty-two of this chapter.

36 (c) Net terminal income shall be divided as set out in this
37 subsection. For all fiscal years beginning on or after the first
38 day of July, two thousand one, any amount of net terminal
39 income received in excess of the amount of net terminal income
40 received during the fiscal year ending on the thirtieth day of
41 June, two thousand one, shall be divided as set out in section
42 ten-b of this article. The licensed racetrack's share is in lieu of
43 all lottery agent commissions and is considered to cover all
44 costs and expenses required to be expended by the licensed
45 racetrack in connection with video lottery operations. The
46 division shall be made as follows:

47 (1) The commission shall receive thirty percent of net
48 terminal income, which shall be paid into the state lottery fund
49 as provided in section ten-a of this article;

50 (2) Until the first day of July, two thousand five, fourteen
51 percent of net terminal income at a licensed racetrack shall be
52 deposited in the special fund established by the licensee, and
53 used for payment of regular purses in addition to other amounts
54 provided for in article twenty-three, chapter nineteen of this
55 code, on and after the first day of July, two thousand five, the
56 rate shall be seven percent of net terminal income;

57 (3) The county where the video lottery terminals are located
58 shall receive two percent of the net terminal income: *Provided,*
59 That:

60 (A) Beginning the first day of July, one thousand nine
61 hundred ninety-nine, and thereafter, any amount in excess of
62 the two percent received during the fiscal year one thousand
63 nine hundred ninety-nine by a county in which a racetrack is
64 located that has participated in the West Virginia thoroughbred
65 development fund since on or before the first day of January,
66 one thousand nine hundred ninety-nine shall be divided as
67 follows:

68 (i) The county shall receive fifty percent of the excess
69 amount; and

70 (ii) The municipalities of the county shall receive fifty
71 percent of the excess amount, said fifty percent to be divided
72 among the municipalities on a per capita basis as determined by
73 the most recent decennial United States census of population;
74 and

75 (B) Beginning the first day of July, one thousand nine
76 hundred ninety-nine, and thereafter, any amount in excess of
77 the two percent received during the fiscal year one thousand
78 nine hundred ninety-nine by a county in which a racetrack other
79 than a racetrack described in paragraph (A) of this proviso is
80 located and where the racetrack has been located in a munici-
81 pality within the county since on or before the first day of
82 January, one thousand nine hundred ninety-nine shall be
83 divided, if applicable, as follows:

84 (i) The county shall receive fifty percent of the excess
85 amount; and

86 (ii) The municipality shall receive fifty percent of the
87 excess amount; and

88 (C) This proviso shall not affect the amount to be received
89 under this subdivision by any other county other than a county
90 described in paragraph (A) or (B) of this proviso;

91 (4) One half of one percent of net terminal income shall be
92 paid for and on behalf of all employees of the licensed racing
93 association by making a deposit into a special fund to be
94 established by the racing commission to be used for payment
95 into the pension plan for all employees of the licensed racing
96 association;

97 (5) The West Virginia thoroughbred development fund
98 created under section thirteen-b, article twenty-three, chapter
99 nineteen of this code and the West Virginia greyhound breeding
100 development fund created under section ten of said article shall
101 receive an equal share of a total of not less than one and one-
102 half percent of the net terminal income: *Provided*, That for any
103 racetrack which does not have a breeder's program supported
104 by the thoroughbred development fund or the greyhound
105 breeding development fund, the one and one-half percent
106 provided for in this subdivision shall be deposited in the special
107 fund established by the licensee and used for payment of
108 regular purses, in addition to other amounts provided in
109 subdivision (2) of this subsection and article twenty-three,
110 chapter nineteen of this code.

111 (6) The West Virginia racing commission shall receive one
112 percent of the net terminal income which shall be deposited and
113 used as provided in section thirteen-c, article twenty-three,
114 chapter nineteen of this code.

115 (7) A licensee shall receive forty-seven percent of net
116 terminal income.

117 (8) (A) The tourism promotion fund established in section
118 twelve, article two, chapter five-b of this code shall receive
119 three percent of the net terminal income: *Provided*, That for the
120 fiscal year beginning the first day of July, two thousand three,
121 the tourism commission shall transfer from the tourism promo-
122 tion fund five million dollars of the three percent of the net
123 terminal income described in this section and section ten-b of
124 this article into the fund administered by the West Virginia

125 economic development authority pursuant to section seven,
126 article fifteen, chapter thirty-one of this code, five million
127 dollars into the capitol renovation and improvement fund
128 administered by the department of administration pursuant to
129 section six, article four, chapter five-a of this code and five
130 million dollars into the tax reduction and federal funding
131 increased compliance fund; and

132 (B) Notwithstanding any provision of paragraph (A) of this
133 subdivision to the contrary, for each fiscal year beginning after
134 the thirtieth day of June, two thousand four, this three percent
135 of net terminal income and the three percent of net terminal
136 income described in paragraph (B), subdivision (8), subsection
137 (a), section ten-b of this article shall be distributed as provided
138 in this paragraph as follows:

139 (i) 1.375 percent of the total amount of net terminal income
140 described in this section and in section ten-b of this article shall
141 be deposited into the tourism promotion fund created under
142 section twelve, article two, chapter five-b of this code;

143 (ii) 0.375 percent of the total amount of net terminal income
144 described in this section and in section ten-b of this article shall
145 be deposited into the development office promotion fund
146 created under section three-b, article two, chapter five-b of this
147 code;

148 (iii) 0.5 percent of the total amount of net terminal income
149 described in this section and in section ten-b of this article shall
150 be deposited into the research challenge fund created under
151 section ten, article one-b, chapter eighteen-b of this code;

152 (iv) 0.6875 percent of the total amount of net terminal
153 income described in this section and in section ten-b of this
154 article shall be deposited into the capitol renovation and
155 improvement fund administered by the department of adminis-
156 tration pursuant to section six, article four, chapter five-a of this
157 code; and

158 (v) 0.0625 percent of the total amount of net terminal
159 income described in this section and in section ten-b of this
160 article shall be deposited into the 2004 capitol complex parking
161 garage fund administered by the department of administration
162 pursuant to section five-a, article four, chapter five-a of this
163 code;

164 (9) On and after the first day of July, two thousand five,
165 seven percent of net terminal income shall be deposited into the
166 workers' compensation debt reduction fund created in section
167 five, article two-d, chapter twenty-three of this code; and

168 (10) The remaining one percent of net terminal income
169 shall be deposited as follows:

170 (A) For the fiscal year beginning the first day of July, two
171 thousand three, the veterans memorial program shall receive
172 one percent of the net terminal income until sufficient moneys
173 have been received to complete the veterans memorial on the
174 grounds of the state capitol complex in Charleston, West
175 Virginia. The moneys shall be deposited in the state treasury in
176 the division of culture and history special fund created under
177 section three, article one-i, chapter twenty-nine of this code:
178 *Provided*, That only after sufficient moneys have been depos-
179 ited in the fund to complete the veterans memorial and to pay
180 in full the annual bonded indebtedness on the veterans memo-
181 rial, not more than twenty thousand dollars of the one percent
182 of net terminal income provided for in this subdivision shall be
183 deposited into a special revenue fund in the state treasury, to be
184 known as the "John F. 'Jack' Bennett Fund". The moneys in
185 this fund shall be expended by the division of veterans affairs
186 to provide for the placement of markers for the graves of
187 veterans in perpetual cemeteries in this state. The division of
188 veterans affairs shall promulgate legislative rules pursuant to
189 the provisions of article three, chapter twenty-nine-a of this
190 code specifying the manner in which the funds are spent,
191 determine the ability of the surviving spouse to pay for the

192 placement of the marker and setting forth the standards to be
193 used to determine the priority in which the veterans grave
194 markers will be placed in the event that there are not sufficient
195 funds to complete the placement of veterans grave markers in
196 any one year, or at all. Upon payment in full of the bonded
197 indebtedness on the veterans memorial, one hundred thousand
198 dollars of the one percent of net terminal income provided for
199 in this subdivision shall be deposited in the special fund in the
200 division of culture and history created under section three,
201 article one-i, chapter twenty-nine of this code and be expended
202 by the division of culture and history to establish a West
203 Virginia veterans memorial archives within the cultural center
204 to serve as a repository for the documents and records pertain-
205 ing to the veterans memorial, to restore and maintain the
206 monuments and memorial on the capitol grounds: *Provided,*
207 *however,* That five hundred thousand dollars of the one percent
208 of net terminal income shall be deposited in the state treasury
209 in a special fund of the department of administration, created
210 under section five, article four, chapter five-a of this code, to be
211 used for construction and maintenance of a parking garage on
212 the state capitol complex; and the remainder of the one percent
213 of net terminal income shall be deposited in equal amounts in
214 the capitol dome and improvements fund created under section
215 two, article four, chapter five-a of this code and cultural
216 facilities and capitol resources matching grant program fund
217 created under section three, article one of this chapter.

218 (B) For each fiscal year beginning after the thirtieth day of
219 June, two thousand four:

220 (i) Five hundred thousand dollars of the one percent of net
221 terminal income shall be deposited in the state treasury in a
222 special fund of the department of administration, created under
223 section five, article four, chapter five-a of this code, to be used
224 for construction and maintenance of a parking garage on the
225 state capitol complex; and

226 (ii) The remainder of the one percent of net terminal
227 income and all of the one percent of net terminal income
228 described in paragraph (B), subdivision (9), subsection (a),
229 section ten-b of this article twenty-two-a shall be distributed as
230 follows: The net terminal income shall be deposited in equal
231 amounts into the capitol dome and capitol improvements fund
232 created under section two, article four, chapter five-a of this
233 code and the cultural facilities and capitol resources matching
234 grant program fund created under section three, article one,
235 chapter twenty-nine of this code until a total of one million five
236 hundred thousand dollars is deposited into the cultural facilities
237 and capitol resources matching grant program fund; thereafter,
238 the remainder shall be deposited into the capitol dome and
239 capitol improvements fund.

240 (d) Each licensed racetrack shall maintain in its account an
241 amount equal to or greater than the gross terminal income from
242 its operation of video lottery machines, to be electronically
243 transferred by the commission on dates established by the
244 commission. Upon a licensed racetrack's failure to maintain
245 this balance, the commission may disable all of a licensed
246 racetrack's video lottery terminals until full payment of all
247 amounts due is made. Interest shall accrue on any unpaid
248 balance at a rate consistent with the amount charged for state
249 income tax delinquency under chapter eleven of this code. The
250 interest shall begin to accrue on the date payment is due to the
251 commission.

252 (e) The commission's central control computer shall keep
253 accurate records of all income generated by each video lottery
254 terminal. The commission shall prepare and mail to the licensed
255 racetrack a statement reflecting the gross terminal income
256 generated by the licensee's video lottery terminals. Each
257 licensed racetrack shall report to the commission any discrepan-
258 cies between the commission's statement and each terminal's
259 mechanical and electronic meter readings. The licensed

260 racetrack is solely responsible for resolving income discrepan-
261 cies between actual money collected and the amount shown on
262 the accounting meters or on the commission's billing statement.

263 (f) Until an accounting discrepancy is resolved in favor of
264 the licensed racetrack, the commission may make no credit
265 adjustments. For any video lottery terminal reflecting a
266 discrepancy, the licensed racetrack shall submit to the commis-
267 sion the maintenance log which includes current mechanical
268 meter readings and the audit ticket which contains electronic
269 meter readings generated by the terminal's software. If the
270 meter readings and the commission's records cannot be
271 reconciled, final disposition of the matter shall be determined
272 by the commission. Any accounting discrepancies which
273 cannot be otherwise resolved shall be resolved in favor of the
274 commission.

275 (g) Licensed racetracks shall remit payment by mail if the
276 electronic transfer of funds is not operational or the commission
277 notifies licensed racetracks that remittance by this method is
278 required. The licensed racetracks shall report an amount equal
279 to the total amount of cash inserted into each video lottery
280 terminal operated by a licensee, minus the total value of game
281 credits which are cleared from the video lottery terminal in
282 exchange for winning redemption tickets, and remit the amount
283 as generated from its terminals during the reporting period. The
284 remittance shall be sealed in a properly addressed and stamped
285 envelope and deposited in the United States mail no later than
286 noon on the day when the payment would otherwise be com-
287 pleted through electronic funds transfer.

288 (h) Licensed racetracks may, upon request, receive addi-
289 tional reports of play transactions for their respective video
290 lottery terminals and other marketing information not consid-
291 ered confidential by the commission. The commission may
292 charge a reasonable fee for the cost of producing and mailing
293 any report other than the billing statements.

294 (i) The commission has the right to examine all accounts,
295 bank accounts, financial statements and records in a licensed
296 racetrack's possession, under its control or in which it has an
297 interest and the licensed racetrack shall authorize all third
298 parties in possession or in control of the accounts or records to
299 allow examination of any of those accounts or records by the
300 commission.

§29-22A-10b. Distribution of excess net terminal income.

1 (a) For all years beginning on or after the first day of July,
2 two thousand one, any amount of net terminal income generated
3 annually by a licensed racetrack in excess of the amount of net
4 terminal income generated by that licensed racetrack during the
5 fiscal year ending on the thirtieth day of June, two thousand
6 one, shall be divided as follows:

7 (1) The commission shall receive forty-one percent of net
8 terminal income, which the commission shall deposit in the
9 state excess lottery revenue fund created in section eighteen-a,
10 article twenty-two of this chapter;

11 (2) Until the first day of July, two thousand five, eight
12 percent of net terminal income at a licensed racetrack shall be
13 deposited in the special fund established by the licensee and
14 used for payment of regular purses in addition to other amounts
15 provided for in article twenty-three, chapter nineteen of this
16 code; on and after the first day of July, two thousand five, the
17 rate shall be four percent of net terminal income;

18 (3) The county where the video lottery terminals are located
19 shall receive two percent of the net terminal income: *Provided,*
20 *That:*

21 (A) Any amount by which the total amount under this
22 section and subdivision (3), subsection (c), section ten of this
23 article is in excess of the two percent received during fiscal year
24 one thousand nine hundred ninety-nine by a county in which a

25 racetrack is located that has participated in the West Virginia
26 thoroughbred development fund since on or before the first day
27 of January, one thousand nine hundred ninety-nine, shall be
28 divided as follows:

29 (i) The county shall receive fifty percent of the excess
30 amount; and

31 (ii) The municipalities of the county shall receive fifty
32 percent of the excess amount, the fifty percent to be divided
33 among the municipalities on a per capita basis as determined by
34 the most recent decennial United States census of population;
35 and

36 (B) Any amount by which the total amount under this
37 section and subdivision (3), subsection (c), section ten of this
38 article is in excess of the two percent received during fiscal year
39 one thousand nine hundred ninety-nine by a county in which a
40 racetrack other than a racetrack described in paragraph (A) of
41 this proviso is located and where the racetrack has been located
42 in a municipality within the county since on or before the first
43 day of January, one thousand nine hundred ninety-nine, shall be
44 divided, if applicable, as follows:

45 (i) The county shall receive fifty percent of the excess
46 amount; and

47 (ii) The municipality shall receive fifty percent of the
48 excess amount; and

49 (C) This proviso shall not affect the amount to be received
50 under this subdivision by any county other than a county
51 described in paragraph (A) or (B) of this proviso;

52 (4) One half of one percent of net terminal income shall be
53 paid for and on behalf of all employees of the licensed racing
54 association by making a deposit into a special fund to be
55 established by the racing commission to be used for payment

56 into the pension plan for all employees of the licensed racing
57 association;

58 (5) The West Virginia thoroughbred development fund
59 created under section thirteen-b, article twenty-three, chapter
60 nineteen of this code and the West Virginia greyhound breeding
61 development fund created under section ten, article twenty-
62 three, chapter nineteen of this code shall receive an equal share
63 of a total of not less than one and one-half percent of the net
64 terminal income: *Provided*, That for any racetrack which does
65 not have a breeder's program supported by the thoroughbred
66 development fund or the greyhound breeding development
67 fund, the one and one-half percent provided for in this subdivi-
68 sion shall be deposited in the special fund established by the
69 licensee and used for payment of regular purses, in addition to
70 other amounts provided for in subdivision (2) of this subsection
71 and article twenty-three, chapter nineteen of this code;

72 (6) The West Virginia racing commission shall receive one
73 percent of the net terminal income which shall be deposited and
74 used as provided in section thirteen-c, article twenty-three,
75 chapter nineteen of this code;

76 (7) A licensee shall receive forty-two percent of net
77 terminal income;

78 (8) The tourism promotion fund established in section
79 twelve, article two, chapter five-b of this code shall receive
80 three percent of the net terminal income: *Provided*, That for
81 each fiscal year beginning after the thirtieth day of June, two
82 thousand four, this three percent of net terminal income shall be
83 distributed pursuant to the provisions of paragraph (B), subdivi-
84 sion (8), subsection (c), section ten of this article;

85 (9) On and after the first day of July, two thousand five,
86 four percent of net terminal income shall be deposited into the
87 workers' compensation debt reduction fund created in section

88 five, article two-d, chapter twenty-three of this code: *Provided,*
89 That in any fiscal year when the amount of money generated by
90 this subdivision together with the total allocation transferred by
91 the operation of subdivision (9), subsection (c), section ten of
92 this article totals eleven million dollars, all subsequent distribu-
93 tions under this subdivision (9) shall be deposited in the special
94 fund established by the licensee, and used for payment of
95 regular purses in addition to other amounts provided for in
96 article twenty-three, chapter nineteen of this code; and

97 (10) (A) One percent of the net terminal income shall be
98 deposited in equal amounts in the capitol dome and improve-
99 ments fund created under section two, article four, chapter five-
100 a of this code and cultural facilities and capitol resources
101 matching grant program fund created under section three,
102 article one of this chapter; and

103 (B) Notwithstanding any provision of paragraph (A) of this
104 subdivision to the contrary, for each fiscal year beginning after
105 the thirtieth day of June, two thousand four, this one percent of
106 net terminal income shall be distributed pursuant to the provi-
107 sions of subparagraph (ii), paragraph (B), subdivision (9),
108 subsection (c), section ten of this article.

109 (b) The commission may establish orderly and effective
110 procedures for the collection and distribution of funds under
111 this section in accordance with the provisions of this section
112 and section ten of this article.

CHAPTER 33. INSURANCE.

Article

1. Definitions.
2. Insurance Commissioner.
41. Privileges and Immunity.

ARTICLE 1. DEFINITIONS.

§33-1-2. Insurer.

§33-1-10. Kinds of insurance defined.

§33-1-2. Insurer.

1 Insurer is every person engaged in the business of making
2 contracts of insurance. Insurer includes private carrier as that
3 term is used in chapter twenty-three of this code.

§33-1-10. Kinds of insurance defined.

1 The following definitions of kinds of insurance are not
2 mutually exclusive and, if reasonably adaptable thereto, a
3 particular coverage may be included under one or more of such
4 definitions:

5 (a) *Life insurance.* — Life insurance is insurance on human
6 lives including endowment benefits, additional benefits in the
7 event of death or dismemberment by accident or accidental
8 means, additional benefits for disability and annuities.

9 (b) *Accident and sickness.* — Accident and sickness
10 insurance is insurance against bodily injury, disability or death
11 by accident or accidental means, or the expense thereof, or
12 against disability or expense resulting from sickness and
13 insurance relating thereto. Group credit accident and health
14 insurance may also include loss of income insurance which is
15 insurance against the failure of a debtor to pay his or her
16 monthly obligation due to involuntary loss of employment. For
17 the purposes of this definition, involuntary loss of employment
18 means the debtor loses employment income (salary or wages)
19 as a result of unemployment caused by individual or mass
20 layoff, general strikes, labor disputes, lockout or termination by
21 employer for other than willful or criminal misconduct. Any or
22 all of the above-mentioned perils may be included in an
23 insurance policy, at the discretion of the policyholder.

24 (c) *Fire.* — Fire insurance is insurance on real or personal
25 property of every kind and interest therein, against loss or
26 damage from any or all hazard or cause, and against loss
27 consequential upon such loss or damage, other than

28 noncontractual liability for any such loss or damage. Fire
29 insurance shall also include miscellaneous insurance as defined
30 in paragraph (12), subdivision (e) of this section.

31 (d) *Marine insurance is insurance:*

32 (1) Against any and all kinds of loss or damage to vessels,
33 craft, aircraft, cars, automobiles and vehicles of every kind, as
34 well as all goods, freight, cargoes, merchandise, effects,
35 disbursements, profits, moneys, bullion, precious stones,
36 securities, choses in action, evidences of debt, valuable papers,
37 bottomry and respondentia interests and all other kinds of
38 property and interests therein, in respect to, appertaining to or
39 in connection with any and all risks or perils of navigation,
40 transit or transportation, including war risks, on or under any
41 seas or other waters, on land (above or below ground), or in the
42 air, or while being assembled, packed, crated, baled, com-
43 pressed or similarly prepared for shipment or while awaiting the
44 same or during any delays, storage, transshipment, or
45 reshipment incident thereto, including marine builders' risks
46 and all personal property floater risks;

47 (2) Against any and all kinds of loss or damage to person or
48 to property in connection with or appertaining to a marine,
49 inland marine, transit or transportation insurance, including
50 liability for loss of or damage to either, arising out of or in
51 connection with the construction, repair, operation, mainte-
52 nance or use of the subject matter of such insurance (but not
53 including life insurance or surety bonds nor insurance against
54 loss by reason of bodily injury to the person arising out of the
55 ownership, maintenance or use of automobiles);

56 (3) Against any and all kinds of loss or damage to precious
57 stones, jewels, jewelry, gold, silver and other precious metals,
58 whether used in business or trade or otherwise and whether the
59 same be in course of transportation or otherwise;

60 (4) Against any and all kinds of loss or damage to bridges,
61 tunnels and other instrumentalities of transportation and
62 communication (excluding buildings, their furniture and
63 furnishings, fixed contents and supplies held in storage) unless
64 fire, windstorm, sprinkler leakage, hail, explosion, earthquake,
65 riot or civil commotion or any or all of them are the only
66 hazards to be covered;

67 (5) Against any and all kinds of loss or damage to piers,
68 wharves, docks and ships, excluding the risks of fire, wind-
69 storm, sprinkler leakage, hail, explosion, earthquake, riot and
70 civil commotion and each of them;

71 (6) Against any and all kinds of loss or damage to other aids
72 to navigation and transportation, including dry docks and
73 marine railways, dams and appurtenant facilities for control of
74 waterways; and

75 (7) Marine protection and indemnity insurance, which is
76 insurance against, or against legal liability of the insured for,
77 loss, damage or expense arising out of, or incident to, the
78 ownership, operation, chartering, maintenance, use, repair or
79 construction of any vessel, craft or instrumentality in use in
80 ocean or inland waterways, including liability of the insured for
81 personal injury, illness or death or for loss of or damage to the
82 property of another person.

83 (e) *Casualty*. — Casualty insurance includes:

84 (1) Vehicle insurance, which is insurance against loss of or
85 damage to any land vehicle or aircraft or any draft or riding
86 animal or to property while contained therein or thereon or
87 being loaded therein or therefrom, from any hazard or cause,
88 and against any loss, liability or expense resulting from or
89 incident to ownership, maintenance or use of any such vehicle,
90 aircraft or animal; together with insurance against accidental
91 death or accidental injury to individuals, including the named

92 insured, while in, entering, alighting from, adjusting, repairing
93 or cranking, or caused by being struck by any vehicle, aircraft
94 or draft or riding animal, if such insurance is issued as a part of
95 insurance on the vehicle, aircraft or draft or riding animal;

96 (2) Liability insurance, which is insurance against legal
97 liability for the death, injury or disability of any human being,
98 or for damage to property; and provisions for medical, hospital,
99 surgical, disability benefits to injured persons and funeral and
100 death benefits to dependents, beneficiaries or personal represen-
101 tatives of persons killed, irrespective of legal liability of the
102 insured, when issued as an incidental coverage with or supple-
103 mental to liability insurance;

104 (3) Burglary and theft insurance, which is insurance against
105 loss or damage by burglary, theft, larceny, robbery, forgery,
106 fraud, vandalism, malicious mischief, confiscation, or wrongful
107 conversion, disposal or concealment, or from any attempt at any
108 of the foregoing, including supplemental coverages for medical,
109 hospital, surgical and funeral benefits sustained by the named
110 insured or other person as a result of bodily injury during the
111 commission of a burglary, robbery or theft by another; also
112 insurance against loss of or damage to moneys, coins, bullion,
113 securities, notes, drafts, acceptances or any other valuable
114 papers and documents resulting from any cause;

115 (4) Personal property floater insurance, which is insurance
116 upon personal effects against loss or damage from any cause;

117 (5) Glass insurance, which is insurance against loss or
118 damage to glass, including its lettering, ornamentation and
119 fittings;

120 (6) Boiler and machinery insurance, which is insurance
121 against any liability and loss or damage to property or interest
122 resulting from accidents to or explosion of boilers, pipes,
123 pressure containers, machinery or apparatus and to make

124 inspection of and issue certificates of inspection upon boilers,
125 machinery and apparatus of any kind, whether or not insured;

126 (7) Leakage and fire extinguishing equipment insurance,
127 which is insurance against loss or damage to any property or
128 interest caused by the breakage or leakage of sprinklers, hoses,
129 pumps and other fire extinguishing equipment or apparatus,
130 water mains, pipes and containers, or by water entering through
131 leaks or openings in buildings, and insurance against loss or
132 damage to such sprinklers, hoses, pumps and other fire extin-
133 guishing equipment or apparatus;

134 (8) Credit insurance, which is insurance against loss or
135 damage resulting from failure of debtors to pay their obligations
136 to the insured. Credit insurance shall include loss of income
137 insurance which is insurance against the failure of a debtor to
138 pay his or her monthly obligation due to involuntary loss of
139 employment. For the purpose of this definition, involuntary
140 loss of employment means the debtor loses employment income
141 (salary or wages) as a result of unemployment caused by
142 individual or mass layoff, general strikes, labor disputes,
143 lockout or termination by employer for other than willful or
144 criminal misconduct; any or all of the above-mentioned perils
145 may be included in an insurance policy, at the discretion of the
146 policyholder;

147 (9) Malpractice insurance, which is insurance against legal
148 liability of the insured and against loss, damage or expense
149 incidental to a claim of such liability, and including medical,
150 hospital, surgical and funeral benefits to injured persons,
151 irrespective of legal liability of the insured arising out of the
152 death, injury or disablement of any person, or arising out of
153 damage to the economic interest of any person, as the result of
154 negligence in rendering expert, fiduciary or professional
155 service;

156 (10) Entertainment insurance, which is insurance indemni-
157 fying the producer of any motion picture, television, radio,

158 theatrical, sport, spectacle, entertainment or similar production,
159 event or exhibition against loss from interruption, postpone-
160 ment or cancellation thereof due to death, accidental injury or
161 sickness of performers, participants, directors or other princi-
162 pals;

163 (11) Mine subsidence insurance as provided for in article
164 thirty of this chapter;

165 (12) Miscellaneous insurance, which is insurance against
166 any other kind of loss, damage or liability properly a subject of
167 insurance and not within any other kind of insurance as defined
168 in this chapter, if such insurance is not disapproved by the
169 commissioner as being contrary to law or public policy; and

170 (13) Federal flood insurance, which is insurance provided
171 by the federal insurance administration or by private insurers
172 through the write your own program within the national flood
173 insurance program, instituted by the federal insurance adminis-
174 tration pursuant to the provision of 42 U.S.C. §4071, on real or
175 personal property of every kind and interest therein, against loss
176 or damage from flood or mudslide and against loss consequen-
177 tial to such loss or damage, other than noncontractual liability
178 for any loss or damage.

179 (14) Workers' compensation insurance, which is insurance
180 providing all compensation and benefits required by chapter
181 twenty-three of this code.

182 (f) *Surety*. — Surety insurance includes:

183 (1) Fidelity insurance, which is insurance guaranteeing the
184 fidelity of persons holding positions of public or private trust;

185 (2) Insurance guaranteeing the performance of contracts,
186 other than insurance policies, and guaranteeing and executing
187 bonds, undertakings and contracts of surety ship: *Provided*,
188 That surety insurance does not include the guaranteeing and

189 executing of bonds by professional bondsmen in criminal cases
190 or by individuals not in the business of becoming a surety for
191 compensation upon bonds;

192 (3) Insurance indemnifying banks, bankers, brokers,
193 financial or moneyed corporations or associations against loss,
194 resulting from any cause, of bills of exchange, notes, bonds,
195 securities, evidences of debt, deeds, mortgages, warehouse
196 receipts or other valuable papers, documents, money, precious
197 metals and articles made therefrom, jewelry, watches, neck-
198 laces, bracelets, gems, precious and semiprecious stones,
199 including any loss while they are being transported in armored
200 motor vehicles or by messenger, but not including any other
201 risks of transportation or navigation, and also insurance against
202 loss or damage to such an insured's premises or to his furnish-
203 ings, fixtures, equipment, safes and vaults therein, caused by
204 burglary, robbery, theft, vandalism or malicious mischief, or
205 any attempt to commit such crimes; and

206 (4) Title insurance, which is insurance of owners of
207 property or others having an interest therein, or liens or
208 encumbrances thereon, against loss by encumbrance, defective
209 title, invalidity or adverse claim to title.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-10. Rules and regulations.

§33-2-20. Authority of insurance commissioner to regulate workers compensation industry; authority of insurance commissioner to administer chapter twenty-three.

§33-2-10. Rules and regulations.

1 (a) The commissioner is authorized to promulgate and
2 adopt rules relating to insurance as are necessary to discharge
3 his or her duties and exercise his or her powers and to effectuate
4 the provisions of this chapter, protect and safeguard the
5 interests of policyholders and the public of this state.

6 (b) The commissioner is authorized to promulgate rules
7 necessary to discharge his or her duties relating to workers'
8 compensation insurance as set forth in chapter twenty-three of
9 this code, which shall be exempt from the provisions of chapter
10 twenty-nine-a, article three of this code, except that these rules
11 shall be filed with the Secretary of State's Office.

12 (c) Prior to assuming regulatory authority over workers'
13 compensation insurance pursuant to article two-c, chapter
14 twenty-three of this code, the commissioner shall review and
15 revise all applicable rules to reflect the assumption of this new
16 regulatory authority: *Provided*, That all such revisions shall be
17 exempt from the provisions of chapter twenty-nine-a, article
18 three, except that the amended rules shall be filed with the
19 Secretary of State's Office.

**§33-2-20. Authority of insurance commissioner to regulate
workers compensation industry; authority of
insurance commissioner to administer chapter
twenty-three.**

1 (a) Upon the termination of the Workers' Compensation
2 Commission pursuant to chapter twenty-three of this code, the
3 powers and duties heretofore imposed upon the Workers'
4 Compensation Commission as they relate to general administra-
5 tion of the provisions of chapter twenty-three of this code are
6 hereby transferred to and imposed upon the insurance commis-
7 sioner.

8 (b) Unless otherwise specified in chapter twenty-three,
9 upon termination of the Workers' Compensation Commission,
10 the duties imposed upon the Workers' Compensation Commis-
11 sion as they relate to the award and payment of disability and
12 death benefits and the review of claims in articles four and five,
13 chapter twenty-three of this code, will be imposed upon the
14 employers mutual insurance company established pursuant to
15 article two-c, chapter twenty-three of this code, a private carrier

16 offering workers' compensation insurance in this state and self-
17 insured employers. Whenever reference is made to the Work-
18 ers' Compensation Commissioner in those articles, the duty
19 prescribed shall apply to the employers mutual insurance
20 company, a private carrier or self-insured employer, as applica-
21 ble.

22 (c) From the effective date of this enactment, the insurance
23 commissioner shall regulate all insurers licensed to transact
24 workers' compensation insurance in this state and all of the
25 provisions of this chapter shall apply to such insurers, unless
26 otherwise exempted by statute.

ARTICLE 41. PRIVILEGES AND IMMUNITY.

§33-41-2. Definitions.

§33-41-8. Creation of insurance fraud unit; purpose; duties; personnel qualifications.

§33-41-11. Fraudulent claims to insurance companies.

§33-41-2. Definitions.

1 As used in this article:

2 (1) "Benefits" mean money payments, goods, services or
3 other thing of value paid in response to a claim filed with an
4 insurer based upon a policy of insurance;

5 (2) "Business of insurance" means the writing of insurance,
6 including the writing of workers' compensation insurance under
7 the provisions of chapter twenty-three of this code, self-
8 insurance by an employer or employer group for workers'
9 compensation risk including the risk of catastrophic injuries
10 under the provisions of chapter twenty-three of this code or the
11 reinsuring of risks by an insurer, including acts necessary or
12 incidental to writing insurance or reinsuring risks and the
13 activities of persons who act as or are officers, directors, agents
14 or employees of insurers, or who are other persons authorized
15 to act on their behalf;

16 (3) "Claim" means an application or request for payment or
17 benefits provided under the terms of a policy of insurance;

18 (4) "Commissioner" means the insurance commissioner of
19 West Virginia or his or her designee;

20 (5) "Health care provider" means a person, partnership,
21 corporation, facility or institution licensed by, or certified in,
22 this state or another state, to provide health care or professional
23 health care services, including, but not limited to, a physician,
24 osteopathic physician, hospital, dentist, registered or licensed
25 practical nurse, optometrist, pharmacist, podiatrist, chiroprac-
26 tor, physical therapist or psychologist;

27 (6) "Insurance" means a contract or arrangement in which
28 a person undertakes to:

29 (A) Pay or indemnify another person as to loss from certain
30 contingencies called "risks", including through reinsurance;

31 (B) Pay or grant a specified amount or determinable benefit
32 to another person in connection with ascertainable risk contin-
33 gencies;

34 (C) Pay an annuity to another person;

35 (D) Act as surety; or

36 (E) Self-insurance for workers' compensation risk includ-
37 ing the risk of catastrophic injuries under the provisions of
38 chapter twenty-three of this code.

39 (7) "Insurer" means a person entering into arrangements or
40 contracts of insurance or reinsurance. Insurer includes, but is
41 not limited to, any domestic or foreign stock company, mutual
42 company, mutual protective association, farmers' mutual fire
43 companies, fraternal benefit society, reciprocal or
44 interinsurance exchange, nonprofit medical care corporation,

45 nonprofit health care corporation, nonprofit hospital service
46 association, nonprofit dental care corporation, health mainte-
47 nance organization, captive insurance company, risk retention
48 group or other insurer, regardless of the type of coverage
49 written, including the writing of workers' compensation
50 insurance or self insurance under the provisions of chapter
51 twenty-three of this code, benefits provided or guarantees made
52 by each. A person is an insurer regardless of whether the
53 person is acting in violation of laws requiring a certificate of
54 authority or regardless of whether the person denies being an
55 insurer;

56 (8) "Person" means an individual, a corporation, a limited
57 liability company, a partnership, an association, a joint stock
58 company, a trust, trustees, an unincorporated organization, or
59 any similar business entity or any combination of the foregoing.
60 "Person" also includes hospital service corporations, medical
61 service corporations and dental service corporations as defined
62 in article twenty-four of this chapter, health care corporations
63 as defined in article twenty-five of this chapter, or a health
64 maintenance organization organized pursuant to article
65 twenty-five-a of this chapter;

66 (9) "Policy" means an individual or group policy, group
67 certificate, contract or arrangement of insurance or reinsurance,
68 coverage by a self-insured employer or employer group for its
69 workers' compensation risk including its risk of catastrophic
70 injuries or reinsurance, affecting the rights of a resident of this
71 state or bearing a reasonable relation to this state, regardless of
72 whether delivered or issued for delivery in this state;

73 (10) "Reinsurance" means a contract, binder of coverage
74 (including placement slip) or arrangement under which an
75 insurer procures insurance for itself in another insurer as to all
76 or part of an insurance risk of the originating insurer;

77 (11) "Statement" means any written or oral representation
78 made to any person, insurer or authorized agency. A statement

79 includes, but is not limited to, any oral report or representation;
80 any insurance application, policy, notice or statement; any proof
81 of loss, bill of lading, receipt for payment, invoice, account,
82 estimate of property damages, or other evidence of loss, injury
83 or expense; any bill for services, diagnosis, prescription,
84 hospital or doctor record, X-ray, test result or other evidence of
85 treatment, services or expense; and any application, report,
86 actuarial study, rate request or other document submitted or
87 required to be submitted to any authorized agency. A statement
88 also includes any written or oral representation recorded by
89 electronic or other media; and

90 (12) "Unit" means the insurance fraud unit established
91 pursuant to the provisions of this article acting collectively or
92 by its duly authorized representatives.

**§33-41-8. Creation of insurance fraud unit; purpose; duties;
personnel qualifications.**

1 (a) There is established the West Virginia insurance fraud
2 unit within the office of the insurance commissioner of West
3 Virginia. The commissioner may employ full-time supervisory,
4 legal and investigative personnel for the unit, who shall be
5 qualified by training and experience in the areas of detection,
6 investigation or prosecution of fraud within and against the
7 insurance industry to perform the duties of their positions. The
8 director of the fraud unit shall be a full-time position and shall
9 be appointed by the commissioner and serve at his or her will
10 and pleasure. The commissioner shall provide office space,
11 equipment, supplies, clerical and other staff that is necessary for
12 the unit to carry out its duties and responsibilities under this
13 article.

14 (b) The fraud unit may in its discretion:

15 (1) Initiate inquiries and conduct investigations when the
16 unit has cause to believe violations of the provisions of this
17 chapter, the provisions of chapter twenty-three, the provisions

18 of article three, chapter sixty-one of this code relating to the
19 business of insurance have been or are being committed;

20 (2) Review reports or complaints of alleged fraud related to
21 the business of insurance activities from federal, state and local
22 law-enforcement and regulatory agencies, persons engaged in
23 the business of insurance and the general public to determine
24 whether the reports require further investigation; and

25 (3) Conduct independent examinations of alleged fraudulent
26 activity related to the business of insurance and undertake
27 independent studies to determine the extent of fraudulent
28 insurance acts.

29 (c) The insurance fraud unit may:

30 (1) Employ and train personnel to achieve the purposes of
31 this article and to employ legal counsel, investigators, auditors
32 and clerical support personnel and other personnel as the
33 commissioner determines necessary from time to time to
34 accomplish the purposes of this article;

35 (2) Inspect, copy or collect records and evidence;

36 (3) Serve subpoenas issued by grand juries and trial courts
37 in criminal matters;

38 (4) Share records and evidence with federal, state or local
39 law-enforcement or regulatory agencies, and enter into inter-
40 agency agreements;

41 (5) Make criminal referrals to the county prosecutors;

42 (6) Conduct investigations outside this state. If the infor-
43 mation the insurance fraud unit seeks to obtain is located
44 outside this state, the person from whom the information is
45 sought may make the information available to the insurance
46 fraud unit to examine at the place where the information is

47 located. The insurance fraud unit may designate representa-
48 tives, including officials of the state in which the matter is
49 located, to inspect the information on behalf of the insurance
50 fraud unit, and the insurance fraud unit may respond to similar
51 requests from officials of other states;

52 (7) The fraud unit may initiate investigations and partici-
53 pate in the development of, and if necessary, the prosecution of
54 any health care provider, including a provider of rehabilitation
55 services, suspected of fraudulent activity related to the business
56 of insurance;

57 (8) Specific personnel, designated by the commissioner,
58 shall be permitted to operate vehicles owned or leased for the
59 state displaying Class A registration plates;

60 (9) Notwithstanding any provision of this code to the
61 contrary, specific personnel designated by the commissioner
62 may carry firearms in the course of their official duties after
63 meeting specialized qualifications established by the governor's
64 committee on crime, delinquency and correction, which shall
65 include the successful completion of handgun training provided
66 to law-enforcement officers by the West Virginia state police:
67 *Provided*, That nothing in this subsection shall be construed to
68 include any person designated by the commissioner as a
69 law-enforcement officer as that term is defined by the provi-
70 sions of section one, article twenty-nine, chapter thirty of this
71 code; and

72 (10) The insurance fraud unit shall not be subject to the
73 provisions of article nine-a, chapter six of this code and the
74 investigations conducted by the insurance fraud unit and the
75 materials placed in the files of the unit as a result of any such
76 investigation are exempt from public disclosure under the
77 provisions of chapter twenty-nine-b of this code.

§33-41-11. Fraudulent claims to insurance companies.

1 (a) Any person who knowingly and willfully and with intent
2 to defraud submits a materially false statement in support of a
3 claim for insurance benefits or payment pursuant to a policy of
4 insurance or who conspires to do so is guilty of a crime and is
5 subject to the penalties set forth in the provisions of this
6 section.

7 (b) Any person who commits a violation of the provisions
8 of subsection (a) of this section where the benefit sought
9 exceeds one thousand dollars in value is guilty of a felony and,
10 upon conviction thereof, shall be confined in a correctional
11 facility for not less than one nor more than ten years, fined not
12 more than ten thousand dollars, or both or in the discretion of
13 the circuit court confined in a county or regional jail for not
14 more than one year and so fined.

15 (c) Any person who commits a violation of the provisions
16 of subsection (a) of this section where the benefit sought is one
17 thousand dollars or less in value, is guilty of a misdemeanor
18 and, upon conviction thereof, shall be confined in a county or
19 regional jail for not more than one year, fined not more than
20 two thousand five hundred dollars, or both.

21 (d) Any person convicted of a violation of this section is
22 subject to the restitution provisions of article eleven-a, chapter
23 sixty-one of this code.

24 (e) In addition to the foregoing provisions, the offenses
25 enumerated in sections twenty-four-e through twenty-four-h,
26 inclusive, article three, chapter sixty-one of this code are
27 applicable to matters concerning workers' compensation
28 insurance.

29 (f) The circuit court may award to the unit or other
30 law-enforcement agency investigating a violation of this section
31 or other criminal offense related to the business of insurance its
32 cost of investigation.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**ARTICLE 3. CRIMES AGAINST PROPERTY.**

§61-3-24e. Omission to subscribe for workers' compensation insurance; failure to file a premium tax report or pay premium taxes; false testimony or statements; failure to file reports; penalties; asset forfeiture; venue.

§61-3-24f. Wrongfully seeking workers' compensation; false testimony or statements; penalties; venue.

§61-3-24g. Workers' compensation health care offenses; fraud; theft or embezzlement; false statements; penalties; notice; prohibition against providing future services; penalties; asset forfeiture; venue.

§61-3-24h. Providing false documentation to workers' compensation, to the insurance commissioner or a private carrier of workers' compensation insurance; altering documents or certificates from workers' compensation; penalties; venue.

§61-3-24e. Omission to subscribe for workers' compensation insurance; failure to file a premium tax report or pay premium taxes; false testimony or statements; failure to file reports; penalties; asset forfeiture; venue.

1 (1) Failure to subscribe:

2 (A) Responsible person. Any person who individually or
3 as owner, partner, president, other officer, or manager of a sole
4 proprietorship, firm, partnership, company, corporation or
5 association, who, as a person who is responsible for and who is
6 required by specific assignment, duty or legal duty, which is
7 either expressed or inherent in laws which require the em-
8 ployer's principals to be informed and to know the facts and
9 laws affecting the business organization and to make internal
10 policy and decisions which ensure that the individual and
11 organization comply with the general laws and provisions of
12 chapter twenty-three of this code, knowingly and willfully fails
13 to subscribe for and maintain workers' compensation insurance
14 shall be guilty of a felony and, upon conviction, shall be
15 imprisoned in a state correctional facility not less than one nor
16 more than ten years, or in the discretion of the court, be

17 confined in a county or regional jail not more than one year and
18 shall be fined not more than two thousand five hundred dollars.

19 (B) Any corporation, association or partnership who, as an
20 employer as defined in chapter twenty-three of this code,
21 knowingly and willfully fails to subscribe for and maintain
22 workers' compensation insurance shall be guilty of a felony
23 and, upon conviction, shall be fined not less than two thousand
24 five hundred dollars nor more than ten thousand dollars.

25 (2) Failure to pay:

26 (A) Any person who individually or as owner, partner,
27 president, other officer or manager of a sole proprietorship,
28 firm, partnership, company, corporation or association, who, as
29 a responsible person as defined in this section, knowingly and
30 willfully fails to make premium tax payments to the workers'
31 compensation fund or premiums to a private carrier as required
32 by chapter twenty-three of this code, shall be guilty of the
33 larceny of the premium owed and, if the amount is one thou-
34 sand dollars or more, such person shall be guilty of a felony
35 and, upon conviction thereof, shall be imprisoned in a state
36 correctional facility not less than one nor more than ten years
37 or, in the discretion of the court, be confined in a county or
38 regional jail not more than one year and shall be fined not more
39 than two thousand five hundred dollars. If the amount is less
40 than one thousand dollars, such person shall be guilty of a
41 misdemeanor and, upon conviction thereof, shall be confined in
42 a county or regional jail for a term not to exceed one year or
43 fined an amount not to exceed two thousand five hundred
44 dollars, or both, in the discretion of the court.

45 (B) Any corporation, association, company or partnership
46 which, as an employer as defined in chapter twenty-three of this
47 code, knowingly and willfully fails to make premium tax
48 payments to the workers' compensation fund or premiums to a
49 private carrier as required by chapter twenty-three of this code
50 shall be guilty of the larceny of the premium owed, and, if the

51 amount is one thousand dollars or more, such corporation,
52 association, company or partnership shall be guilty of a felony
53 and, upon conviction thereof, shall be fined not less than two
54 thousand five hundred dollars nor more than ten thousand
55 dollars. If the amount is less than one thousand dollars, such
56 corporation, association, company or partnership shall be guilty
57 of a misdemeanor and, upon conviction thereof, shall be fined
58 an amount not to exceed two thousand five hundred dollars.

59 (C) Any person who individually or as owner, partner,
60 president, other officer, or manager of a sole proprietorship,
61 firm, partnership, company, corporation or association, who, as
62 a responsible person, as defined in this section, knowingly and
63 willfully and with fraudulent intent sells, transfers or otherwise
64 disposes of substantially all of the employer's assets for the
65 purpose of evading the payment of workers' compensation
66 premium taxes to the workers' compensation fund, or premiums
67 to a private carrier as required by chapter twenty-three of this
68 code, shall be guilty of the larceny of the premium owed and,
69 if the amount is one thousand dollars or more, such person shall
70 be guilty of a felony and, upon conviction thereof, shall be
71 imprisoned in a state correctional facility not less than one nor
72 more than ten years or, in the discretion of the court, be
73 confined in a county or regional jail not more than one year and
74 shall be fined not more than two thousand five hundred dollars.
75 If the amount is less than one thousand dollars, such person
76 shall be guilty of a misdemeanor and, upon conviction thereof,
77 shall be confined in a county or regional jail for a term not to
78 exceed one year or fined an amount not to exceed two thousand
79 five hundred dollars, or both, in the discretion of the court.

80 (D) Any corporation, association, company or partnership
81 which, as an employer as defined in chapter twenty-three of this
82 code, knowingly and willfully and with fraudulent intent sells,
83 transfers or otherwise disposes of substantially all of the
84 employer's assets for the purpose of evading the payment of
85 workers' compensation premium taxes to the workers' compen-

86 sation fund, or premiums to a private carrier as required by
87 chapter twenty-three of this code shall be guilty of the larceny
88 of the premium owed, and, if the amount is one thousand
89 dollars or more, such corporation, association, company or
90 partnership shall be guilty of a felony and, upon conviction
91 thereof, shall be fined not less than two thousand five hundred
92 dollars nor more than ten thousand dollars. If the amount is less
93 than one thousand dollars, such corporation, association,
94 company or partnership shall be guilty of a misdemeanor and,
95 upon conviction thereof, shall be fined an amount not to exceed
96 two thousand five hundred dollars.

97 (3) Failure to file premium tax reports:

98 (A) Any person who individually or as owner, partner,
99 president, other officer, or manager of a sole proprietorship,
100 firm, partnership, company, corporation or association, who, as
101 a responsible person as defined in this section, knowingly and
102 willfully fails to file a premium tax report with the workers'
103 compensation fund or a premium report to a private carrier as
104 required by chapter twenty-three of this code, shall be guilty of
105 a felony and, upon conviction thereof, shall be imprisoned in a
106 state correctional facility not less than one nor more than ten
107 years, or in the discretion of the court, be confined in a county
108 or regional jail for a term not to exceed one year and shall be
109 fined not more than two thousand five hundred dollars.

110 (B) Any corporation, association, company or partnership
111 which, as an employer as defined in chapter twenty-three of this
112 code, knowingly and willfully fails to file a premium tax report
113 with the workers' compensation fund or a premium report to a
114 private carrier as required by chapter twenty-three of this code,
115 shall be guilty of a felony and, upon conviction thereof, shall be
116 fined not less than two thousand five hundred dollars nor more
117 than ten thousand dollars.

118 (4) Failure to file other reports:

119 (A) Any person, individually or as owner, partner, president
120 or other officer, or manager of a sole proprietorship, firm,
121 partnership, company, corporation or association who, as a
122 responsible person as defined in this section, knowingly and
123 willfully fails to file any report, other than a premium tax
124 report, required by such chapter shall be guilty of a misde-
125 meanor and, upon conviction thereof, shall be confined in a
126 county or regional jail for a term not to exceed one year or fined
127 an amount not to exceed two thousand five hundred dollars, or
128 both, in the discretion of the court.

129 (B) Any corporation, association, company or partnership
130 which, as an employer as defined in chapter twenty-three of this
131 code, knowingly and willfully fails to file any report, other than
132 a premium tax report, with the workers' compensation fund or
133 insurance commissioner as required by chapter twenty-three of
134 this code, shall be guilty of a misdemeanor and, upon convic-
135 tion thereof, shall be fined an amount not to exceed two
136 thousand five hundred dollars.

137 (5) False testimony or statements:

138 Any person, individually or as owner, partner, president,
139 other officer, or manager of a sole proprietorship, firm, partner-
140 ship, company, corporation or association who, as a responsible
141 person as defined in this section, knowingly and willfully
142 makes a false report or statement under oath, affidavit, certifica-
143 tion or by any other means respecting any information required
144 to be provided under chapter twenty-three of this code shall be
145 guilty of a felony and, upon conviction thereof, shall be
146 confined in a state correctional facility for a definite term of
147 imprisonment which is not less than one year nor more than
148 three years or fined not less than one thousand dollars nor more
149 than ten thousand dollars, or both, in the discretion of the court.
150 In addition to any other penalty imposed, the court shall order
151 any defendant convicted under this section to make full
152 restitution of all moneys paid by or due to the workers' com-

153 pension fund, insurance commissioner or private carrier as
154 the result of a violation of this section. The restitution ordered
155 shall constitute a judgment against the defendant and in favor
156 of the state of West Virginia workers' compensation commis-
157 sion, insurance commissioner or private carrier.

158 (6) Asset forfeiture:

159 (A) The court, in imposing sentence on a person or entity
160 convicted of an offense under this section, shall order the
161 person or entity to forfeit property, real or personal, that
162 constitutes or is derived, directly or indirectly, from gross
163 proceeds traceable to the commission, insurance commissioner
164 or private carrier of the offense. Any person or entity convicted
165 under this section shall pay the costs of asset forfeiture.

166 (B) For purposes of subdivision (A) of this subsection, the
167 term "payment of the costs of asset forfeiture" means:

168 (i) The payment of any expenses necessary to seize, detain,
169 inventory, safeguard, maintain, advertise, sell or dispose of
170 property under seizure, detention, forfeiture or of any other
171 necessary expenses incident to the seizure, detention, forfeiture,
172 or disposal of such property, including payment for:

173 (I) Contract services;

174 (II) The employment of outside contractors to operate and
175 manage properties or provide other specialized services
176 necessary to dispose of such properties in an effort to maximize
177 the return from such properties; and

178 (III) Reimbursement of any state or local agency for any
179 expenditures made to perform the functions described in this
180 subparagraph;

181 (ii) The compromise and payment of valid liens and
182 mortgages against property that has been forfeited, subject to

183 the discretion of the workers' compensation fund to determine
184 the validity of any such lien or mortgage and the amount of
185 payment to be made, and the employment of attorneys and
186 other personnel skilled in state real estate law as necessary;

187 (iii) Payment authorized in connection with remission or
188 mitigation procedures relating to property forfeited; and

189 (iv) The payment of state and local property taxes on
190 forfeited real property that accrued between the date of the
191 violation giving rise to the forfeiture and the date of the
192 forfeiture order.

193 (7) Venue:

194 Venue for prosecution of any violation of this section shall
195 be either the county in which the defendant's principal business
196 operations are located or in Kanawha County where the
197 workers' compensation fund is located.

**§61-3-24f. Wrongfully seeking workers' compensation; false
testimony or statements; penalties; venue.**

1 (1) Any person who shall knowingly and with fraudulent
2 intent secure or attempt to secure compensation from the
3 workers' compensation fund, a private carrier or from a self-
4 insured employer:

5 (A) That is larger in amount than that to which he or she is
6 entitled; or

7 (B) That is longer in term than that to which he or she is
8 entitled; or

9 (C) To which he or she is not entitled, shall be guilty of a
10 larceny and, if the amount is one thousand dollars or more, such
11 person shall be guilty of a felony and, upon conviction thereof,
12 shall be imprisoned in a state correctional facility not less than

13 one nor more than ten years or, in the discretion of the court, be
14 confined in a county or regional jail not more than one year and
15 shall be fined not more than two thousand five hundred dollars.
16 If the amount is less than one thousand dollars, such person
17 shall be guilty of a misdemeanor and, upon conviction thereof,
18 shall be confined in a county or regional jail for a term not to
19 exceed one year or fined an amount not to exceed two thousand
20 five hundred dollars, or both, in the discretion of the court.

21 (2) Any person who shall knowingly and willfully make a
22 false report or statement under oath, affidavit, certification or
23 by any other means respecting any information required to be
24 provided under chapter twenty-three of this code shall be guilty
25 of a felony and, upon conviction thereof, shall be confined in a
26 state correctional facility for a definite term of imprisonment
27 which is not less than one year nor more than three years or
28 fined not less than one thousand dollars nor more than ten
29 thousand dollars, or both, in the discretion of the court.

30 (3) In addition to any other penalty imposed, the court shall
31 order any person convicted under this section to make full
32 restitution of all moneys paid by the workers' compensation
33 fund, private carrier or self-insured employer as the result of a
34 violation of this section. The restitution ordered shall constitute
35 a judgment against the defendant and in favor of the state of
36 West Virginia workers' compensation commission, private
37 carrier or self-insured employer.

38 (4) If the person so convicted is receiving compensation
39 from such fund, private carrier or employer, he or she shall,
40 from and after such conviction, cease to receive such compen-
41 sation as a result of any alleged injury or disease.

42 (5) Venue for prosecution of any violation of this section
43 shall either be the county in which the claimant resides, the
44 county in which the claimant is employed or working, or in
45 Kanawha County where the workers' compensation fund is
46 located.

§61-3-24g. Workers' compensation health care offenses; fraud; theft or embezzlement; false statements; penalties; notice; prohibition against providing future services; penalties; asset forfeiture; venue.

1 (1) Any person who knowingly and willfully executes, or
2 attempts to execute, a scheme or artifice:

3 (A) To defraud the workers' compensation fund, private
4 carrier or a self-insured employer in connection with the
5 delivery of or payment for workers' compensation health care
6 benefits, items or services;

7 (B) To obtain, by means of false or fraudulent pretenses,
8 representations, or promises any of the money or property
9 owned by or under the custody or control of the workers'
10 compensation fund, private carrier or a self-insured employer
11 in connection with the delivery of or payment for workers'
12 compensation health care benefits, items or services; or

13 (C) To make any charge or charges against any injured
14 employee or any other person, firm or corporation which would
15 result in a total charge for the treatment or service rendered in
16 excess of the maximum amount set forth in the workers'
17 compensation commission's schedule of maximum reasonable
18 amounts to be paid for the treatment or services issued pursuant
19 to subsection (a), section three article four, chapter twenty-three
20 of this code is guilty of a felony and, upon conviction thereof,
21 shall be imprisoned in a state correctional facility not less than
22 one year nor more than ten years or, in the discretion of the
23 court, be confined in a county or regional jail not more than one
24 year and shall be fined not more than two thousand five
25 hundred dollars.

26 (2) Any person who, in any matter involving a health care
27 program related to workers' compensation insurance, know-
28 ingly and willfully:

29 (A) Falsifies, conceals or covers up by any trick, scheme or
30 device a material fact; or

31 (B) Makes any materially false, fictitious or fraudulent
32 statement or representation, or makes or uses any materially
33 false writing or document knowing the same to contain any
34 materially false, fictitious or fraudulent statement or entry, is
35 guilty of a felony and, upon conviction thereof, shall be
36 confined in a state correctional facility for a definite term of
37 imprisonment which is not less than one year nor more than
38 three years or fined not less than one thousand dollars nor more
39 than ten thousand dollars, or both, in the discretion of the court.

40 (3) Any person who willfully embezzles, steals or otherwise
41 unlawfully converts to the use of any person other than the
42 rightful owner, or intentionally misapplies any of the moneys,
43 funds, securities, premiums, credits, property or other assets of
44 a health care program related to the provision of workers'
45 compensation insurance, is guilty of a felony and, upon
46 conviction thereof, shall be imprisoned in a state correctional
47 facility for not less than one year nor more than ten years or
48 fined not less than ten thousand dollars, or both, in the discre-
49 tion of the court.

50 (4) Any health care provider who fails, in violation of
51 subsection (5) of this section to post a notice, in the form
52 required by the workers' compensation commission, in the
53 provider's public waiting area that the provider cannot accept
54 any patient whose treatment or other services or supplies would
55 ordinarily be paid for from the workers' compensation fund,
56 private carrier or by a self-insured employer unless the patient
57 consents, in writing, prior to the provision of the treatment or
58 other services or supplies, to make payment for that treatment
59 or other services or supplies himself or herself, is guilty of a
60 misdemeanor and, upon conviction thereof, shall be fined one
61 thousand dollars.

62 (5) Any person convicted under the provisions of this
63 section shall, after such conviction, be barred from providing
64 future services or supplies to injured employees for the pur-
65 poses of workers' compensation and shall cease to receive
66 payment for services or supplies. In addition to any other
67 penalty imposed, the court shall order any defendant convicted
68 under this section to make full restitution of all moneys paid by
69 or due to the workers' compensation fund, private carrier or
70 self-insured employer as the result of a violation of this section.
71 The restitution ordered shall constitute a judgment against the
72 defendant and in favor of the state of West Virginia workers'
73 compensation commission, insurance commissioner, private
74 carrier or self-insured employer.

75 (6) (A) The court, in imposing sentence on a person
76 convicted of an offense under this section, shall order the
77 person to forfeit property, real or personal, that constitutes or is
78 derived, directly or indirectly, from gross proceeds traceable to
79 the commission of the offense. Any person convicted under
80 this section shall pay the costs of asset forfeiture.

81 (B) For purposes of subdivision (A) of this subsection, the
82 term "payment of the costs of asset forfeiture" means:

83 (i) The payment of any expenses necessary to seize, detain,
84 inventory, safeguard, maintain, advertise, sell or dispose of
85 property under seizure, detention or forfeiture, or of any other
86 necessary expenses incident to the seizure, detention, forfeiture
87 or disposal of the property, including payment for:

88 (I) Contract services;

89 (II) The employment of outside contractors to operate and
90 manage properties or provide other specialized services
91 necessary to dispose of the properties in an effort to maximize
92 the return from the properties; and

93 (III) Reimbursement of any state or local agency for any
94 expenditures made to perform the functions described in this
95 subparagraph;

96 (ii) The compromise and payment of valid liens and
97 mortgages against property that has been forfeited, subject to
98 the discretion of the workers' compensation fund to determine
99 the validity of the lien or mortgage and the amount of payment
100 to be made, and the employment of attorneys and other person-
101 nel skilled in state real estate law as necessary;

102 (iii) Payment authorized in connection with remission or
103 mitigation procedures relating to property forfeited; and

104 (iv) The payment of state and local property taxes on
105 forfeited real property that accrued between the date of the
106 violation giving rise to the forfeiture and the date of the
107 forfeiture order.

108 (7) Venue for prosecution of any violation of this section
109 shall be either the county in which the defendant's principal
110 business operations are located or in Kanawha County where
111 the workers' compensation fund is located.

**§61-3-24h. Providing false documentation to workers' compensa-
tion, to the insurance commissioner or a private
carrier of workers' compensation insurance;
altering documents or certificates from workers'
compensation; penalties; venue.**

1 (1) Any person, firm, partnership, company, corporation
2 association or medical provider who submits false documenta-
3 tion to workers' compensation, the insurance commissioner or
4 a private carrier of workers' compensation insurance with the
5 intent to defraud the workers' compensation commission, the
6 insurance commissioner or a private carrier of workers'
7 compensation insurance shall be guilty of a misdemeanor and,
8 upon conviction thereof, shall be confined in jail for a term not

9 to exceed one year or fined an amount not to exceed two
10 thousand five hundred dollars, or both, in the discretion of the
11 court.

12 (2) Any person, firm, partnership, company, corporation,
13 association or medical provider who alters, falsifies, defaces,
14 changes or modifies any certificate or other document which
15 would indicate good standing with the workers' compensation
16 commission, insurance commissioner or private carrier con-
17 cerning workers' compensation insurance coverage or endorse-
18 ment by workers' compensation for medical services shall be
19 guilty of a misdemeanor and, upon conviction thereof, shall be
20 confined in jail for a term not to exceed one year or fined an
21 amount not to exceed two thousand five hundred dollars, or
22 both, in the discretion of the court.

23 (3) Venue for prosecution of any violation of this section
24 shall be either the county in which the claimant resides, a
25 defendant's principal business operations are located, or in
26 Kanawha County where the workers' compensation fund is
27 located.

LEGISLATURE OF WEST VIRGINIA

**CONSTITUTIONAL
AMENDMENT**

FIRST EXTRAORDINARY SESSION, 2005

SENATE JOINT RESOLUTION 101

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

[Adopted January 29, 2005.]

Proposing an amendment to the Constitution of the State of West Virginia authorizing appropriations and the issuance and sale of additional state general obligation bonds in an amount not exceeding five billion five hundred million dollars for the purpose of funding all or a portion of the unfunded actuarial accrued liabilities of the state teachers retirement system, §18-7A-1, *et seq.*, of the Code of West Virginia, the judges' retirement system, §51-9-1, *et seq.*, of said Code and the public safety death,

disability and retirement system, §15-2-26, *et seq.*, of said Code and paying any costs associated with the issuance of said bonds; requiring the Legislature to direct the investment of the funds from such issuance and sale pursuant to the laws and Constitution of the State of West Virginia; requiring the levy, collection and dedication of an additional tax for the payment of the principal and interest on the bonds in any year the moneys from the general revenue fund of the state irrevocably set aside and appropriated and applied to the payment of the interest on and the principal of the bonds becoming due and payable in the year are insufficient therefor; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the State at the next general election to be held in the year two thousand six, or at any special election held prior thereto, which proposed amendment is as follows:

Pension Bond Amendment

1 The Legislature may authorize the issuing and selling of
2 state general obligation bonds not exceeding in the aggregate
3 five billion five hundred million dollars, which shall be in
4 addition to all other state bonds heretofore authorized. Such
5 bonds may be issued and sold at such time or times and in such
6 amount or amounts as the Legislature authorizes. The proceeds
7 of the bonds hereby authorized to be issued and sold shall be
8 deposited in the trust funds of the consolidated public retire-
9 ment board to fund all or a portion of the unfunded actuarial
10 accrued liabilities of the state teachers retirement system, §18-
11 7A-1, *et seq.*, of the Code of West Virginia; the judges'
12 retirement system, §51-9-1, *et seq.*, of said Code; and the

13 public safety death, disability and retirement system, §15-2-
14 26, *et seq.*, of said Code and used to pay any costs associated
15 with the issuance of the bonds. When a bond issue as afore-
16 said is authorized, the Legislature shall direct the investment
17 of such proceeds as permitted by the laws and the Constitution
18 of the State of West Virginia.

19 When a bond issue as aforesaid is authorized, the Legisla-
20 ture shall at the same time provide for the levy, collection and
21 dedication of an additional state tax, or enhancement to such
22 other tax as the Legislature may determine, in such amount as
23 may be required to pay annually the interest on such bonds
24 and the principal thereof or premium, if any, within and not
25 exceeding thirty years and all such taxes so levied shall be
26 irrevocably dedicated for the payment of the principal of or
27 premium, if any, and interest on such bonds until such
28 principal of and interest on such bonds are finally paid and
29 discharged. Such additional tax shall be levied in any year
30 only to the extent that the moneys from the general revenue
31 fund of the state irrevocably set aside and appropriated and
32 applied to the payment of the interest on and the principal of
33 the bonds becoming due and payable in the year are insuffi-
34 cient therefor. Any of the covenants, agreements or provi-
35 sions in the acts of the Legislature levying such taxes shall be
36 enforceable in any court of competent jurisdiction by any of
37 the holders of the bonds.

38 The Legislature may enact legislation to implement the
39 provisions of this amendment.

40 *Resolved further,* That in accordance with the provisions
41 of article eleven, chapter three of the code of West Virginia,
42 one thousand nine hundred thirty-one, as amended, such
43 proposed amendment is hereby numbered "Amendment No.
44 1" and designated as the "Pension Bond Amendment" and the
45 purpose of the proposed amendment is summarized as
46 follows: "To amend the State Constitution to permit the

47 issuance and sale of additional state general obligation bonds
48 not exceeding five billion five hundred million dollars to help
49 provide for the fiscal soundness of the State Teachers Retirement
50 System, the Judges' Retirement System, and the Public
51 Safety Death, Disability and Retirement System. These
52 additional state general obligation bonds will help the State to
53 fund the unfunded actuarial accrued liabilities of these systems."
54

Clerks's Note: Pursuant to the provisions of the resolution, a Special Statewide Election was held on June 25, 2005. The voters of the State defeated the proposed bond sale by a vote of 75,065 for the proposal and 87,883 against the proposal.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2005

CHAPTER 1

**(H. B. 201 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed April 16, 2005; in effect from passage.]

[Approved by the Governor on April 22, 2005.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, general revenue, to the Senate, fund 0165, fiscal year 2005, organization 2100, to the House of Delegates, fund 0170, fiscal year 2005, organization 2200, to the Joint Expenses, fund 0175, fiscal year 2005, organization 2300, to the Department of Administration - Division of Purchasing, fund 0210, fiscal year 2005, organization 0213, to the Department of Administration, Ethics Commission,

fund 0223, fiscal year 2005, organization 0220, to the Educational Broadcasting Authority, fund 0300, fiscal year 2005, organization 0439, to the Department of Health and Human Resources, Division of Human Services, fund 0403, fiscal year 2005, organization 0511, to the Department of Military Affairs and Public Safety, West Virginia State Police, fund 0453, fiscal year 2005, organization 0612, to the Department of Transportation, Aeronautics Commission, fund 0582, fiscal year 2005, organization 0807, and to the Department of Environmental Protection, fund 0273, fiscal year 2005, organization 0313, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The governor submitted to the Legislature a statement of the state fund, general revenue, dated the ninth day of February, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand four; and further included the estimate of revenues for the fiscal year two thousand five, less net appropriation balances forwarded and regular appropriations for fiscal year two thousand five; and

WHEREAS, It appears from the governor's statement there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand five; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for fiscal year ending the thirtieth day of June, two thousand five, to fund 0165, fiscal year 2005, organization 2100, be supplemented and amended by increasing and adding a new item of appropriation to the total appropriation as follows:

1 **TITLE II — APPROPRIATIONS.**

2 **Section 1. Appropriations from general revenue.**

3 **LEGISLATIVE**

4

1—Senate

5

Fund 0165 FY 2005 Org 2100

6

General

7

Act-**Revenue**

8

ivity**Fund**

9

12a Technology

10

12b Improvements - Surplus(R) 725 \$ 120,000

11

12

13

14

Any unexpended balances remaining in the appropriation for technology improvements - surplus (fund 0165, activity 725) at the close of the fiscal year 2005 is hereby reappropriated for expenditure during the fiscal year 2006.

15

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That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0170, fiscal year 2005, organization 2200, be supplemented and amended by increasing and adding a new item of appropriation to the total appropriation as follows:

20

TITLE II — APPROPRIATIONS.

21

Section 1. Appropriations from general revenue.

22

LEGISLATIVE

23

2-House of Delegates

24

Fund 0170 FY 2005 Org 2200

25

General

26

Act-**Revenue**

27

ivity**Fund**

28

7a Technology

29

7b Improvements - Surplus (R) . . . 725 \$ 240,000

30 Any unexpended balance remaining in the appropriation for
 31 technology improvements - surplus (fund 0170, activity 725) at
 32 the close of the fiscal year 2005 is hereby reappropriated for
 33 expenditure during the fiscal year 2006.

34 That the total appropriation for the fiscal year ending the
 35 thirtieth day of June, two thousand five, to fund 0175, fiscal
 36 year 2005, organization 2300, be supplemented and amended
 37 by increasing and adding a new item of appropriation to the
 38 total appropriation as follows:

39 TITLE II — APPROPRIATIONS.

40 **Section 1. Appropriations from general revenue.**

41 **LEGISLATIVE**

42 *3-Joint Expenses*

43 *(WV Code Chapter 4)*

44 Fund 0175 FY 2005 Org 2300

45			General
46		Act-	Revenue
47		ivity	Fund
48	12a	Technology	
49	12b	Improvements - Surplus (R) 725	\$ 240,000

50 Any unexpended balance remaining in the appropriation for
 51 technology improvements - surplus (fund 0175, activity 725) at
 52 the close of the fiscal year 2005 is hereby reappropriated for
 53 expenditure during the fiscal year 2006.

54 That the total appropriation for fiscal year ending the
 55 thirtieth day of June, two thousand five, to fund 0210, fiscal

56 year 2005, organization 0213, be supplemented and amended
57 by increasing an existing item of appropriation as follows:

58 TITLE II — APPROPRIATIONS.

59 Section 1. Appropriations from general revenue.

60 DEPARTMENT OF ADMINISTRATION

61 22—*Division of Purchasing*

62 (WV Code Chapter 5A)

63 Fund 0210 FY 2005 Org 0213

64	65	66	Act-	ivity	General	Revenue	Fund
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67	4	Unclassified - Surplus	097	\$	100,000		
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68 That the total appropriation for the fiscal year ending the
69 thirtieth day of June, two thousand five, to fund 0223, fiscal
70 year 2005, organization 0220, be supplemented and amended
71 by increasing existing items of appropriation as follows:

72 TITLE II — APPROPRIATIONS.

73 Section 1. Appropriations from general revenue.

74 DEPARTMENT OF ADMINISTRATION

75 26—*Ethics Commission*

76 (WV Code Chapter 6B)

77 Fund 0223 FY 2005 Org 0220

2612 APPROPRIATIONS [Ch. 1

78					General
79					Revenue
80					Fund
81	1	Personal Services - Surplus	243	\$	20,000
82	3	Employee Benefits - Surplus	250		6,000
83	4	Unclassified - Surplus	097		47,000

84 That the total appropriation for the fiscal year ending the
85 thirtieth day of June, two thousand five, to fund 0300, fiscal
86 year 2005, organization 0439, be supplemented and amended
87 by increasing an existing item of appropriation as follows:

88 TITLE II — APPROPRIATIONS.

89 **Section 1. Appropriations from general revenue.**

90 **DEPARTMENT OF EDUCATION AND THE ARTS**

91 *43-Educational Broadcasting Authority*

92 (WV Code Chapter 10)

93 Fund 0300 FY 2005 Org 0439

94					General
95					Revenue
96					Fund
97	4	Unclassified - Surplus (R)	097	\$	328,000

98 Any unexpended balance remaining in the appropriation for
99 unclassified-surplus (fund 0300, activity 097) at the close of the
100 fiscal year 2005 is hereby reappropriated for expenditure during
101 the fiscal year 2006.

102 That the total appropriation for the fiscal year ending the
103 thirtieth day of June, two thousand five, to fund 0403, fiscal

104 year 2005, organization 0511, be supplemented and amended
105 by increasing an existing item of appropriation as follows:

106 TITLE II — APPROPRIATIONS.

107 Section 1. Appropriations from general revenue.

108 DEPARTMENT OF HEALTH AND
109 HUMAN RESOURCES

110 50—*Division of Human Services*

111 (WV Code Chapters 9, 48 and 49)

112 Fund 0403 FY 2005 Org 0511

113			General
114		Act-	Revenue
115		ivity	Fund

116	35	Indigent Burials - Surplus	076	\$	500,000
-----	----	--------------------------------------	-----	----	---------

117 That the total appropriation for the fiscal year ending the
118 thirtieth day of June, two thousand five, to fund 0453, fiscal
119 year 2005, organization 0612, be supplemented and amended
120 by increasing an existing item of appropriation as follows:

121 TITLE II — APPROPRIATIONS.

122 Section 1. Appropriations from general revenue.

123 DEPARTMENT OF MILITARY AFFAIRS
124 AND PUBLIC SAFETY

125 57-*West Virginia State Police*

126 (WV Code Chapter 15)

127 Fund 0453 FY 2005 Org 0612

2614 APPROPRIATIONS [Ch. 1

128 **General**
129 **Revenue**
130 **Fund**
Act-
ivity

131 7 Barracks Maintenance
132 and Construction - Surplus (R) \$ 1,250,000

133 That the total appropriation for the fiscal year ending the
134 thirtieth day of June, two thousand five, to fund 0582, fiscal
135 year 2005, organization 0807, be supplemented and amended
136 by increasing an existing item of appropriation as follows:

137 TITLE II — APPROPRIATIONS.

138 **Section 1. Appropriations from general revenue.**

139 **DEPARTMENT OF TRANSPORTATION**

140 *72-Aeronautics Commission*

141 (WV Code Chapter 29)

142 Fund 0582 FY 2005 Org 0807

143 **General**
144 **Revenue**
145 **Fund**
Act-
ivity

146 1 Unclassified - Surplus 097 \$ 75,000

147 That the total appropriation for the fiscal year ending the
148 thirtieth day of June, two thousand five, to fund 0273, fiscal
149 year 2005, organization 0313, be supplemented and amended
150 by increasing an existing item of appropriation as follows:

151 TITLE II — APPROPRIATIONS.

152 **Section 1. Appropriations from general revenue.**

153 **DEPARTMENT OF ENVIRONMENTAL**
154 **PROTECTION**

155 *82—Division of Environmental Protection*

156 (WV Code Chapter 22)

157 Fund 0273 FY 2005 Org 0313

158			General
159		Act-	Revenue
160		ivity	Fund

161 10 Unclassified - Surplus 097 \$ 3,000,000

162 The above appropriation to unclassified-surplus (activity
163 097), three million dollars shall be transferred to fund 3287, org
164 0312 for the administration of loans by the solid waste manage-
165 ment board to solid waste authorities on a revolving basis.

166 The purpose of this supplemental appropriation bill is to
167 supplement, and increase appropriations in the aforesaid
168 accounts for the designated spending units for expenditure
169 during the fiscal year two thousand five.



CHAPTER 2

(H. B. 202 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]

[Passed April 16, 2005; in effect from passage.]
[Approved by the Governor on April 22, 2005.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an

unappropriated balance in the state excess lottery revenue fund, to the lottery commission - excess lottery revenue fund surplus, fund 7208, fiscal year 2005, organization 0705, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The governor submitted to the Legislature a statement of the state excess lottery revenue fund, dated the ninth day of February, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand four; and further included the estimate of revenue for the fiscal year two thousand five, less regular and surplus appropriations for the fiscal year two thousand five; and

WHEREAS, The governor, by executive message dated the sixteenth day of April, two thousand five, has increased the state excess lottery revenue fund revenue estimates for the fiscal year ending the thirtieth day of June, two thousand five; and

WHEREAS, It appears from the governor's statement of the state excess lottery revenue fund and executive message there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand five; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 7208, fiscal year 2005, organization 0705, be supplemented and increased in the existing line as follows:

1 TITLE II — APPROPRIATIONS.

2 **Sec. 5. Appropriations from state excess lottery**
3 **revenue fund.**

4 245—*Lottery Commission*—

5 *Excess Lottery Revenue Fund Surplus*

6 Fund 7208 FY 2005 Org 0705

7 1 Unclassified - Total - Transfer 402 \$139,191,000

8 The purpose of this supplementary appropriation bill is to
9 increase items of appropriations in the aforesaid account for the
10 designated spending unit for expenditure during the fiscal year
11 two thousand five.



CHAPTER 3

(H. B. 203 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)

[Passed April 16, 2005; in effect from passage.]

[Approved by the Governor on April 22, 2005.]

AN ACT expiring funds to the unappropriated surplus balance in the state fund, general revenue, for the fiscal year ending the thirtieth day of June, two thousand five, in the amount of one million one hundred thousand dollars from the Industrial Development Loans Fund, fund 3148, fiscal year 2005, organization 0307, in the amount of one hundred four dollars and twenty-four cents from the Transfers-Governors Contingency Fund, fund 1306, fiscal year 2005, organization 1300, and in the amount of two hundred thirty-four thousand five hundred three dollars and eighty-six cents from the Jury Fees Fund, fund 1314, fiscal year 2005, organization 1300, and making a supplementary appropriation of public moneys out of the treasury from the unappropriated surplus balance for the fiscal year ending the thirtieth day of June, two thousand five, to the Department of Education and the Arts-Division of Culture and History, fund 0293, fiscal year 2005,

organization 0432, to the Department of Education and the Arts-State Board of Rehabilitation-Division of Rehabilitation Services, fund 0310, fiscal year 2005, organization 0932, and to the Department of Commerce-West Virginia Development Office-Division of Tourism, fund 0246, fiscal year 2005, organization 0304.

WHEREAS, The Legislature finds that the account balance in the industrial development loans fund, fund 3148, fiscal year 2005, organization 0307, Transfers-Governors Contingency Fund, fund 1306, fiscal year 2005, organization 1300, and the Jury Fees Fund, fund 1314, fiscal year 2005, organization 1300, exceeds that which is necessary for the purposes for which the accounts were established; and

WHEREAS, By the provision of this legislation there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand five; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds in the industrial development loans fund, fund 3148, fiscal year 2005, organization 0307, be decreased by expiring the amount of one million one hundred thousand dollars, the Transfers-Governors Contingency Fund, fund 1306, fiscal year 2005, organization 1300, be decreased by expiring the amount of one hundred four dollars and twenty-four cents, and the Jury Fees Fund, fund 1314, fiscal year 2005, organization 1300, be decreased by expiring the amount of two hundred thirty-four thousand five hundred three dollars and eighty-six cents, to the unappropriated surplus balance of the state fund, general revenue, and that the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0293, fiscal year 2005, organization 0432, be supplemented and amended by increasing existing items of appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF EDUCATION AND THE ARTS

4 41—Division of Culture and History

5 (WV Code Chapter 29)

6 Fund 0293 FY 2005 Org 0432

7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22

10	11	12	13	14	15	16	17	18	19	20	21	22

12 That the total appropriation for the fiscal year ending the
13 thirtieth day of June, two thousand five, to fund 0310, fiscal
14 year 2005, organization 0932, be supplemented and amended
15 by increasing an existing item of appropriation as follows:

16 TITLE II—APPROPRIATIONS.

17 Section 1. Appropriations from general revenue.

18 DEPARTMENT OF EDUCATION AND THE ARTS

19 44—State Board of Rehabilitation-

20 Division of Rehabilitation Services

21 (WV Code Chapter 18)

22 Fund 0310 FY 2005 Org 0932

2620 APPROPRIATIONS [Ch. 3

23
24 Act- General
25 ivity Revenue
Fund

26 4 Unclassified-Surplus (R) 097 \$ 300,000

27 Any unexpended balance remaining in the appropriation for
28 Unclassified-Surplus(fund 0310, activity 097) at the close of the
29 fiscal year 2005 is hereby reappropriated for expenditure during
30 the fiscal year 2006.

31 That chapter thirteen, acts of the Legislature, regular
32 session, two thousand four, known as the budget bill, be
33 supplemented and amended by adding to Title II, section one
34 thereof the following:

35 TITLE II — APPROPRIATIONS.

36 Section 1. Appropriations from general revenue.

37 DEPARTMENT OF COMMERCE

38 72a—West Virginia Development Office

39 Division of Tourism

40 (WV Code Chapter 5B)

41 Fund 0246 FY 2005 Org 0304

42
43 Act- General
44 ivity Revenue
Fund

45 1 Tourism-Special Projects-Surplus(R) . . 293 \$ 984,108

46 Any unexpended balance remaining in the appropriation
47 for Tourism-Special Projects-Surplus(fund 0246, activity 293)

48 at the close of the fiscal year 2005 is hereby reappropriated for
49 expenditure during the fiscal year 2006.

50 The purpose of this supplementary appropriation bill is to
51 supplement and increase items of appropriations in the afore-
52 said account for the designated spending units for expenditure
53 during the fiscal year two thousand five.

CHAPTER 4

**(H. B. 204 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed April 16, 2005; in effect from passage.]

[Approved by the Governor on April 22, 2005.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand five, to the higher education policy commission - system - tuition fee capital improvement fund (capital improvement and bond retirement fund) control account, fund 4903, fiscal year 2005, organization 0442, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The governor has established that there now remains an unappropriated balance in the higher education policy commission - system - tuition fee capital improvement fund (capital improvement and bond retirement fund) control account, fund 4903, fiscal year 2005, organization 0442, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand five; therefore

CHAPTER 5

**(H. B. 205 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed April 16, 2005; in effect from passage.]

[Approved by the Governor on April 22, 2005.]

AN ACT supplementing, amending, reducing and increasing items of the existing appropriations from the state fund, general revenue, to the department of administration - public defender services, fund 0226, fiscal year 2005, organization 0221, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the state fund, general revenue, to the department of administration - public defender services, fund 0226, fiscal year 2005, organization 0221, be amended and reduced in the existing line item as follows:

- 1 TITLE II — APPROPRIATIONS.
- 2 **Section 1. Appropriations from general revenue.**
- 3 **DEPARTMENT OF ADMINISTRATION**
- 4 *27—Public Defender Services*
- 5 (WV Code Chapter 29)
- 6 Fund 0226 FY 2005 Org 0221

7				General
8			Act-	Revenue
9			ivity	Fund
10	9	Appointed Counsel - Public		
11	10	Defender Conflicts	568	\$ 1,000,000

12 And that the total appropriations from the state fund,
 13 general revenue, to the department of administration - public
 14 defender services, fund 0226, fiscal year 2005, organization
 15 0221, be amended and increased in the existing line item as
 16 follows:

17 TITLE II — APPROPRIATIONS.

18 Section 1. Appropriations from general revenue.

19 DEPARTMENT OF ADMINISTRATION

20 27—Public Defender Services

21 (WV Code Chapter 29)

22 Fund 0226 FY 2005 Org 0221

23				General
24			Act-	Revenue
25			ivity	Fund
26	7	Appointed Counsel Fees	788	\$ 1,000,000

27 The purpose of this supplementary appropriation bill is to
 28 supplement, amend, reduce and increase items of existing
 29 appropriations in the aforesaid account for the designated
 30 spending unit. The funds are for expenditure during the fiscal
 31 year two thousand five with no new money being appropriated.

CHAPTER 6

**(H. B. 206 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed April 16, 2005; in effect from passage.]

[Approved by the Governor on April 22, 2005.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated balance in the state fund, general revenue, to the Governor's Office, fund 0101, fiscal year 2005, organization 0100, to the Governor's Office - civil contingent fund, fund 0105, fiscal year 2005, organization 0100, to the West Virginia Conservation Agency, fund 0132, fiscal year 2005, organization 1400, to the Secretary of State, fund 0155, fiscal year 2005, organization 1600, to the Department of Administration - Office of the Secretary, fund 0186, fiscal year 2005, organization 0201, to the Department of Administration - Consolidated Public Retirement Board, fund 0195, fiscal year 2005, organization 0205, to the Department of Education - State Department of Education, fund 0313, fiscal year 2005, organization 0402, to the Department of Education - State Department of Education - state aid to schools, fund 0317, fiscal year 2005, organization 0402, to the Department of Military Affairs and Public Safety - Division of Corrections - correctional units, fund 0450, fiscal year 2005, organization 0608, to the Department of Military Affairs and Public Safety - Division of Veterans' Affairs, fund 0456, fiscal year 2005, organization 0613, to the Department of Revenue - Tax Division, fund 0470, fiscal year 2005, organization 0702, to the Bureau of Commerce - West Virginia Development Office - Division of Tourism, fund 0246, fiscal year 2005, organization 0304, to the Bureau of

Commerce - West Virginia Development Office, fund 0256, fiscal year 2005, organization 0307, to the Higher Education Policy Commission - Higher Education Policy Commission - administration - control account, fund 0589, fiscal year 2005, organization 0441, all supplementing and amending the appropriations for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The Governor submitted to the Legislature a statement of the state fund, general revenue, dated the ninth day of February, two thousand five, setting forth therein the cash balance as of the first day of July, two thousand four; and further included the estimate of revenues for the fiscal year 2005, less net appropriation balances forwarded and regular appropriations for fiscal year 2005; and

WHEREAS, The Governor, by executive message dated the sixteenth day of April, two thousand five, has revised the revenue estimates for the fiscal year ending the thirtieth day of June, two thousand five; and

WHEREAS, It appears from the Governor's statement of the state fund - general revenue and executive message there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand five; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0101, fiscal year 2005, organization 0100, be supplemented and amended by increasing the total appropriation by adding new items of appropriation as follows:

1 **TITLE II — APPROPRIATIONS.**

2 **Section 1. Appropriations from general revenue.**

3 **EXECUTIVE**

4

5—*Governor's Office*

5

(WV Code Chapter 5)

6

Fund 0101 FY 2005 Org 0100

7

General

8

Act-

Revenue

9

ivity

Fund

10	11a	Capital Outlay, Repairs and		
11	11b	Equipment (R)	589	\$ 1,000,000
12	11c	Pharmaceutical Cost Management		
13	11d	Council (R)	796	200,000
14	11e	Jobs Fund (R)	665	2,000,000

15 Any unexpended balances remaining in the appropriations
 16 for Capital Outlay, Repairs and Equipment (fund 0101, activity
 17 589), Pharmaceutical Cost Management Council (fund 0101,
 18 activity 796), and Jobs Fund (fund 0101, activity 665) at the
 19 close of the fiscal year 2005 are hereby reappropriated for
 20 expenditure during the fiscal year 2006.

21 And, that the total appropriation for fiscal year ending the
 22 thirtieth day of June, two thousand five, to fund 0105, fiscal
 23 year 2005, organization 0100, be supplemented and amended
 24 by increasing the total appropriation and adding a new item of
 25 appropriation as follows:

26 TITLE II — APPROPRIATIONS.

27 Section 1. Appropriations from general revenue.

28 EXECUTIVE

29 8—*Governor's Office*—

30 *Civil Contingent Fund*

2628 APPROPRIATIONS [Ch. 6

31 (WV Code Chapter 5)

32 Fund 0105 FY 2005 Org 0100

33			General
34		Act-	Revenue
35		ivity	Fund

36	3	Civil Contingent Fund - Total (R) . .	114	\$ 14,500,000
37	3a	Unclassified - Transfer	482	28,307,000

38 The above appropriation for Unclassified - Transfer (fund
39 0105, activity 482) shall be transferred to the Tax Reduction
40 and Federal Funding Increased Compliance fund (fund 1732,
41 organization 2300).

42 And, that the total appropriation for fiscal year ending the
43 thirtieth day of June, two thousand five, to fund 0132, fiscal
44 year 2005, organization 1400, be supplemented and amended
45 by increasing the total appropriation as follows:

46 TITLE II — APPROPRIATIONS.

47 Section 1. Appropriations from general revenue.

48 EXECUTIVE

49 *12—West Virginia Conservation Agency*

50 (WV Code Chapter 19)

51 Fund 0132 FY 2005 Org 1400

52			General
53		Act-	Revenue
54		ivity	Fund

55	5	Soil Conservation Projects (R)	120	\$ 2,000,000
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56 And, that the total appropriation for the fiscal year ending
 57 the thirtieth day of June, two thousand five, to fund 0155, fiscal
 58 year 2005, organization 1600, be supplemented and amended
 59 by increasing the total appropriation by adding a new item of
 60 appropriation as follows:

61 TITLE II — APPROPRIATIONS.

62 Section 1. Appropriations from general revenue.

63 EXECUTIVE

64 16—*Secretary of State*

65 (WV Code Chapters 3, 5 and 59)

66 Fund 0155 FY 2005 Org 1600

67			General
68		Act-	Revenue
69		ivity	Fund
70	6a Pension Bond Amendment (R)	088	\$ 2,000,000

71 Any unexpended balance remaining in the appropriation for
 72 Pension Bond Amendment (fund 0155, activity 088) at the
 73 close of the fiscal year 2005 is hereby reappropriated for
 74 expenditure during the fiscal year 2006.

75 And, that the total appropriation for the fiscal year ending
 76 the thirtieth day of June, two thousand five, to fund 0186, fiscal
 77 year 2005, organization 0201, be supplemented and amended
 78 by increasing the total appropriation by adding new items of
 79 appropriation as follows:

80 TITLE II — APPROPRIATIONS.

81 Section 1. Appropriations from general revenue.

2630

APPROPRIATIONS

[Ch. 6

82

DEPARTMENT OF ADMINISTRATION

83

18—Department of Administration—

84

Office of the Secretary

85

(WV Code Chapter 5F)

86

Fund 0186 FY 2005 Org 0201

87

General

88

Act-

Revenue

89

ivity

Fund

90

4a Program Review (R) 086 \$ 500,000

91

4b Financial Advisor (R) 304 500,000

92

Any unexpended balance remaining in the appropriation for
93 Program Review (fund 0186, activity 086), and Financial
94 Advisor (fund 0186, activity 304) at the close of the fiscal year
95 2005 is hereby reappropriated for expenditure during the fiscal
96 year 2006.

97

And that the total appropriation for the fiscal year ending
98 the thirtieth day of June, two thousand five, to fund 0195, fiscal
99 year 2005, organization 0205, be supplemented and amended to
100 read as follows:

101

TITLE II — APPROPRIATIONS.

102

Section 1. Appropriations from general revenue.

103

DEPARTMENT OF ADMINISTRATION

104

19—Consolidated Public Retirement Board

105

(WV Code Chapter 5)

106

Fund 0195 FY 2005 Org 0205

					General
					Revenue
					Fund
107					
108					
109					
110	1	Pension Merger Administration			
111	2	Costs (R)	429	\$	2,000,000
112	3	Unclassified - Transfer	482		<u>225,000,000</u>
113	4	Total			\$227,000,000

114 The above appropriation for Unclassified - Transfer (fund
115 0195, activity 482) shall be transferred to the West Virginia
116 Department of Public Safety Death, Disability and Retirement
117 Fund (Plan A) as certified by the Consolidated Public Retirement
118 Board and approved by the Governor.

119 The Division of Highways, Division of Motor Vehicles,
120 Bureau of Employment Programs, Public Service Commission
121 and other departments, bureaus, divisions, or commissions
122 operating from special revenue funds and/or federal funds shall
123 pay their proportionate share of the retirement costs for their
124 respective divisions. When specific appropriations are not
125 made, such payments may be made from the balances in the
126 various special revenue funds in excess of specific appropriations.
127

128 Any unexpended balance remaining in the appropriation for
129 Pension Merger Administration Costs (fund 0195, activity 429)
130 at the close of the fiscal year 2005 is hereby reappropriated for
131 expenditure during the fiscal year 2006.

132 And, that the total appropriation for fiscal year ending the
133 thirtieth day of June, two thousand five, to fund 0313, fiscal
134 year 2005, organization 0402, be supplemented and amended
135 by increasing the total appropriation as follows:

136 TITLE II — APPROPRIATIONS.

137 Section 1. Appropriations from general revenue.

138 DEPARTMENT OF EDUCATION

139 34—*State Department of Education*

140 (WV Code Chapters 18 and 18A)

141 Fund 0313 FY 2005 Org 0402

142				General
143			Act-	Revenue
144			ivity	Fund

145	8	Traditional Student Increased		
146	9	Enrollment 5yr-12th grade	997	\$ 2,491,935
147	31b	Tax Assessment Errors	353	227,037

148 And, that the total appropriation for fiscal year ending the
 149 thirtieth day of June, two thousand five, to fund 0317, fiscal
 150 year 2005, organization 0402, be supplemented and amended
 151 by increasing the total appropriation as follows:

152 TITLE II — APPROPRIATIONS.

153 Section 1. Appropriations from general revenue.

154 DEPARTMENT OF EDUCATION

155 36—*State Department of Education*—

156 *State Aid to Schools*

157 (WV Code Chapters 18 and 18A)

158 Fund 0317 FY 2005 Org 0402

159				General
160			Act-	Revenue
161			ivity	Fund

162	14	Teachers' Retirement System (R) . .	019	\$ 7,627,000
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163 Any unexpended balance remaining in the appropriation for
164 Teachers' Retirement System (fund 0317, activity 019) at the
165 close of the fiscal year 2005 is hereby reappropriated for
166 expenditure during the fiscal year 2006.

167 And that the total appropriation for the fiscal year ending
168 the thirtieth day of June, two thousand five, to fund 0450, fiscal
169 year 2005, organization 0608, be supplemented and amended
170 by increasing the total appropriation as follows:

171 TITLE II — APPROPRIATIONS.

172 Section 1. Appropriations from general revenue.

173 DEPARTMENT OF MILITARY AFFAIRS
174 AND PUBLIC SAFETY

175 56—*Division of Corrections*—

176 *Correctional Units*

177 (WV Code Chapters 25, 28, 49 and 62)

178 Fund 0450 FY 2005 Org 0608

179			General
180		Act-	Revenue
181		ivity	Fund

182	11	Payments to Federal, County and/or		
183	12	Regional Jails (R)	555	\$ 9,316,000

184 Any unexpended balance remaining in the appropriation for
185 Payments to Federal, County and/or Regional Jails (fund 0450,
186 activity 555) at the close of the fiscal year 2005 is hereby
187 reappropriated for expenditure during the fiscal year 2006.

188 And, that the total appropriation for the fiscal year ending
189 the thirtieth day of June, two thousand five, to fund 0456, fiscal

190 year 2005, organization 0613, be supplemented and amended
191 by adding a new item of appropriation as follows:

192 TITLE II — APPROPRIATIONS.

193 Section 1. Appropriations from general revenue.

194 DEPARTMENT OF MILITARY AFFAIRS

195 AND PUBLIC SAFETY

196 58—*Division of Veterans' Affairs*

197 (WV Code Chapter 9A)

198 Fund 0456 FY 2005 Org 0613

199			General
200		Act-	Revenue
201		ivity	Fund

202	12a Veterans Bonus (R)	483	\$ 6,000,000
-----	----------------------------------	-----	--------------

203 Any unexpended balance remaining in the appropriation for
204 Veterans' Bonus (fund 0456, activity 483) at the close of fiscal
205 year 2005 is hereby reappropriated for expenditure during the
206 fiscal year 2006.

207 And, that the total appropriation for the fiscal year ending
208 the thirtieth day of June, two thousand five, to fund 0470, fiscal
209 year 2005, organization 0702 be supplemented and amended by
210 increasing the total appropriation by adding a new item of
211 appropriation as follows:

212 TITLE II — APPROPRIATIONS.

213 Section 1. Appropriations from general revenue.

214 DEPARTMENT OF REVENUE

2636 APPROPRIATIONS [Ch. 6

238				
239			Act-	General
240			ivity	Revenue
				Fund

241	1	Tourism - Special Projects (R)	859	\$ 2,000,000
-----	---	--	-----	--------------

242 Any unexpended balance remaining in the appropriation for
243 Tourism - Special Projects (fund 0246, activity 859) at the close
244 of the fiscal year 2005 is hereby reappropriated for expenditure
245 during the fiscal year 2006.

246 And, that the total appropriation for the fiscal year ending
247 the thirtieth day of June, two thousand five, to fund 0256, fiscal
248 year 2005, organization 0307, be supplemented and amended
249 by increasing an existing item of appropriation as follows:

250 TITLE II — APPROPRIATIONS.

251 **Section 1. Appropriations from general revenue.**

252 **BUREAU OF COMMERCE**

253 *75—West Virginia Development Office*

254 (WV Code Chapter 5B)

255 Fund 0256 FY 2005 Org 0307

256				General
257			Act-	Revenue
258			ivity	Fund

259	41	Local Economic		
260	42	Development Assistance (R) . .	819	\$ 5,000,000

261 And, that the total appropriation for the fiscal year ending
262 the thirtieth day of June, two thousand five, to fund 0589, fiscal
263 year 2005, organization 0441, be supplemented and amended to
264 read as follows:

265 TITLE II — APPROPRIATIONS.

266 Section 1. Appropriations from general revenue.

267 HIGHER EDUCATION POLICY COMMISSION

268 85—Higher Education Policy Commission—

269 Administration—

270 Control Account

271 (WV Code Chapter 18B)

272 Fund 0589 FY 2005 Org 0441

273			General
274			Revenue
275			Fund
		Act- ivity	
276	1	Unclassified	\$ 2,000,000
277	2	WVNET	1,952,662
278	3	West Virginia Council for Community	
279	4	and Technical Education (R) ..	0
280	5	Vice Chancellor for Health Sciences -	
281	6	Rural Health Initiative Program	
282	7	And Site Support (R)	0
283	7a	PROMISE Scholarship - Transfer ..	10,921,651
284	7b	Higher Education -	
285	7c	Special Projects (R)	5,600,000
286	8	BRIM Premium	<u>66,509</u>
287	9	Total	\$ 20,540,822

288 Any unexpended balances remaining in the appropriations
 289 for Vice Chancellor for Health Sciences - Rural Health Initia-
 290 tive Program and Site Support (fund 0589, activity 595), Vice
 291 Chancellor for Health Sciences - Rural Health Residency
 292 Program (fund 0589, activity 601), West Virginia Council for

293 Community and Technical Education (fund 0589, activity 392)
294 and HEAPS Grant Program (fund 0589, activity 867) at the
295 close of the fiscal year 2004 are hereby reappropriated for
296 expenditure during the fiscal year 2005, with the exception of
297 fund 0589, fiscal year 2004, activity 595, organization 0441
298 (\$27,976); fund 0343, fiscal year 2004, activity 595, organiza-
299 tion 0463 (\$21,906); fund 0347, fiscal year 2004, activity 595,
300 organization 0471 (\$75,000); fund 0589, fiscal year 2004,
301 activity 601, organization 0441 (\$1,400); fund 0347, fiscal year
302 2004, activity 601, organization 0471 (\$86,122); and fund 0589,
303 fiscal year 2004, activity 392, organization 0441 (\$8,808) which
304 shall expire on June 30, 2004.

305 The above appropriation for PROMISE Scholarship -
306 Transfer (activity 800) shall be transferred to the PROMISE
307 Scholarship Fund (fund 4296, organization 0441) established by
308 chapter eighteen-c, article seven, section seven.

309 Any unexpended balances remaining in the appropriation
310 for Higher Education - Special Projects (fund 0589, activity
311 488) at the close of the fiscal year 2005 are hereby
312 reappropriated for expenditure during the fiscal year 2006.

313 The purpose of this supplementary appropriation bill is to
314 supplement, amend, add and increase items of appropriations in
315 the aforesaid accounts for the designated spending units for
316 expenditure during the fiscal year two thousand five.

LEGISLATURE OF WEST VIRGINIA

ACTS

THIRD EXTRAORDINARY SESSION, 2005

CHAPTER 1

**(Com. Sub. for S. B. 3009 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed May 17, 2005; in effect July 1, 2005.]

[Approved by the Governor on May 26, 2005.]

AN ACT to repeal §5A-10-1, §5A-10-2 and §5A-10-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §5-10D-1 of said code; to amend and reenact §5-16-3 and §5-16-4 of said code; to amend and reenact §5A-1-2 of said code; and to amend and reenact §29-6-5 and §29-6-6 of said code, all relating generally to the elimination of the Employee and Insurance Services Division of the Department of Administration and reassigning certain duties; reinstating the Secretary of the

Department of Administration as a member of the Consolidated Public Retirement Board, the Public Employees Insurance Agency Finance Board and the State Personnel Board; providing that the Governor shall appoint the Director of the Public Employees Insurance Agency; providing that the Division of Personnel is continued within the Department of Administration; clarifying board member compensation and expense reimbursement; and making technical changes.

Be it enacted by the Legislature of West Virginia:

That §5A-10-1, §5A-10-2 and §5A-10-3 of the Code of West Virginia, 1931, as amended, be repealed; that §5-10D-1 of said code be amended and reenacted; that §5-16-3 and §5-16-4 of said code be amended and reenacted; that §5A-1-2 of said code be amended and reenacted; and that §29-6-5 and §29-6-6 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.**
- 5A. Department of Administration.**
- 29. Miscellaneous Boards and Officers.**

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

- 10D. Consolidated Public Retirement Board.**
- 16. West Virginia Public Employees Insurance Act.**

ARTICLE 10D. CONSOLIDATED PUBLIC RETIREMENT BOARD.

- §5-10D-1. Consolidated Public Retirement Board continued; members; vacancies; investment of plan funds.**

1 (a) The Consolidated Public Retirement Board is continued
2 to administer all public retirement plans in this state. It shall
3 administer the Public Employees Retirement System estab-
4 lished in article ten of this chapter; the Teachers Retirement
5 System established in article seven-a, chapter eighteen of this
6 code; the Teachers Defined Contribution Retirement System
7 created by article seven-b of said chapter; the West Virginia
8 State Police Death, Disability and Retirement Fund created by
9 article two, chapter fifteen of this code; the West Virginia State
10 Police Retirement System created by article two-a of said
11 chapter; the Deputy Sheriff Death, Disability and Retirement
12 Fund created by article fourteen-d, chapter seven of this code;
13 and the Judges' Retirement System created under article nine,
14 chapter fifty-one of this code.

15 (b) The membership of the Consolidated Public Retirement
16 Board consists of:

17 (1) The Governor or his or her designee;

18 (2) The State Treasurer or his or her designee;

19 (3) The State Auditor or his or her designee;

20 (4) The Secretary of the Department of Administration or
21 his or her designee;

22 (5) Four residents of the state, who are not members,
23 retirants or beneficiaries of any of the public retirement
24 systems, to be appointed by the Governor, with the advice and
25 consent of the Senate; and

26 (6) A member, annuitant or retirant of the Public Employ-
27 ees Retirement System who is or was a state employee; a
28 member, annuitant or retirant of the Public Employees Retire-
29 ment System who is not or was not a state employee; a member,
30 annuitant or retirant of the Teachers Retirement System; a

31 member, annuitant or retirant of the West Virginia State Police
32 Death, Disability and Retirement Fund; a member, annuitant or
33 retirant of the Deputy Sheriff Death, Disability and Retirement
34 Fund; and a member, annuitant or retirant of the Teachers
35 Defined Contribution Retirement System all to be appointed by
36 the Governor, with the advice and consent of the Senate.

37 (c) The appointed members of the Board serve five-year
38 terms. A member appointed pursuant to subdivision (6),
39 subsection (b) of this section ceases to be a member of the
40 Board if he or she ceases to be a member of the represented
41 system. If a vacancy occurs in the appointed membership, the
42 Governor, within sixty days, shall fill the vacancy by appoint-
43 ment for the unexpired term. No more than five appointees
44 may be of the same political party.

45 (d) The Consolidated Public Retirement Board has all the
46 powers, duties, responsibilities and liabilities of the Public
47 Employees Retirement System established pursuant to article
48 ten of this chapter; the Teachers Retirement System established
49 pursuant to article seven-a, chapter eighteen of this code; the
50 Teachers Defined Contribution System established pursuant to
51 article seven-b of said chapter; the West Virginia State Police
52 Death, Disability and Retirement Fund created pursuant to
53 article two, chapter fifteen of this code; the West Virginia State
54 Police Retirement System created by article two-a of said
55 chapter; the Deputy Sheriff Death, Disability and Retirement
56 Fund created pursuant to article fourteen-d, chapter seven of
57 this code; and the Judges' Retirement System created pursuant
58 to article nine, chapter fifty-one of this code and their appropri-
59 ate governing boards.

60 (e) The Consolidated Public Retirement Board may propose
61 rules for legislative approval, in accordance with article three,
62 chapter twenty-nine-a of this code, necessary to effectuate its
63 powers, duties and responsibilities: *Provided*, That the Board

64 may adopt any or all of the rules, previously promulgated, of a
65 retirement system which it administers.

66 (f) The Consolidated Public Retirement Board shall
67 continue to transfer all funds received for the benefit of the
68 retirement systems within the consolidated pension plan as
69 defined in section three-c, article six-b, chapter forty-four of
70 this code, including, but not limited to, all employer and
71 employee contributions, to the West Virginia Investment
72 Management Board: *Provided*, That the employer and em-
73 ployee contributions of the Teachers Defined Contribution
74 System, established in section three, article seven-b, chapter
75 eighteen of this code, and voluntary deferred compensation
76 funds invested by the West Virginia Consolidated Public
77 Retirement Board pursuant to section five, article ten-b of this
78 chapter may not be transferred to the West Virginia Investment
79 Management Board.

80 (g) Notwithstanding any provision of this code or any
81 legislative rule to the contrary, all assets of the public retire-
82 ment plans set forth in subsection (a) of this section shall be
83 held in trust. The Consolidated Public Retirement Board is a
84 trustee for all public retirement plans, except with regard to the
85 investment of funds: *Provided*, That the Consolidated Public
86 Retirement Board is a trustee with regard to the investments of
87 the Teachers Defined Contribution System, the voluntary
88 deferred compensation funds invested pursuant to section five,
89 article ten-b of this chapter and any other assets of the public
90 retirement plans administered by the Consolidated Public
91 Retirement Board as set forth in subsection (a) of this section
92 for which no trustee has been expressly designated in this code.

93 (h) The Board may employ the West Virginia Investment
94 Management Board to provide investment management
95 consulting services for the investment of funds in the Teachers
96 Defined Contribution System.

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-3. Composition of Public Employees Insurance Agency; appointment, qualification, compensation and duties of Director of Agency; employees; civil service coverage.

§5-16-4. Public Employees Insurance Agency Finance Board continued; qualifications, terms and removal of members; quorum; compensation and expenses; termination date.

§5-16-3. Composition of Public Employees Insurance Agency; appointment, qualification, compensation and duties of Director of Agency; employees; civil service coverage.

1 (a) The Public Employees Insurance Agency consists of the
2 Director, the Finance Board, the Advisory Board and any
3 employees who may be authorized by law. The Director shall
4 be appointed by the Governor, with the advice and consent of
5 the Senate, and serves at the will and pleasure of the Governor.
6 The Director shall have at least three years' experience in health
7 or governmental health benefit administration as his or her
8 primary employment duty prior to appointment as director. The
9 Director shall receive actual expenses incurred in the perfor-
10 mance of official business. The Director shall employ any
11 administrative, technical and clerical employees required for
12 the proper administration of the programs provided in this
13 article. The Director shall perform the duties that are required
14 of him or her under the provisions of this article and is the
15 Chief Administrative Officer of the Public Employees Insur-
16 ance Agency. The Director may employ a deputy director.

17 (b) Except for the Director, his or her personal secretary,
18 the Deputy Director and the Chief Financial Officer, all
19 positions in the Agency shall be included in the classified
20 service of the civil service system pursuant to article six,
21 chapter twenty-nine of this code.

22 (c) The Director is responsible for the administration and
23 management of the Public Employees Insurance Agency as

24 provided in this article and in connection with his or her
25 responsibility may make all rules necessary to effectuate the
26 provisions of this article. Nothing in section four or five of this
27 article limits the Director's ability to manage on a day-to-day
28 basis the group insurance plans required or authorized by this
29 article, including, but not limited to, administrative contracting,
30 studies, analyses and audits, eligibility determinations, utiliza-
31 tion management provisions and incentives, provider negotia-
32 tions, provider contracting and payment, designation of covered
33 and noncovered services, offering of additional coverage
34 options or cost containment incentives, pursuit of coordination
35 of benefits and subrogation or any other actions which would
36 serve to implement the plan or plans designed by the Finance
37 Board. The Director is to function as a benefits management
38 professional and should avoid political involvement in manag-
39 ing the affairs of the Public Employees Insurance Agency.

**§5-16-4. Public Employees Insurance Agency Finance Board
continued; qualifications, terms and removal of
members; quorum; compensation and expenses;
termination date.**

1 (a) The Public Employees Insurance Agency Finance Board
2 is continued and consists of the Secretary of the Department of
3 Administration or his or her designee and eight members
4 appointed by the Governor, with the advice and consent of the
5 Senate, for terms of four years and until the appointment of
6 their successors. Members may be reappointed for successive
7 terms. No more than five members, including the Secretary of
8 the Department of Administration, may be of the same political
9 party.

10 (b) Of the eight members appointed by the Governor, one
11 member shall represent the interests of education employees,
12 one shall represent the interests of public employees, one shall
13 represent the interests of retired employees, one shall represent

14 the interests of organized labor and four shall be selected from
15 the public at large. The Governor shall appoint the member
16 representing the interests of education employees from a list of
17 three names submitted by the largest organization of education
18 employees in this state. The Governor shall appoint the member
19 representing the interests of organized labor from a list of three
20 names submitted by the state's largest organization representing
21 labor affiliates. The four members appointed from the public
22 shall each have experience in the financing, development or
23 management of employee benefit programs. All appointments
24 shall be selected to represent the different geographical areas
25 within the state and all members shall be residents of West
26 Virginia. No member may be removed from office by the
27 Governor except for official misconduct, incompetence, neglect
28 of duty, neglect of fiduciary duty or other specific responsibility
29 imposed by this article or gross immorality.

30 (c) The Secretary of the Department of Administration shall
31 serve as Chair of the Finance Board, which shall meet at times
32 and places specified by the call of the Chair or upon the written
33 request to the Chair of at least two members. The Director of
34 the Public Employees Insurance Agency shall serve as staff to
35 the Board. Notice of each meeting shall be given in writing to
36 each member by the Director at least three days in advance of
37 the meeting. Five members constitute a quorum. The Board
38 shall pay each member the same compensation and expense
39 reimbursement that is paid to members of the Legislature for
40 their interim duties, as recommended by the Citizens Legisla-
41 tive Compensation Commission and authorized by law, for each
42 day or portion of a day engaged in the discharge of official
43 duties.

44 (d) Upon termination of the Board and notwithstanding any
45 provisions in this article to the contrary, the Director is autho-
46 rized to assess monthly employee premium contributions and
47 to change the types and levels of costs to employees only in

48 accordance with this subsection. Any assessments or changes
49 in costs imposed pursuant to this subsection shall be imple-
50 mented by legislative rule proposed by the Director for promul-
51 gation pursuant to the provisions of article three, chapter
52 twenty-nine-a of this code. Any employee assessments or costs
53 previously authorized by the Finance Board shall then remain
54 in effect until amended by rule of the Director promulgated
55 pursuant to this subsection.

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-2. Department of Administration and Office of Secretary; Secretary; divisions; directors.

1 (a) The Department of Administration and the Office of
2 Secretary of Administration are continued in the executive
3 branch of state government. The Secretary is the Chief
4 Executive Officer of the Department and shall be appointed by
5 the Governor, by and with the advice and consent of the Senate,
6 for a term not exceeding the term of the Governor.

7 (b) The Department of Administration may receive federal
8 funds.

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

13 (d) There shall be in the Department of Administration a
14 Finance Division, a General Services Division, an Information
15 Services and Communications Division, Division of Personnel
16 and a Purchasing Division. Each division shall be headed by a
17 director who may also head any and all sections within that
18 division and who shall be appointed by the Secretary. In

19 addition to the divisions enumerated in this subsection, there
20 shall also be in the Department of Administration those
21 agencies, boards, commissions and councils specified in section
22 one, article two, chapter five-f of this code.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 6. CIVIL SERVICE SYSTEM.

§29-6-5. Division of Personnel continued; sections.

§29-6-6. State Personnel Board continued; members; term; quorum; vacancies;
powers and duties.

§29-6-5. Division of Personnel continued; sections.

1 (a) The Division of Personnel is continued within the
2 Department of Administration.

3 (b) The Division of Personnel shall perform the following
4 functions:

5 (1) Applicant services;

6 (2) Classification and compensation;

7 (3) Management development and training;

8 (4) Program evaluation and payroll;

9 (5) Employee services;

10 (6) Employee relations; and

11 (7) Administrative and staff services.

12 (c) Each section shall be under the control of a section chief
13 to be appointed by the Director who shall be qualified by reason
14 of exceptional training and experience in the field of activities

15 of the respective section. The Director may establish additional
16 sections necessary to carry out the purposes of this article.

**§29-6-6. State Personnel Board continued; members; term;
quorum; vacancies; powers and duties.**

1 (a) There is continued within the Division a State Personnel
2 Board consisting of the Secretary of the Department of Admin-
3 istration or his or her designee who serves as an ex officio
4 nonvoting member and five members appointed by the Gover-
5 nor, with the advice and consent of the Senate, for terms of four
6 years and until the appointment of their successors. No more
7 than four members may be of the same political party. Four
8 members of the Board constitute a quorum.

9 (b) A member of the Board may not be removed from
10 office except for official misconduct, incompetence, neglect of
11 duty, gross immorality or malfeasance and then only in the
12 manner prescribed in article six, chapter six of this code for the
13 removal by the Governor of state elected officers.

14 (c) Citizen members of the Board shall each be compen-
15 sated for attending official meetings or engaging in official
16 duties not to exceed the amount paid to members of the
17 Legislature for their interim duties, as recommended by the
18 Citizens Legislative Compensation Commission as authorized
19 by law, and may be reimbursed actual and necessary expenses
20 incurred for each day or portion thereof engaged in the dis-
21 charge of official duties in a manner consistent with guidelines
22 of the Travel Management Office of the Department of Admin-
23 istration.

24 (d) The Secretary of the Department of Administration or
25 his or her designee serves as Chair of the Board. The Board
26 shall meet at the time and place specified by the call of the
27 Chair. At least one meeting shall be held in each month. All

28 meetings shall be open to the public. Notice of each meeting
29 shall be given in writing to each member by the Director at least
30 three days in advance of the meeting period.

31 (e) In addition to other powers and duties invested in it by
32 this article or by any other law, the Board shall:

33 (1) Propose rules for legislative approval, in accordance
34 with chapter twenty-nine-a of this code, to implement the
35 provisions of this article;

36 (2) Interpret the application of this article to any public
37 body or entity; and

38 (3) Authorize and conduct any studies, inquiries, investiga-
39 tions or hearings in the operation of this article it considers
40 necessary.

41 (f) The Director or the Board may subpoena and require the
42 attendance of witnesses in the production of evidence or
43 documents relevant to any proceeding under this article.

CHAPTER 2

**(S. B. 3005 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed May 17, 2005; in effect from passage.]

[Approved by the Governor on May 23, 2005.]

AN ACT supplementing, amending, reducing and increasing items of
the existing appropriations from the State Fund, General Revenue,
to the Department of Administration - Office of the Secretary,

fund 0186, fiscal year 2006, organization 0201, and to the Department of Revenue - State Budget Office, fund 0595, fiscal year 2006, organization 0703, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand six.

Be it enacted by the Legislature of West Virginia:

That the items of the total appropriation from the State Fund, General Revenue, to the Department of Administration - Office of the Secretary, fund 0186, fiscal year 2006, organization 0201, be amended to hereafter read as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from General Revenue.

3 DEPARTMENT OF ADMINISTRATION

4 17—Department of Administration—

5 Office of the Secretary

6 (WV Code Chapter 5F)

7 Fund 0186 FY 2006 Org 0201

8	1	Unclassified	099	\$	256,810
9	2	Pay Equity Reserve	364		0
10	3	Lease Rental Payments	516		16,000,000
11	4	Design-Build Board	540		19,068
12	5	BRIM Premium	913		<u>13,397</u>
13	6	Total		\$	16,289,275

14 The appropriation for Lease Rental Payments shall be
15 disbursed as provided by chapter thirty-one, article fifteen,
16 section six-b of the Code of West Virginia.

17 That the items of the total appropriation from the State
 18 Fund, General Revenue, to the Department of Revenue - State
 19 Budget Office, fund 0595, fiscal year 2006, organization 0703,
 20 be amended to hereafter read as follows:

21 TITLE II—APPROPRIATIONS.

22 Section 1. Appropriations from General Revenue.

23 DEPARTMENT OF REVENUE

24 77—*State Budget Office*

25 (WV Code Chapter 11B)

26 Fund 0595 FY 2006 Org 0703

27	1	Unclassified	099	\$ 1,052,333
28	2	Pay Equity Reserve	364	<u>250,000</u>
29	3	Total		\$ 1,302,333

30 Any unexpended balance remaining in the appropriation for
 31 Unclassified - Total (fund 0595, activity 096) at the close of the
 32 fiscal year two thousand five is hereby reappropriated for
 33 expenditure during the fiscal year two thousand six.

34 The purpose of this supplementary appropriation bill is to
 35 supplement, amend, reduce and increase items of existing
 36 appropriations in the aforesaid accounts for the designated
 37 spending units. The funds are for expenditure during the
 38 fiscal year two thousand six with no new money being
 39 appropriated.

CHAPTER 3

**(S. B. 3006 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed May 17, 2005; in effect from passage.]

[Approved by the Governor on May 23, 2005.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand six, to a new item of appropriation designated to the Department of Environmental Protection - Litter Control Fund, fund 3486, fiscal year 2006, organization 0313, supplementing and amending chapter sixteen, Acts of the Legislature, regular session, two thousand five, known as the budget bill.

WHEREAS, The Governor has established that there remains an unappropriated balance in the Department of Environmental Protection - litter control fund, fund 3486, fiscal year 2006, organization 0313, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand six, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter sixteen, Acts of the Legislature, regular session, two thousand five, known as the budget bill, be supplemented and amended by adding to Title II, section three thereof, the following:

1 **TITLE II—APPROPRIATIONS.**

2 **Sec. 3. Appropriations from other funds.**

3 **DEPARTMENT OF ENVIRONMENTAL PROTECTION**

4 *151a—Division of Environmental Protection—*

5 *Litter Control Fund*

6 (WV Code Chapter 22)

7 Fund 3486 FY 2006 Org 0313

8	Act-	Other
9	ivity	Funds
10	1 Unclassified - Total 096	\$ 40,000

11 The purpose of this supplementary appropriation bill is to
 12 supplement this account in the budget act for fiscal year ending
 13 the thirtieth day of June, two thousand six, by providing for a
 14 new item of appropriation to be established therein to appropri-
 15 ate funds for the designated spending unit for expenditure
 16 during the fiscal year two thousand six.



CHAPTER 4

(S. B. 3004 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

 [Passed May 17, 2005; in effect from passage.]
 [Approved by the Governor on May 23, 2005.]

AN ACT supplementing and amending items of the existing appro-
 priations from the State Fund, General Revenue, to a new item of
 appropriation designated to the Governor’s Office, fund 0104,

fiscal year 2006, organization 0100, supplementing and amending chapter sixteen, Acts of the Legislature, for the fiscal year ending the thirtieth day of June, two thousand six.

Be it enacted by the Legislature of West Virginia:

That chapter sixteen, Acts of the Legislature, regular session, two thousand five, known as the budget bill, be supplemented and amended by adding to Title II, section one thereof, the following:

1 TITLE II—APPROPRIATIONS.

2 **Section 1. Appropriations from General Revenue.**

3 **EXECUTIVE**

4 *6a—Governor's Office—*

5 *Governor's Cabinet on Children and Families*

6 (WV Code Chapter 5)

7 Fund 0104 FY 2006 Org 0100

8 Any unexpended balances remaining in the appropriations
9 for Family Resource Networks (fund 0104, activity 274) at the
10 close of the fiscal year two thousand five is hereby
11 reappropriated and redesignated to fund 0403, fiscal year 2006,
12 activity 274, for expenditure during the fiscal year two thou-
13 sand six.

14 The purpose of this supplementary appropriation bill is to
15 supplement this account in the budget act for fiscal year ending
16 the thirtieth day of June, two thousand six, by providing a new
17 item of appropriation to be established therein to appropriate
18 funds for the designated spending unit for expenditure during
19 the fiscal year two thousand six.

CHAPTER 5

**(S. B. 3007 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed May 17, 2005; in effect from passage.]

[Approved by the Governor on May 23, 2005.]

AN ACT supplementing, amending, reducing and increasing items of appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to the Department of Military Affairs and Public Safety - West Virginia State Police, fund 6394, fiscal year 2005, organization 0612, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 6394, fiscal year 2005, organization 0612, be supplemented and amended to hereafter read as follows:

- 1 **TITLE II—APPROPRIATIONS.**
- 2 **Sec. 5. Appropriations from State Excess**
- 3 **Lottery Revenue Fund.**
- 4 *246a—West Virginia State Police*
- 5 (WV Code Chapter 15)
- 6 Fund 6394 FY 2005 Org 0612

7	1	Helicopter Purchase	063	\$ 1,408,021
8	2	Transfer to Aviation Division	670	<u>2,491,979</u>
9	3	Total		\$ 3,900,000

10 The above appropriation for Transfer to Aviation Division
 11 (activity 670) shall be transferred to the Travel Management
 12 Office Fund (fund 2300, organization 0215) for expenditure by
 13 the Aviation Division.

14 The purpose of this supplementary appropriation bill is to
 15 supplement, amend, decrease and add items of appropriation in
 16 the aforesaid account for the designated spending unit for
 17 expenditure during the fiscal year two thousand five with no
 18 additional funds being appropriated.

CHAPTER 6

**(Com. Sub. for S. B. 3010 — By Senators Tomblin,
 Mr. President, and Sprouse)
 [By Request of the Executive]**

[Passed May 17, 2005; in effect July 1, 2005.]
 [Approved by the Governor on May 26, 2005.]

AN ACT to amend and reenact §51-9-1a, §51-9-4, §51-9-6, §51-9-6a, §51-9-6b and §51-9-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §51-9-6d, all relating generally to the judicial retirement system; increasing the contribution rate for judges and justices effective the first day of July, two thousand five, consistent with the salary increase granted to judges and justices of courts of record during the two thousand five regular legislative session; providing that judges and justices appointed or

elected for the first time as judge of a court of record after the first day of July, two thousand five, must have served fourteen years as a sitting judge to receive annual retirement benefits; changing the annual benefit calculations and retirement qualifications for all judges and justices appointed or elected for the first time as judge of a court of record after the first day of July, two thousand five; changing the annual benefit calculations for the spouses and children of all judges and justices appointed or elected for the first time as judge of a court of record after the first day of July, two thousand five; clarifying the ability of judges and justices to use prosecutorial service as qualifying service; providing that retired judges and justices may hold a public office or trust for compensation from the State of West Virginia; and providing that retired judges and justices are ineligible to participate in any other pension plan maintained by the State of West Virginia.

Be it enacted by the Legislature of West Virginia:

That §51-9-1a, §51-9-4, §51-9-6, §51-9-6a, §51-9-6b and §51-9-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §51-9-6d, all to read as follows:

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-1a. Definitions.

§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; leased employees; military service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.

§51-9-6. Eligibility for and payment of benefits.

§51-9-6a. Eligibility benefits; service and retirement of judges over sixty-five years of age.

§51-9-6b. Annuities for surviving spouses and surviving dependent children of judges; automatic escalation and increase of annuity benefit; proration designation by judge permitted.

§51-9-6d. Adjusted annual retirement benefit calculations.

§51-9-7. Ineligibility to receive pay or benefits.

§51-9-1a. Definitions.

1 (a) As used in this article, the term “judge”, “judge of any
2 court of record” or “judge of any court of record of this state”
3 means, refers to and includes judges of the several circuit
4 courts and Justices of the Supreme Court of Appeals. For
5 purposes of this article, the terms do not mean, refer to or
6 include family court judges.

7 (b) “Beneficiary” means any person, except a member, who
8 is entitled to an annuity or other benefit payable by the
9 retirement system.

10 (c) “Board” means the Consolidated Public Retirement
11 Board created pursuant to article ten-d, chapter five of this
12 code.

13 (d) “Final average salary” means the average of the highest
14 thirty-six consecutive months’ compensation received by the
15 member as a judge of any court of record of this state.

16 (e) “Internal Revenue Code” means the Internal Revenue
17 Code of 1986, as it has been amended.

18 (f) “Member” means a judge participating in this system.

19 (g) “Plan year” means the twelve-month period commenc-
20 ing on the first day of July of any designated year and ending
21 the following thirtieth day of June.

22 (h) “Required beginning date” means the first day of April
23 of the calendar year following the later of: (i) The calendar
24 year in which the member attains age seventy and one-half; or
25 (ii) the calendar year in which the member retires or otherwise
26 separates from covered employment.

27 (i) "Retirement system" or "system" means the Judges'
28 Retirement System created and established by this article.
29 Notwithstanding any other provision of law to the contrary, the
30 provisions of this article are applicable only to circuit judges
31 and Justices of the Supreme Court of Appeals in the manner
32 specified in this article. No service as a family court judge may
33 be construed to qualify a person to participate in the Judges'
34 Retirement System or used in any manner as credit toward
35 eligibility for retirement benefits under the Judges' Retirement
36 System.

§51-9-4. Required percentage contributions from salaries; any termination of required contributions prior to actual retirement disallowed; leased employees; military service credit; maximum allowable and qualified military service; qualifiable prosecutorial service.

1 (a) Every person who is now serving or shall hereafter
2 serve as a judge of any court of record of this state shall pay
3 into the judges' retirement fund six percent of the salary
4 received by such person out of the State Treasury: *Provided,*
5 That when a judge becomes eligible to receive benefits from
6 such trust fund by actual retirement, no further payment by him
7 or her shall be required, since such employee contribution, in
8 an equal treatment sense, ceases to be required in the other
9 retirement systems of the state, also, only after actual retire-
10 ment: *Provided, however,* That on and after the first day of
11 January, one thousand nine hundred ninety-five, every person
12 who is then serving or shall thereafter serve as a judge of any
13 court of record in this state shall pay into the judges' retirement
14 fund nine percent of the salary received by that person:
15 *Provided further,* That consistent with the salary increase
16 granted to judges of courts of record during the two thousand
17 five regular legislative session and to changes effectuated in
18 judicial retirement by provisions enacted during the third

19 extraordinary legislative session of two thousand five, on and
20 after the first day of July, two thousand five, every person who
21 is then serving or shall thereafter serve as a judge of any court
22 of record in this state shall pay into the judges' retirement fund
23 ten and one-half percent of the salary received by that person.
24 Any prior occurrence or practice to the contrary, in any way
25 allowing discontinuance of required employee contributions
26 prior to actual retirement under this retirement system, is
27 rejected as erroneous and contrary to legislative intent and as
28 violative of required equal treatment and is hereby nullified
29 and discontinued fully, with the State Auditor to require such
30 contribution in every instance hereafter, except where no
31 contributions are required to be made under any of the provi-
32 sions of this article.

33 (b) An individual who is a leased employee shall not be
34 eligible to participate in the system. For purposes of this
35 system, a "leased employee" means any individual who
36 performs services as an independent contractor or pursuant to
37 an agreement with an employee leasing organization or other
38 similar organization. If a question arises regarding the status
39 of an individual as a leased employee, the Board has the final
40 power to decide the question.

41 (c) In drawing warrants for the salary checks of judges, the
42 State Auditor shall deduct from the amount of each such salary
43 check six percent thereof, which amount so deducted shall be
44 credited by the Consolidated Public Retirement Board to the
45 trust fund: *Provided*, That on or after the first day of January,
46 one thousand nine hundred ninety-five, the amount so deducted
47 and credited shall be nine percent of each such salary check:
48 *Provided, however*, That consistent with the salary increase
49 granted to judges of courts of record during the two thousand
50 five regular legislative session and to changes effectuated in
51 judicial retirement by provisions enacted during the third
52 extraordinary legislative session of two thousand five, on or

53 after the first day of July, two thousand five, the amount so
54 deducted and credited shall be ten and one-half percent of each
55 such salary check.

56 (d) Any judge seeking to qualify military service to be
57 claimed as credited service, in allowable aggregate maximum
58 amount up to five years, shall be entitled to be awarded the
59 same without any required payment in respect thereof to the
60 judges' retirement fund.

61 (e) Notwithstanding the preceding provisions of this
62 section, contributions, benefits and service credit with respect
63 to qualified military service shall be provided in accordance
64 with Section 414(u) of the Internal Revenue Code. For
65 purposes of this section, "qualified military service" has the
66 same meaning as in Section 414(u) of the Internal Revenue
67 Code. The Retirement Board is authorized to determine all
68 questions and make all decisions relating to this section and
69 may promulgate rules relating to contributions, benefits and
70 service credit pursuant to the authority granted to the Retirement
71 Board in section one, article ten-d, chapter five of this
72 code to comply with Section 414(u) of the Internal Revenue
73 Code.

74 (f) Any judge holding office as such on the effective date
75 of the amendments to this article adopted by the Legislature at
76 its regular session in the year one thousand nine hundred
77 eighty-seven who seeks to qualify service as a prosecuting
78 attorney as credited service, which service credit must have
79 been earned prior to the year one thousand nine hundred
80 eighty-seven, shall be required to pay into the judges' retirement
81 fund nine percent of the annual salary which was actually
82 received by such person as prosecuting attorney during the
83 time such prosecutorial service was rendered prior to the year
84 one thousand nine hundred eighty-seven and for which credited
85 service is being sought, together with applicable interest. No

86 judge whose term of office shall commence after the effective
87 date of such amendments to this article shall be eligible to
88 claim any credit for service rendered as a prosecuting attorney
89 as eligible service for retirement benefits under this article, nor
90 shall any time served as a prosecutor after the year one thou-
91 sand nine hundred eighty-eight be considered as eligible
92 service for any purposes of this article.

§51-9-6. Eligibility for and payment of benefits.

1 (a) Except as otherwise provided in sections five, six-d,
2 twelve and thirteen of this article, and subject to the provisions
3 of subsection (e) of this section, any person who is now
4 serving, or who shall hereafter serve, as a judge of any court of
5 record of this state and shall have served as such judge for a
6 period of not less than sixteen full years and shall have reached
7 the age of sixty-five years, or who has served as judge of such
8 court or of that court and other courts of record of the state for
9 a period of sixteen full years or more (whether continuously or
10 not and whether said service be entirely before or after this
11 article became effective, or partly before and partly after said
12 date, and whether or not said judge shall be in office on the
13 date he or she shall become eligible to benefits hereunder) and
14 shall have reached the age of sixty-five years, or who is now
15 serving, or who shall hereafter serve, as a judge of any court of
16 record of this state and shall have served as such judge for a
17 period of not less than twenty-four full years, regardless of age,
18 shall, upon a determination and certification of his or her
19 eligibility as provided in section nine hereof, be paid from the
20 fund annual retirement benefits, so long as he or she shall live,
21 in an amount equal to seventy-five percent of the annual salary
22 of the office from which he or she has retired based upon such
23 salary of such office and as such salary may be changed from
24 time to time during the period of his or her retirement and the
25 amount of his or her retirement benefits shall be based upon
26 and be equal to seventy-five percent of the highest annual

27 salary of such office for any one calendar year during the
28 period of his or her retirement and shall be payable in monthly
29 installments: *Provided*, That such retirement benefits shall be
30 paid only after such judge has resigned as such or, for any
31 reason other than his or her impeachment, his or her service as
32 such has ended: *Provided, however*, That every such person
33 seeking to retire and to receive the annual retirement benefits
34 provided by this subsection must have served a minimum of
35 twelve years as a sitting judge of any such court of record:
36 *Provided further*, That every individual who is appointed or
37 elected for the first time as judge of a court of record of this
38 state after the first day of July, two thousand five, who subse-
39 quently seeks to retire and to receive the annual retirement
40 benefits provided by this subsection must have served a
41 minimum of fourteen years as a sitting judge of any court of
42 record.

43 (b) Notwithstanding any other provisions of this article
44 with the exception of sections twelve-a and twelve-b, any
45 person who is now serving or who shall hereafter serve as a
46 judge of any court of record of this state and who shall have
47 accumulated sixteen years or more of credited service, at least
48 twelve years of which is as a sitting judge of a court of record,
49 and who has attained the age of sixty-two years or more but
50 less than the age of sixty-five years, may elect to retire from his
51 or her office and to receive the pension to which he or she
52 would otherwise be entitled to receive at age sixty-five, but
53 with an actuarial reduction of pension benefit to be established
54 as a reduced annuity receivable throughout retirement:
55 *Provided*, That every individual who is appointed or elected for
56 the first time as judge of a court of record of this state after the
57 first day of July, two thousand five, who subsequently seeks to
58 retire and to receive the annual retirement benefits provided by
59 this subsection must have served a minimum of fourteen years
60 as a sitting judge of any court of record. The reduced percent-
61 age (less than seventy-five percent) actuarially computed,

62 determined and established at time of retirement in respect of
63 this reduced pension benefit shall also continue and be applica-
64 ble to any subsequent new annual salary set for the office from
65 which such judge has retired and as such salary may be
66 changed from time to time during the period of his or her
67 retirement.

68 (c) In determining eligibility for the benefits provided by
69 this section, active full-time duty (including leaves and
70 furloughs) in the armed forces of the United States shall be
71 eligible for qualification as credited military service for the
72 purposes of this article by any judge with twelve or more years
73 actual service as a sitting judge of a court of record, such
74 awardable military service to not exceed five years: *Provided,*
75 That in determining eligibility for the benefits provided by this
76 section for every individual who is appointed or elected for the
77 first time as judge of a court of record of this state after the first
78 day of July, two thousand five, active full-time duty (including
79 leaves and furloughs) in the armed forces of the United States
80 qualifies as credited service for the purposes of this article for
81 any judge with fourteen or more years actual service as a sitting
82 judge of a court of record of this state, the awardable military
83 service not to exceed five years.

84 (d) If a judge of a court of record who is presently sitting
85 as such on the effective date of the amendments to this section
86 enacted by the Legislature at its regular session held in the year
87 one thousand nine hundred eighty-seven and who has served
88 for a period of not less than twelve full years and has made
89 payments into the judges' retirement fund as provided in this
90 article for each month during which he or she served as judge,
91 following the effective date of this section, any portion of time
92 which he or she had served as prosecuting attorney in any
93 county in this state shall qualify as years of service, if such
94 judge shall pay those sums required to be paid pursuant to the
95 provisions of section four of this article: *Provided,* That any

96 term of office as prosecuting attorney, or part thereof, com-
97 mencing after the thirty-first day of December, one thousand
98 nine hundred eighty-eight, shall not hereafter in any way
99 qualify as eligible years of service under this retirement
100 system. For purposes of this article, eligible service as a
101 “prosecuting attorney” or as a “prosecutor” does not include
102 any service as an assistant prosecuting attorney. The amend-
103 ment to this subsection during the third extraordinary session
104 in the year two thousand five is not for the purpose of changing
105 existing law but is intended to clarify the intent of the Legisla-
106 ture as to existing law regarding eligibility for benefits for
107 service as a prosecuting attorney since its initial enactment and
108 this clarification shall be applied retrospectively to the effective
109 date of this section and any predecessor acts in which service
110 as a prosecuting attorney was initially determined by statute to
111 qualify as eligible years of service under the retirement system
112 provided by this article.

113 (e) Any retirement benefit accruing under the provisions of
114 this section shall not be paid if otherwise barred under the
115 provisions of article ten-a, chapter five of this code.

116 (f) Notwithstanding any other provisions of this article,
117 forfeitures under the system shall not be applied to increase the
118 benefits any member would otherwise receive under the
119 system.

**§51-9-6a. Eligibility benefits; service and retirement of judges
over sixty-five years of age.**

1 Any judge of a court of record of this state who shall have
2 served for a period of not less than eight full years after
3 attaining the age of sixty-five years and who shall have made
4 payments into the judges’ retirement fund as provided in this
5 article for each month during which he or she served as such
6 judge following the effective date of this section, shall be

7 subject to all the applicable terms and provisions of this article,
8 not inconsistent with the provisions hereof, and shall receive
9 retirement benefits in an amount equal to seventy-five percent
10 of the annual salary of the office from which he or she has
11 retired based upon such salary of such office as such salary
12 may be changed from time to time during the period of his or
13 her retirement and the amount of his or her retirement benefits
14 shall be based upon and be equal to seventy-five percent of the
15 highest annual salary of such office for any one calendar year
16 during the period of his or her retirement and shall be payable
17 in monthly installments. If such judge shall become incapacitated
18 to perform his or her said duties before the expiration of
19 his or her said term and after serving for six years thereof, and
20 upon the acceptance of his or her resignation as in this article
21 provided, he or she shall be paid the annual retirement benefits
22 as herein provided so long as he or she shall live. The provisions
23 of this section shall prevail over any language to the
24 contrary in this article contained, except those provisions of
25 sections twelve-a and twelve-b of this article: *Provided*, That
26 no individual who is appointed or elected for the first time as
27 judge of a court of record of this state after the first day of July,
28 two thousand five, is eligible for retirement under this section.

§51-9-6b. Annuities for surviving spouses and surviving dependent children of judges; automatic escalation and increase of annuity benefit; proration designation by judge permitted.

1 (a) There shall be paid, from the fund created or continued
2 by section two of this article, or from such funds as may be
3 appropriated by the Legislature for such purpose, an annuity to
4 the surviving spouse of a judge, if such judge at the time of his
5 or her death is eligible for the retirement benefits provided by
6 any of the provisions of this article, or who has, at death,
7 actually served five years or more as a sitting judge of any
8 court of record of this state, exclusive of any other service

9 credit to which such judge may otherwise be entitled, and who
10 dies either while in office or after resignation or retirement
11 from office pursuant to the provisions of this article. Said
12 annuity shall amount to forty percent of the annual salary of the
13 office which said judge held at his or her death or from which
14 he or she resigned or retired. In the event said salary is
15 increased or decreased while an annuitant is receiving the
16 benefits hereunder, his or her annuity shall amount to forty
17 percent of the new salary: *Provided*, That with respect to any
18 individual who is appointed or elected for the first time as
19 judge of a court of record of this state after the first day of July,
20 two thousand five, any annuity to the surviving spouse of the
21 judge shall be an amount equal to forty percent of the judge's
22 final average salary: *Provided, however*, That the annuitant is
23 not entitled to an increase in benefits by virtue of any increase
24 in the salaries of the offices of circuit court judge or Justice of
25 the Supreme Court of Appeals. The annuity granted hereunder
26 shall accrue monthly and shall be due and payable in monthly
27 installments on the first business day of the month following
28 the month for which the annuity shall have accrued. Such
29 annuity shall commence on the first day of the month in which
30 said judge dies and shall, subject to the provisions of subsection
31 (b) of this section, terminate upon the death of the annu-
32 itant or shall terminate upon the remarriage of the annuitant.

33 (b) If there be no surviving spouse at the time of death of
34 a judge who dies after serving five years or more as a sitting
35 judge of any court of record and such judge leaves surviving
36 him any dependent child or children, such dependent child or
37 children shall receive an amount equal to twenty percent of the
38 annual salary of the office which said judge held at the time of
39 his or her death: *Provided*, That the total of all such annuities
40 payable to each such child shall not exceed in the aggregate an
41 amount equal to forty percent of such salary. Such annuity
42 shall continue as to each such child until: (i) He or she attains

43 the age of eighteen years; or (ii) attains the age of twenty-three
44 years so long as such child remains a full-time student. The
45 Auditor shall by legislative rule establish the criteria for
46 determining a person's status as a full-time student within the
47 meaning and intent of this subsection. In the event there are
48 surviving any such judge three or more dependent children,
49 then each such child's annuity shall be proratably reduced in
50 order that the aggregate annuity received by all such dependent
51 children does not exceed forty percent of such salary and the
52 amount to be so received by any such child shall continue
53 throughout the entire period during which each such child is
54 eligible to receive such annuity. The provisions of this
55 subsection shall also apply to those circumstances and situa-
56 tions wherein a surviving spouse of a deceased judge shall die
57 while receiving benefits pursuant to subsection (a) of this
58 section and who shall leave surviving dependent children of
59 such deceased judge who would be entitled to benefits under
60 this subsection as if they had succeeded to such annuity
61 benefits upon the death of such judge in the first instance. In
62 the event the salary of judges is increased or decreased while
63 an annuitant is receiving benefits pursuant to this subsection,
64 the annuities payable shall be likewise increased or decreased
65 proportionately to reflect such change in salary: *Provided,*
66 *however,* That with respect to any individual who is appointed
67 or elected for the first time as judge of a court of record of this
68 state after the first day of July, two thousand five, any annuity
69 to any children of the judge shall be calculated with respect to
70 the judge's final average salary: *Provided further,* That the
71 child is not entitled to an increase in benefits by virtue of any
72 increase in the salaries of the offices of circuit court judge or
73 Justice of the Supreme Court of Appeals. The annuities
74 granted hereunder shall accrue monthly and shall be due and
75 payable in monthly installments on the same day as surviving
76 spouses' benefits are required to be paid. Such annuities shall
77 commence on the first day of the month in which any such

78 dependent child becomes eligible for benefits hereunder and
79 shall terminate on the last day of the month during which such
80 eligibility ceases.

§51-9-6d. Adjusted annual retirement benefit calculations.

1 In calculating the annual retirement benefits under section
2 six of this article for any individual who is appointed or elected
3 for the first time as judge of a court of record of this state after
4 the first day of July, two thousand five, the judge shall receive
5 retirement benefits in an amount equal to seventy-five percent
6 of the individual's final average salary. The individual is not
7 entitled to an increase in benefits by virtue of any increase in
8 the salaries of the offices of circuit court judge or Justice of the
9 Supreme Court of Appeals.

§51-9-7. Ineligibility to receive pay or benefits.

1 A judge who retires under the provisions of any section of
2 this article and accepts the pay or benefits payable under this
3 article shall, while receiving said pay or benefits, be permitted
4 to hold any public office or trust for which the judge receives
5 compensation from the State of West Virginia. If, after
6 retirement under the provisions of this article, a judge is elected
7 or appointed to any public office or trust for which he or she
8 receives any salary or other compensation from the State of
9 West Virginia, the retired judge is not eligible to participate in
10 any other pension plan maintained by the State of West
11 Virginia, nor accrue additional years of credited service under
12 this system or any other state pension system. A judge who
13 retires because of disability and accepts the pay or benefits
14 payable under this article because of his or her disability shall
15 not, while receiving said pay or benefits because of his or her
16 disability, be permitted to practice law. If, after disability
17 retirement under the provisions of this article and while
18 receiving pay or benefits payable under said article because of

19 his or her disability, he or she shall enter the practice of law,
20 his or her pay or benefits under this article because of his or her
21 disability shall be suspended for such time only as he or she
22 shall be engaged in the practice of law.

CHAPTER 7

**(S. B. 3008 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed May 17, 2005; in effect from passage.]

[Approved by the Governor on May 26, 2005.]

AN ACT to amend and reenact §8-13C-1 and §8-13C-9 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §8-13C-14, all relating to the use of proceeds from a pension relief municipal occupational tax, a pension relief municipal sales and service tax and a pension relief municipal use tax; providing that amendments shall not be construed to allow certain taxes; providing circumstances under which a municipality loses authority to impose certain taxes; authorizing a qualifying municipality, subject to meeting certain requirements, to close its existing pension and relief fund plan for policemen and firemen to those hired after a future date; authorizing a qualifying municipality, subject to meeting certain requirements, to establish a defined contribution plan for policemen and firemen hired on and after the future date; authorizing a qualifying municipality, subject to meeting certain requirements, to issue revenue bonds for the purpose of eliminating the unfunded actuarial accrued liability of the existing pension and relief fund plan for policemen and firemen and to issue refunding bonds issued to refund, in whole or in part, bonds

issued for that purpose; requiring that certain disability and health benefits be provided; and providing for expiration of authority granted by this enactment.

Be it enacted by the Legislature of West Virginia:

That §8-13C-1 and §8-13C-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §8-13C-14, all to read as follows:

ARTICLE 13C. MUNICIPAL TAX IN LIEU OF BUSINESS AND OCCUPATION TAX; AND MUNICIPAL TAXES APPLICABLE TO PENSION FUNDS; ADDITIONAL AUTHORITIES RELATING TO PENSIONS AND BOND ISSUANCE.

§8-13C-1. Findings.

§8-13C-9. Restriction on use of certain revenues.

§8-13C-14. Authorization for closure of existing retirement plans, creation of defined contribution plans and issuance of bonds for certain qualifying municipalities.

§8-13C-1. Findings.

1 The Legislature finds that:

2 (a) Imposing additional taxes creates an extra burden on
3 the citizens of the state;

4 (b) Imposing additional taxes can be detrimental to the
5 economy of the state;

6 (c) Imposing additional taxes is only proper under certain
7 circumstances;

8 (d) For many municipalities with severe unfunded liabilities
9 of the police and fire pension funds, all available sources
10 of local revenue have been exhausted. Property taxes are at the
11 maximum allowed by the state Constitution and local business

12 and occupation taxes and utility taxes are at the maximum rates
13 allowed by state law. Other fees have reached the economic
14 maximum and are causing relocation of business outside the
15 municipal boundaries;

16 (e) For many municipalities with severe unfunded police
17 and fire pension fund liabilities, revenue from existing sources
18 has become stagnant over the past few years with no expecta-
19 tion of significant future growth;

20 (f) For many municipalities with severe unfunded police
21 and fire pension fund liabilities, payments required under state
22 law to fund fire and police pension funds are now close to
23 equaling the city payrolls for police and fire protection and will
24 rise to exceed those payrolls within a ten-year period;

25 (g) For many municipalities with severe unfunded police
26 and fire pension fund liabilities, payments required under state
27 law to fund fire and police pension funds now constitute a large
28 percentage of those municipalities' total budget and will rise to
29 an even larger percentage of the available revenues in the next
30 ten years. Payment and benefit levels are dictated to the
31 municipalities by state law;

32 (h) As the required pension payments rise, many of the
33 municipalities with severe unfunded police and fire pension
34 fund liabilities will find it impossible to maintain at minimum
35 levels necessary and proper city services including, but not
36 limited to, police and fire protection, street maintenance and
37 repair and sanitary services;

38 (i) For some of the municipalities with severe unfunded
39 liabilities of the police and fire pension funds, the combination
40 of the steeply rising pension obligations and the stagnant
41 revenue sources raise the real possibility of municipal bank-
42 ruptcy in the near and predictable future. If this happens,

43 pensioners would either not receive the full benefits which they
44 have been promised or pressure would be placed on the state to
45 fund these programs;

46 (j) For a municipality that has the most severe unfunded
47 liability in its pension funds, paying off the unfunded liability
48 in a timely manner would cause tremendous financial hardship
49 and the loss of many services that would otherwise be provided
50 to the municipality's citizens;

51 (k) Only for a municipality that has the most severe
52 unfunded liability in its pension funds would the imposition of
53 the pension relief municipal occupational tax, the pension relief
54 municipal sales and service tax, the pension relief municipal
55 use tax or any combination of those taxes be an appropriate
56 method of addressing the unfunded liability;

57 (l) Only for a municipality that does not impose or ceases
58 to impose a business and occupation or privilege tax would the
59 imposition of an alternative municipal sales and service tax and
60 an alternative municipal use tax be appropriate;

61 (m) Only for a municipality that has the most severe
62 unfunded liability in its pension funds would the closure of its
63 existing pension and relief fund plan for policemen and
64 firemen to those newly employed and the creation of a defined
65 contribution plan for newly employed policemen and firemen
66 be appropriate; and

67 (n) Only for a municipality that has the most severe
68 unfunded liability in its pension funds, that closes its existing
69 pension and relief fund plan for policemen and firemen to those
70 newly employed and that creates a defined contribution plan
71 for newly employed police officers and firefighters, would the
72 issuance of bonds to address the unfunded liability of its
73 existing pension and relief fund plan for policemen and
74 firemen be appropriate.

75 (o) No amendment to this article enacted during the third
76 extraordinary session of the Legislature held during calendar
77 year two thousand five may be interpreted or construed to
78 allow a municipality to adopt by ordinance a sales or use tax,
79 by whatever name called, that imposes either tax prior to the
80 first day of July, two thousand eight.

§8-13C-9. Restriction on use of certain revenues.

1 (a) All proceeds from a pension relief municipal occupa-
2 tional tax, a pension relief municipal sales and service tax and
3 a pension relief municipal use tax imposed pursuant to this
4 article shall be used solely for one of the following purposes:

5 (1) Directly reducing the unfunded actuarial accrued
6 liability of policemen's and firemen's pension and relief funds
7 of the qualifying municipality imposing the tax; or

8 (2) Meeting the principal, interest and any reserve require-
9 ment obligations of any bonds issued pursuant to section
10 fourteen of this article.

11 (b) For any qualifying municipality that chooses to apply
12 the proceeds from a pension relief municipal occupational tax,
13 a pension relief municipal sales and service tax, a pension relief
14 municipal use tax or any permitted combination of these taxes
15 directly to reducing the unfunded actuarial accrued liability of
16 policemen's and firemen's pension and relief funds, the
17 qualifying municipality loses its authority to impose those
18 taxes after:

19 (1) The municipality fails to annually fund, at a minimum,
20 all normal costs of the qualifying municipality's policemen's
21 and firemen's pension and relief funds as determined by the
22 consulting actuary as provided under section twenty-a, article
23 twenty-two of this chapter; or

24 (2) The unfunded actuarial accrued liability of the qualify-
25 ing municipality's policemen's and firemen's pension and
26 relief funds is eliminated; or

27 (3) Sufficient moneys accrue from the proceeds of the
28 pension relief municipal occupational tax, the pension relief
29 municipal sales and service tax, the pension relief municipal
30 use tax or any permitted combination of these taxes to elimi-
31 nate the unfunded actuarial accrued liability of the qualifying
32 municipality's policemen's and firemen's pension and relief
33 funds.

34 (c) For any qualifying municipality that chooses to apply
35 the proceeds from a pension relief municipal occupational tax,
36 a pension relief municipal sales and service tax, a pension relief
37 municipal use tax or any permitted combination of these taxes
38 to the principal, interest and any reserve requirement and
39 arbitrage rebate obligations on any bonds issued pursuant to
40 section fourteen of this article, the qualifying municipality
41 loses its authority to impose those taxes after:

42 (1) The principal, interest and any reserve requirement and
43 arbitrage rebate obligations on the bonds issued pursuant to
44 section fourteen of this article are met;

45 (2) Sufficient moneys accrue from the proceeds of the
46 pension relief municipal occupational tax, the pension relief
47 municipal sales and service tax, the pension relief municipal
48 use tax or any permitted combination of these taxes to meet the
49 principal, interest and any reserve requirement and arbitrage
50 rebate obligations on the bonds issued pursuant to section
51 fourteen of this article; and

52 (3) After retirement of bonds issued pursuant to section
53 fourteen of this article, any unfunded actuarial accrued liability
54 of the qualifying municipality's pension and relief funds for
55 policemen and firemen is eliminated.

§8-13C-14. Authorization for closure of existing retirement plans, creation of defined contribution plans and issuance of bonds for certain qualifying municipalities.

1 (a) Notwithstanding any other section of this code to the
2 contrary and subject to subsection (b) of this section, any
3 qualifying municipality, as that term is defined in section two
4 of this article, has the following authority:

5 (1) To close its existing pension and relief fund plan for
6 policemen and firemen provided in article twenty-two of this
7 chapter for policemen and firemen hired on and after a future
8 date to be set by the governing body of the municipality;

9 (2) To establish a defined contribution plan for police
10 officers and firefighters hired on and after the future date set by
11 the governing body of the municipality to close its existing
12 pension and relief fund plan for policemen and firemen; and

13 (3) To issue revenue bonds for the purpose of eliminating
14 the unfunded actuarial accrued liability of the existing pension
15 and relief fund plan for policemen and firemen and to issue
16 refunding bonds issued to refund, in whole or in part, bonds
17 issued for such purpose.

18 (b) The authority granted in subsection (a) of this section
19 is subject to the following:

20 (1) No qualifying municipality may close an existing
21 pension and relief fund plan for policemen and firemen
22 pursuant to subdivision (1), subsection (a) of this section
23 unless:

24 (A) The qualifying municipality issues revenue bonds for
25 the purpose of eliminating the unfunded actuarial accrued

26 liability of the existing pension and relief fund plan for
27 policemen and firemen; and

28 (B) The qualifying municipality establishes a defined
29 contribution plan for police officers and firefighters pursuant
30 to subdivision (2), subsection (a) of this section;

31 (2) No qualifying municipality may establish a defined
32 contribution plan for police officers and firefighters pursuant
33 to subdivision (2), subsection (a) of this section unless:

34 (A) The qualifying municipality closes its existing pension
35 and relief fund plan for policemen and firemen pursuant to
36 subdivision (1), subsection (a) of this section; and

37 (B) The qualifying municipality issues revenue bonds for
38 the purpose of eliminating the unfunded actuarial accrued
39 liability of the existing pension and relief fund plan for
40 policemen and firemen;

41 (3) No qualifying municipality may issue bonds pursuant
42 to subdivision (3), subsection (a) of this section unless:

43 (A) The qualifying municipality closes its existing pension
44 and relief fund plan for policemen and firemen pursuant to
45 subdivision (1), subsection (a) of this section; and

46 (B) The qualifying municipality establishes a defined
47 contribution plan for police officers and firefighters pursuant
48 to subdivision (2), subsection (a) of this section;

49 (4) No qualifying municipality may exercise any authority
50 provided in subsection (a) of this section unless it obtains a
51 determination of the unfunded actuarial accrued liability of its
52 existing pension and relief fund plans for policemen and
53 firemen from the State Treasurer;

54 (5) If the qualifying municipality elects to issue bonds
55 pursuant to subdivision (3), subsection (a) of this section, the
56 following applies:

57 (A) The proceeds of the revenue bonds shall be at least
58 equal to the unfunded actuarial accrued liability as determined
59 by the State Treasurer plus any reserve fund requirements and
60 any costs, including accrued or capitalized interest, associated
61 with issuing the bonds. All of the proceeds shall be applied to
62 the payment of the unfunded actuarial accrued liability, the
63 funding of reserve requirements and the payment of costs
64 associated with the issuance of the bonds and may not be used
65 for any other purpose;

66 (B) The proceeds of any refunding bonds shall be used to
67 refund all or any portion of the revenue bonds authorized in
68 this section, to fund any required reserve requirements for the
69 refunding bonds and to pay costs of issuance associated with
70 the refunding bonds and for no other purpose; and

71 (C) Notwithstanding any other provision of this code to the
72 contrary, the proceeds of the bonds or refunding bonds shall be
73 invested with the West Virginia Investment Management
74 Board established under the provisions of article six, chapter
75 twelve of this code.

76 (6) If the qualifying municipality elects to issue bonds
77 pursuant to subdivision (3), subsection (a) of this section, the
78 qualifying municipality shall impose a pension relief municipal
79 occupational tax, a pension relief municipal sales and service
80 tax, a pension relief municipal use tax or any permitted
81 combination of these taxes at a rate projected to generate
82 sufficient revenue to meet the principal, interest and any
83 reserve requirement and arbitrage rebate obligations on the
84 bonds, subject to the following:

85 (A) This requirement is void after the qualifying municipi-
86 pality loses its authority to impose those taxes pursuant to
87 subsection (b) or (c), section nine of this article; and

88 (B) If the revenue generated by a pension relief municipal
89 occupational tax, a pension relief municipal sales and service
90 tax and a pension relief municipal use tax is insufficient to
91 meet the principal, interest and any reserve requirement and
92 arbitrage rebate obligations on the bonds, the qualifying
93 municipality shall not issue the bonds;

94 (7) If the qualifying municipality elects to issue bonds
95 pursuant to subdivision (3), subsection (a) of this section, all
96 proceeds from a pension relief municipal occupational tax, a
97 pension relief municipal sales and service tax, a pension relief
98 municipal use tax or any permitted combination of these taxes
99 shall be dedicated solely to paying the principal, interest and
100 any reserve requirement and arbitrage rebate obligations on the
101 bonds;

102 (8) If the qualifying municipality elects to close an existing
103 pension and relief fund plan for policemen and firemen
104 pursuant to subdivision (1), subsection (a) of this section, all
105 current and retired employees in the existing pension and relief
106 fund plans for policemen and firemen shall remain in that plan
107 and shall be paid all benefits of that plan in accordance with
108 Part III, article twenty-two of this chapter;

109 (9) Any such revenue bonds or refunding bonds shall bear
110 interest at not more than twelve percent per annum, payable
111 semiannually, or at shorter intervals, and shall mature at such
112 time or times, not exceeding thirty years, as may be determined
113 by the ordinance authorizing the issuance of the bonds. The
114 bonds may be made redeemable before maturity, at the option
115 of the municipality at not more than the par value thereof, plus
116 a premium of not more than five percent, under such terms and
117 conditions as may be fixed by the ordinance authorizing the

118 issuance of the bonds. The principal and interest of the bonds
119 may be made payable in any lawful medium. The ordinance
120 shall determine the form of the bonds and shall set forth any
121 registration or conversion privileges, and shall fix the denomi-
122 nation or denominations of such bonds, and the place or places
123 of the payment of principal and interest thereof, which may be
124 at any banking institution or trust company within or without
125 the state. The bonds shall contain a statement on their face that
126 the municipality shall not be obligated to pay the same, or the
127 interest thereon, except from the special fund derived from
128 revenues collected by the municipality from the imposition of
129 a pension relief municipal occupational tax, a pension relief
130 municipal sales and service tax, a pension relief municipal use
131 tax or any permitted combination of these taxes and which the
132 municipality may pledge as security for the bonds. All the
133 bonds shall be, and shall have and are hereby declared to have
134 all the qualities and incidents of negotiable instruments, under
135 the Uniform Commercial Code of the state. The bonds shall be
136 executed in such manner as the governing body of the munici-
137 pality may direct. The bonds shall be sold by the municipality
138 in such manner as may be determined to be for the best interest
139 of the municipality. Any surplus of the bond proceeds over
140 and above the cost of paying the unfunded liability, plus any
141 amount required for reserves, capitalized interest and costs of
142 issuance thereof or in the case of refunding bonds over and
143 above the amount necessary to refund the existing bonds being
144 refunded by such issue, plus any amount required for reserves,
145 capitalized interest and costs of issuance thereof, shall be paid
146 into the debt service fund for such bonds; and

147 (10) The defined contribution plan established by the
148 municipality shall:

149 (A) Meet the federal qualification requirements of 26 U.
150 S. C. §401 and related sections of the Internal Revenue Code
151 as applicable to governmental plans;

152 (B) Set the amount of each employee's contribution and
153 the amount of each employer's contribution;

154 (C) Require that the amount of annuity payments a retired
155 member receives be based solely upon the balance in the
156 member's annuity account at the date of retirement, the
157 retirement option selected, or in the event of an annuity option
158 being selected, the actuarial life expectancy of the member or
159 any other factors that normally govern annuity payments;

160 (D) Include detailed provisions that require the prudent and
161 safe handling of the retirement funds;

162 (E) Provide retirement options; and

163 (F) Include any other provision and authorize any policy
164 that the qualifying municipality determines is necessary or
165 incidental to the establishment and operation of the defined
166 contribution plan. The other provisions may include, but are
167 not limited to, the authorization to contract with one or more
168 private pension, insurance, annuity, mutual fund or other
169 qualified company or companies to administer the day-to-day
170 operations of the plan and to provide investments.

171 (c) If a qualifying municipality elects to establish a defined
172 contribution plan pursuant to subdivision (2), subsection (a) of
173 this section, the qualifying municipality shall also establish, by
174 ordinance, mechanisms to provide disability benefits and death
175 benefits for eligible members.

176 (d) The authority granted to a qualifying municipality
177 pursuant to subsection (a) of this section to close its existing
178 pension and relief fund plan for police officers and firefighters,
179 to establish a defined contribution plan for police officers and
180 firefighters and to issue revenue bonds shall terminate on the
181 thirty-first day of December, two thousand five.

182 (e) The right of any person to a benefit provided under a
183 defined contribution plan established by a qualifying municipi-
184 pality pursuant to this section shall not be subjected to execu-
185 tion, attachment, garnishment, the operation of bankruptcy or
186 insolvency laws, or other process whatsoever nor shall any
187 assignment thereof be enforceable in any court with the
188 exception that the benefits or contributions under the plan shall
189 be subject to “qualified domestic relations orders” as that term
190 is defined in 26 U. S. C. §414 with respect to governmental
191 plans.

192 (f) The interest earned on any bonds issued under the
193 authority granted in this section is exempt from any tax
194 imposed under the provisions of this code.

195 (g) Bonds and refunding bonds issued pursuant to the
196 authority provided by this section shall never constitute a direct
197 and general obligation of the State of West Virginia and the
198 full faith and credit of the state is not pledged to secure the
199 payment of the principal and interest of such bonds. Bonds
200 and refunding bonds issued under this section shall state on
201 their face that the bonds or bonds do not constitute a debt of the
202 State of West Virginia and that payment of the bonds, interest
203 and charges thereon cannot become an obligation of the State
204 of West Virginia.

CHAPTER 8

**(S. B. 3003 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed May 17, 2005; in effect July 8, 2005.]
[Approved by the Governor on May 26, 2005.]

AN ACT to amend and reenact §5-16-5 of the Code of West Virginia, 1931, as amended, relating generally to the subsidization of active and retired state pool employees' public employees insurance premiums; authorizing subsidization of a portion of the aggregate cost-sharing percentages of premium between employers and active employees for a limited period by use of certain insurance policy surcharges; and authorizing subsidization of incremental costs for retired state pool employees from a reserve fund of the Public Employees Insurance Agency.

Be it enacted by the Legislature of West Virginia:

That §5-16-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-5. Purpose, powers and duties of the Finance Board; initial financial plan; financial plan for following year; and annual financial plans.

1 (a) The purpose of the Finance Board created by this article
2 is to bring fiscal stability to the Public Employees Insurance
3 Agency through development of annual financial plans and
4 long-range plans designed to meet the Agency's estimated total
5 financial requirements, taking into account all revenues
6 projected to be made available to the Agency and apportioning
7 necessary costs equitably among participating employers,
8 employees and retired employees and providers of health care
9 services.

10 (b) The Finance Board shall retain the services of an
11 impartial, professional actuary, with demonstrated experience
12 in analysis of large group health insurance plans, to estimate
13 the total financial requirements of the Public Employees
14 Insurance Agency for each fiscal year and to review and render
15 written professional opinions as to financial plans proposed by

16 the Finance Board. The actuary shall also assist in the develop-
17 ment of alternative financing options and perform any other
18 services requested by the Finance Board or the Director. All
19 reasonable fees and expenses for actuarial services shall be
20 paid by the Public Employees Insurance Agency. Any financial
21 plan or modifications to a financial plan approved or proposed
22 by the Finance Board pursuant to this section shall be submit-
23 ted to and reviewed by the actuary and may not be finally
24 approved and submitted to the Governor and to the Legislature
25 without the actuary's written professional opinion that the plan
26 may be reasonably expected to generate sufficient revenues to
27 meet all estimated program and administrative costs of the
28 agency, including incurred but unreported claims, for the fiscal
29 year for which the plan is proposed. The actuary's opinion on
30 the financial plan for each fiscal year shall allow for no more
31 than thirty days of accounts payable to be carried over into the
32 next fiscal year. The actuary's opinion for any fiscal year shall
33 not include a requirement for establishment of a reserve fund.

34 (c) All financial plans required by this section shall
35 establish:

36 (1) Maximum levels of reimbursement which the Public
37 Employees Insurance Agency makes to categories of health
38 care providers;

39 (2) Any necessary cost containment measures for imple-
40 mentation by the Director;

41 (3) The levels of premium costs to participating employers;
42 and

43 (4) The types and levels of cost to participating employees
44 and retired employees.

45 The financial plans may provide for different levels of
46 costs based on the insureds' ability to pay. The Finance Board

47 may establish different levels of costs to retired employees
48 based upon length of employment with a participating em-
49 ployer, ability to pay or other relevant factors. The financial
50 plans may also include optional alternative benefit plans with
51 alternative types and levels of cost. The Finance Board may
52 develop policies which encourage the use of West Virginia
53 health care providers.

54 In addition, the Finance Board may allocate a portion of
55 the premium costs charged to participating employers to
56 subsidize the cost of coverage for participating retired employ-
57 ees, on such terms as the Finance Board determines are
58 equitable and financially responsible.

59 (d)(1) The Finance Board shall prepare an annual financial
60 plan for each fiscal year during which the Finance Board
61 remains in existence. The Finance Board Chairman shall
62 request the actuary to estimate the total financial requirements
63 of the Public Employees Insurance Agency for the fiscal year.

64 (2) The Finance Board shall prepare a proposed financial
65 plan designed to generate revenues sufficient to meet all
66 estimated program and administrative costs of the Public
67 Employees Insurance Agency for the fiscal year. The proposed
68 financial plan shall allow for no more than thirty days of
69 accounts payable to be carried over into the next fiscal year.
70 Before final adoption of the proposed financial plan, the
71 Finance Board shall request the actuary to review the plan and
72 to render a written professional opinion stating whether the
73 plan will generate sufficient revenues to meet all estimated
74 program and administrative costs of the Public Employees
75 Insurance Agency for the fiscal year. The actuary's report shall
76 explain the basis of its opinion. If the actuary concludes that
77 the proposed financial plan will not generate sufficient reve-
78 nues to meet all anticipated costs, then the Finance Board shall
79 make necessary modifications to the proposed plan to ensure

80 that all actuarially determined financial requirements of the
81 agency will be met.

82 (3) Upon obtaining the actuary's opinion, the Finance
83 Board shall conduct one or more public hearings in each
84 congressional district to receive public comment on the
85 proposed financial plan, shall review such comments and shall
86 finalize and approve the financial plan.

87 (4) Any financial plan shall be designed to allow thirty
88 days or less of accounts payable to be carried over into the next
89 fiscal year. For each fiscal year, the Governor shall provide his
90 or her estimate of total revenues to the Finance Board no later
91 than the fifteenth day of October of the preceding fiscal year:
92 *Provided, That, for the prospective financial plans required by*
93 *this section, the Governor shall estimate the revenues available*
94 *for each fiscal year of the plans based on the estimated percent-*
95 *age of growth in general fund revenues. The Finance Board*
96 *shall submit its final, approved financial plan, after obtaining*
97 *the necessary actuary's opinion and conducting one or more*
98 *public hearings in each congressional district, to the Governor*
99 *and to the Legislature no later than the first day of January*
100 *preceding the fiscal year. The financial plan for a fiscal year*
101 *becomes effective and shall be implemented by the Director on*
102 *the first day of July of the fiscal year. In addition to each final,*
103 *approved financial plan required under this section, the Finance*
104 *Board shall also simultaneously submit financial statements*
105 *based on generally accepted accounting practices (GAAP) and*
106 *the final, approved plan restated on an accrual basis of account-*
107 *ing, which shall include allowances for incurred but not*
108 *reported claims: Provided, however, That the financial state-*
109 *ments and the accrual-based financial plan restatement shall*
110 *not affect the approved financial plan.*

111 (e) The provisions of chapter twenty-nine-a of this code
112 shall not apply to the preparation, approval and implementation
113 of the financial plans required by this section.

114 (f) By the first day of January of each year the Finance
115 Board shall submit to the Governor and the Legislature a
116 prospective financial plan, for a period not to exceed five years,
117 for the programs provided in this article. Factors that the
118 Board shall consider include, but are not limited to, the trends
119 for the program and the industry; the medical rate of inflation;
120 utilization patterns; cost of services; and specific information
121 such as average age of employee population, active to retiree
122 ratios, the service delivery system and health status of the
123 population.

124 (g) The prospective financial plans shall be based on the
125 estimated revenues submitted in accordance with subdivision
126 (4), subsection (d) of this section and shall include an average
127 of the projected cost-sharing percentages of premiums and an
128 average of the projected deductibles and copays for the various
129 programs. Beginning in the plan year which commences on
130 the first day of July, two thousand two, and in each plan year
131 thereafter, until and including the plan year which commences
132 on the first day of July, two thousand six, the prospective plans
133 shall include incremental adjustments toward the ultimate level
134 required in this subsection, in the aggregate cost-sharing
135 percentages of premium between employers and employees:
136 *Provided*, That for the period beginning the first day of July,
137 two thousand five, through the thirty-first day of December,
138 two thousand five, the portion of the policy surcharge collected
139 from certain fire and casualty insurers and transferred into the
140 fund in the State Treasury of the Public Employees Insurance
141 Agency pursuant to the provisions of section thirty-three,
142 article three, chapter thirty-three of this code shall be used, in
143 lieu of an increase in costs to active state pool employees, to
144 subsidize any incremental adjustment in those employees'

145 portion of the aggregate cost-sharing percentages of premium
146 between employers and employees. The foregoing does not
147 prohibit any premium increase occasioned by an employee's
148 increase in salary: *Provided, however,* That for the period
149 beginning the first day of July, two thousand five, through the
150 thirty-first day of December, two thousand five, in lieu of an
151 increase in costs to retired state pool employees, such funds as
152 are necessary to subsidize any increase in costs to retired state
153 pool employees shall be transferred from the reserve fund
154 established in section twenty-five of this article into the fund
155 in the State Treasury of the Public Employees Insurance
156 Agency. Effective in the plan year commencing on the first
157 day of July, two thousand six, and in each plan year thereafter,
158 the aggregate premium cost-sharing percentages between
159 employers and employees shall be at a level of eighty percent
160 for the employer and twenty percent for employees, except for
161 the employers provided in subsection (d), section eighteen of
162 this article whose premium cost-sharing percentages shall be
163 governed by that subsection. After the submission of the initial
164 prospective plan, the Board may not increase costs to the
165 participating employers or change the average of the premiums,
166 deductibles and copays for employees, except in the event of
167 a true emergency as provided in this section: *Provided further,*
168 That if the Board invokes the emergency provisions, the cost
169 shall be borne between the employers and employees in
170 proportion to the cost-sharing ratio for that plan year: *And*
171 *provided further,* That for purposes of this section, "emer-
172 gency" means that the most recent projections demonstrate that
173 plan expenses will exceed plan revenues by more than one
174 percent in any plan year.

175 (h) The Finance Board shall meet on at least a quarterly
176 basis to review implementation of its current financial plan in
177 light of the actual experience of the Public Employees Insur-
178 ance Agency. The Board shall review actual costs incurred,

179 any revised cost estimates provided by the actuary, expendi-
180 tures and any other factors affecting the fiscal stability of the
181 plan and may make any additional modifications to the plan
182 necessary to ensure that the total financial requirements of the
183 agency for the current fiscal year are met. The Finance Board
184 may not increase the types and levels of cost to employees
185 during its quarterly review except in the event of a true
186 emergency.

187 (i) For any fiscal year in which legislative appropriations
188 differ from the Governor's estimate of general and special
189 revenues available to the Agency, the Finance Board shall,
190 within thirty days after passage of the budget bill, make any
191 modifications to the plan necessary to ensure that the total
192 financial requirements of the agency for the current fiscal year
193 are met.

CHAPTER 9

(S. B. 3002 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]

[Passed May 17, 2005; in effect July 9, 2005.]

[Approved by the Governor on May 26, 2005.]

AN ACT to repeal §20-11-5a of the Code of West Virginia, 1931, as amended, relating to a recycling assessment fee upon the disposal of solid waste.

Be it enacted by the Legislature of West Virginia:

§1. Repeal of section relating to a recycling assessment fee upon the disposal of solid waste.

1 Section five-a, article eleven, chapter twenty of the Code
2 of West Virginia, one thousand nine hundred thirty-one, as
3 amended, is hereby repealed.

CHAPTER 10

**(S. B. 3001 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed May 17, 2005; in effect July 1, 2005.]

[Approved by the Governor on May 26, 2005.]

AN ACT to amend and reenact §6-7-2 of the Code of West Virginia, 1931, as contained in chapter 203, Acts of the Legislature, regular session, 2005, as amended, relating generally to the salaries of the Governor, Attorney General, State Treasurer, State Auditor, Commissioner of Agriculture and Secretary of State; and effective dates.

Be it enacted by the Legislature of West Virginia:

That §6-7-2 of the Code of West Virginia, 1931, as amended, as contained in chapter 203, Acts of the Legislature, regular session, 2005, be amended and reenacted to read as follows:

ARTICLE 7. COMPENSATION AND ALLOWANCES.

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

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

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

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

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

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

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

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

LEGISLATURE OF WEST VIRGINIA

ACTS

THIRD EXTRAORDINARY SESSION, 2004

CHAPTER 1

**(H. B. 301 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed November 16, 2004; in effect from passage.]

[Approved by the Governor on November 22, 2004.]

AN ACT making a supplementary appropriation of excess lottery revenue funds to the workers' compensation commission, fund 3460, fiscal year 2005, organization 0322, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 3460, fiscal year 2005, organization 0322, be supplemented and amended to read as follows:

1 TITLE II — APPROPRIATIONS

2 **Sec. 9. Appropriations from surplus accrued.**

3 *330—Workers’ Compensation Commission*

4 (WV Code Chapter 23)

5 Fund 3460 FY 2005 Org 0322

6	1	Self-Insured Security Pool -		
7	2	Lottery Surplus	072	\$ 9,000,000

8 The above appropriation for Self-Insured Security Pool -
9 Lottery Surplus may be transferred to fund 3440, fiscal year
10 2005, organization 0322, activity 999 and invested in the same
11 manner as other Workers’ Compensation Commission funds.

12 The purpose of this bill is to supplement this account in the
13 budget act for the fiscal year ending the thirtieth day of June,
14 two thousand five, by amending language with no additional
15 funds being appropriated.



CHAPTER 2

**(H. B. 302 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed November 16, 2004; in effect from passage.]
[Approved by the Governor on November 22, 2004.]

AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand five, to new items of appropriation designated to the department of revenue, insurance commissioner, fund 8883, fiscal year 2005, organization 0704, and to the national coal heritage area authority, fund 8869, fiscal year 2005, organization 0941, all supplementing and amending chapter thirteen, acts of the Legislature, regular session, two thousand four, known as the budget bill.

WHEREAS, The Governor has established the availability of federal funds for new programs now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand five, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, regular session, two thousand four, known as the budget bill, be supplemented and amended by adding to Title II, section six thereof the following:

1	TITLE II — APPROPRIATIONS		
2	Sec. 6. Appropriations of federal funds.		
3	DEPARTMENT OF REVENUE		
4	<i>283a—Insurance Commissioner</i>		
5	(WV Code Chapter 33)		
6	Fund <u>8883</u> FY <u>2005</u> Org <u>0704</u>		
7		Act-	Federal
8		ivity	Funds
9	1	Unclassified—Total 096	\$ 1,000,000

2696

APPROPRIATIONS

[Ch. 3

10

TITLE II — APPROPRIATIONS

11

Sec. 6. Appropriations of federal funds.

12

MISCELLANEOUS BOARDS AND COMMISSIONS

13

298a—National Coal Heritage Area Authority

14

(WV Code Chapter 29)

15

Fund 8869 FY 2005 Org 0941

16

Act-

Federal

17

ivity

Funds

18

1 Unclassified—Total 096 \$ 600,000

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The purpose of this supplementary appropriation bill is to supplement these accounts in the budget act for fiscal year ending the thirtieth day of June, two thousand five, by providing for new items of appropriation to be established therein to appropriate federal funds for the designated spending units for expenditure during the fiscal year two thousand five.



CHAPTER 3

**(H. B. 303 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**



[Passed November 16, 2004; in effect from passage.]
[Approved by the Governor on November 22, 2004.]



AN ACT making a supplementary appropriation of federal funds out of the treasury from the balance of federal moneys remaining

unappropriated for the fiscal year ending the thirtieth day of June, two thousand five, to the department of military affairs and public safety - office of emergency services, fund 8727, fiscal year 2005, organization 0606, all supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The Governor has established the availability of federal funds for a new program now available for expenditure in the fiscal year ending the thirtieth day of June, two thousand five, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 8727, fiscal year 2005, organization 0606, be supplemented and amended by increasing the total appropriation as follows:

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TITLE II — APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS

AND PUBLIC SAFETY

276—Office of Emergency Services

(WV Code Chapter 15)

Fund 8727 FY 2005 Org 0606

**Act-
ivity Federal
 Funds**

1 1 Unclassified - Total 096 \$ 399,679

11 The purpose of this supplementary appropriation bill is to
12 supplement and increase items of appropriation in the aforesaid
13 account for the designated spending unit for expenditure during
14 fiscal year two thousand five.

CHAPTER 4

**(S. B. 3006 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed November 16, 2004; in effect from passage.]

[Approved by the Governor on November 22, 2004.]

AN ACT making a supplementary appropriation of public moneys out of the treasury from the balance of moneys remaining as an unappropriated surplus balance in the state fund, general revenue, to the department of education, state department of education, fund 0313, fiscal year 2005, organization 0402, the department of education and the arts, division of culture and history, fund 0293, fiscal year 2005, organization 0432, and the department of military affairs and public safety, division of criminal justice services, fund 0546, fiscal year 2005, organization 0620, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The Governor submitted to the Legislature a statement of the state fund, general revenue, dated the fifteenth day of November, two thousand four, setting forth therein the cash balance as of the first day of July, two thousand four; and further included the estimate of revenues for the fiscal year two thousand five, less net appropriation balances forwarded and regular appropriations for the fiscal year two thousand five; and

WHEREAS, It appears from the Governor’s statement there now remains an unappropriated surplus balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand five; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 0313, fiscal year 2005, organization 0402, be supplemented and amended by increasing and adding new items of appropriation to the total appropriation as follows:

1 TITLE II—APPROPRIATIONS.

2 Section 1. Appropriations from general revenue.

3 DEPARTMENT OF EDUCATION

4 34—State Department of Education

5 (WV Code Chapters 18 and 18A)

6 Fund 0313 FY 2005 Org 0402

			General
		Act-	Revenue
		ivity	Fund
10	31a Increased Enrollment -		
11	Surplus	059	\$ 664,292
12	31b Tax Assessment Errors -		
13	Surplus	065	304,219

14 That the total appropriation for the fiscal year ending the
15 thirtieth day of June, two thousand five, to fund 0293, fiscal
16 year 2005, organization 0432, be supplemented and amended

17 by increasing and adding a new item of appropriation to the
18 total appropriation as follows:

19 TITLE II—APPROPRIATIONS.

20 Section 1. Appropriations from general revenue.

21 DEPARTMENT OF EDUCATION AND THE ARTS

22 41—*Division of Culture and History*

23 (WV Code Chapter 29)

24 Fund 0293 FY 2005 Org 0432

25			General
26		Act-	Revenue
27		ivity	Fund

28	7a	Capital Outlay, Repairs and		
29	7b	Equipment - Surplus	677	\$ 1,600,000

30 And, that the total appropriation for the fiscal year ending
31 the thirtieth day of June, two thousand five, to fund 0546, fiscal
32 year 2005, organization 0620, be supplemented and amended
33 by increasing and adding a new item of appropriation to the
34 total appropriation as follows:

35 TITLE II — APPROPRIATIONS.

36 Section 1. Appropriations from general revenue.

37 DEPARTMENT OF MILITARY AFFAIRS

38 AND PUBLIC SAFETY

39 61—*Division of Criminal Justice Services*

WHEREAS, The Governor submitted to the Legislature a statement of the state excess lottery revenue fund, dated the fifteenth day of November, two thousand four, setting forth therein the cash balance as of the first day of July, two thousand four; and further included the estimate of revenue for the fiscal year two thousand five, less regular and surplus appropriations for the fiscal year two thousand five; and

WHEREAS, It appears from the Governor’s statement of the state excess lottery revenue fund there now remains an unappropriated balance in the state treasury which is available for appropriation during the fiscal year ending the thirtieth day of June, two thousand five; therefore

Be it enacted by the Legislature of West Virginia:

That chapter thirteen, acts of the Legislature, regular session, two thousand four, known as the budget bill, be supplemented and amended by adding to Title II, section five thereof the following:

1 TITLE II—APPROPRIATIONS.

2 **Sec. 5. Appropriations from state excess**
 3 **lottery revenue fund.**

4 *246a—West Virginia State Police*

5 (WV Code Chapter 15)

6 Fund 6394 FY 2005 Org 0612

7 1 Helicopter Purchase 063 \$3,900,000

8 The purpose of this supplementary appropriation bill is to
 9 supplement by amending and adding a new item of appropria-
 10 tion for the aforesaid account in the budget act for the fiscal
 11 year ending the thirtieth day of June, two thousand five, by
 12 providing for a new item of appropriation to be established

- 13 therein for the designated spending unit for expenditure during
14 the fiscal year two thousand five.

CHAPTER 6

**(S. B. 3008 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed November 16, 2004; in effect from passage.]

[Approved by the Governor on November 22, 2004.]

AN ACT making a supplementary appropriation from the balance of moneys remaining unappropriated for the fiscal year ending the thirtieth day of June, two thousand five, to the department of military affairs and public safety - West Virginia state police - surplus transfer account, fund 6519, fiscal year 2005, organization 0612, by supplementing and amending the appropriation for the fiscal year ending the thirtieth day of June, two thousand five.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the department of military affairs and public safety - West Virginia state police - surplus transfer account, fund 6519, fiscal year 2005, organization 0612, available for expenditure during the fiscal year ending the thirtieth day of June, two thousand five; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending the thirtieth day of June, two thousand five, to fund 6519, fiscal year 2005, organization 0612, be supplemented and amended by increasing the total appropriation as follows:

1

TITLE II—APPROPRIATIONS.

2

Sec. 3. Appropriations from other funds.

3

DEPARTMENT OF MILITARY AFFAIRS

4

AND PUBLIC SAFETY

5

144—West Virginia State Police—

6

Surplus Transfer Account

7

(WV Code Chapter 15)

8

Fund 6519 FY 2005 Org 0612

9

Act-

Other

10

ivity

Funds

11

2a Helicopter Purchase 063 \$ 1,200,000

12

The purpose of this supplementary appropriation bill is to
13 supplement and increase items of appropriation in the aforesaid
14 account for the designated spending unit for expenditure during
15 the fiscal year two thousand five.



CHAPTER 7

**(S. B. 3013 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed November 16, 2004; in effect from passage.]
[Approved by the Governor on November 22, 2004.]

5 (WV Code Chapter 5)

6 Fund 0105 FY 2005 Org 0100

7			General
8		Act-	Revenue
9		ivity	Fund

10 3 Civil Contingent Fund-

11 Total-Surplus 238 \$ 6,000,000

12 The purpose of this supplementary appropriation bill is to
 13 expire funds to the unappropriated surplus balance in the state
 14 fund, general revenue, and supplement and increase items of
 15 appropriations in the aforesaid accounts for the designated
 16 spending units for expenditure during the fiscal year two
 17 thousand five.



CHAPTER 8

(S. B. 3014 — By Senator McCabe)

[Passed November 16, 2004; in effect from passage.]

[Approved by the Governor on December 2, 2004.]

AN ACT to amend and reenact §5E-1-8 of the Code of West Virginia, 1931, as amended, relating to modifying the total tax credits available under the capital company act during the fiscal year beginning on the first day of July, two thousand four; limiting the availability of certain tax credits to qualified economic development and technology advancement centers; and authorizing the economic development authority to establish criteria for the determination of the allocation of certain tax credits by vote of the majority of the authority.

Be it enacted by the Legislature of West Virginia:

That §5E-1-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. WEST VIRGINIA CAPITAL COMPANY ACT.

§5E-1-8. Tax credits.

1 (a) The total amount of tax credits authorized for a single
2 qualified company may not exceed two million dollars. The
3 total amount of tax credits authorized for a single economic
4 development and technology advancement center may not
5 exceed one million dollars. Capitalization of the company or
6 center may be increased pursuant to rule of the authority.

7 (b)(1) The total credits authorized by the authority for all
8 companies and centers may not exceed a total of ten million
9 dollars each fiscal year: *Provided*, That for the fiscal year
10 beginning on the first day of July, one thousand nine hundred
11 ninety-nine, the total credits authorized for all companies may
12 not exceed a total of six million dollars: *Provided, however*,
13 That for the fiscal year beginning on the first day of July, two
14 thousand, the total credits authorized for all companies may not
15 exceed a total of four million dollars: *Provided further*, That for
16 the fiscal year beginning on the first day of July, two thousand
17 one, the total credits authorized for all companies may not
18 exceed a total of four million dollars: *And provided further*,
19 That for the fiscal year beginning on the first day of July, two
20 thousand two, the total credits authorized for all companies may
21 not exceed a total of three million dollars: *And provided further*,
22 That for the fiscal year beginning on the first day of July, two
23 thousand three, the total credits authorized for all companies
24 may not exceed a total of three million dollars: *And provided*
25 *further*, That for the fiscal year beginning on the first day of
26 July, two thousand four, the total credits authorized for all
27 companies may not exceed a total of one million dollars: *And*

28 *provided further*; That the capital base of any qualified com-
29 pany other than an economic development and technology
30 advancement center qualified under the provisions of article
31 twelve-a, chapter eighteen-b of this code shall be invested in
32 accordance with the provisions of this article. The authority
33 shall allocate these credits to qualified companies and centers
34 in the order that the companies are qualified.

35 (2) Not more than two million dollars of the credits allowed
36 under subdivision (1) of this subsection may be allocated by the
37 authority during each fiscal year to one or more small business
38 investment companies described in this subdivision: *Provided*,
39 That for the fiscal year beginning on the first day of July, two
40 thousand four, no credits authorized by this section may be
41 allocated by the authority to one or more small business
42 investment companies. After a portion of the credits are
43 allocated to small business investment companies as provided
44 in this section, not more than one million dollars of the credits
45 allowed under subdivision (1) of this subsection may be
46 allocated by the authority during each fiscal year to one or more
47 economic development and technology advancement centers
48 qualified by the authority under article twelve-a, chapter
49 eighteen-b of this code: *Provided, however*, That for the fiscal
50 year beginning on the first day of July, two thousand four, all of
51 the credits allowed under subdivision (1) of this subsection
52 shall be allocated only to one or more qualified economic
53 development and technology advancement centers. The
54 remainder of the tax credits allowed during the fiscal year shall
55 be allocated by the authority under the provisions of section
56 four, article two of this chapter: *Provided further*, That for the
57 fiscal year beginning on the first day of July, two thousand four,
58 no credits authorized by this section may be allocated by the
59 authority to a taxpayer pursuant to the provisions of section
60 four, article two of this chapter. The portion of the tax credits
61 allowed for small business investment companies described in

62 this subdivision shall be allowed only if allocated by the
63 authority during the first ninety days of the fiscal year and may
64 only be allocated to companies that: (A) Were organized on or
65 after the first day of January, one thousand nine hundred ninety-
66 nine; (B) are licensed by the small business administration as a
67 small business investment company under the small business
68 investment act; and (C) have certified in writing to the authority
69 on the application for credits under this act that the company
70 will diligently seek to obtain and thereafter diligently seek to
71 invest leverage available to the small business investment
72 companies under the small business investment act. These
73 credits shall be allocated by the authority in the order that the
74 companies are qualified. The portion of the tax credits allowed
75 for economic development and technology advancement centers
76 described in article twelve-a, chapter eighteen-b of this code
77 shall be similarly allowed only if allocated by the authority
78 during the first ninety days of the fiscal year. Any credits
79 which have not been allocated to qualified companies meeting
80 the requirements of this subdivision relating to small business
81 investment companies or to qualified economic development
82 and technology advancement centers during the first ninety
83 days of the fiscal year shall be made available and allocated by
84 the authority under the provisions of section four, article two of
85 this chapter: *And provided further*, That for the fiscal year
86 beginning on the first day of July, two thousand four, no credits
87 authorized by this section may be allocated by the authority to
88 a taxpayer pursuant to the provisions of section four, article two
89 of this chapter.

90 (3) Notwithstanding any provision of this code or legisla-
91 tive rule promulgated thereunder to the contrary, for the fiscal
92 year beginning on the first day of July, two thousand four, the
93 authority has the sole discretion to allocate or refuse to allocate
94 tax credits authorized under this section to any qualified
95 economic development and technology advancement center

96 upon its determination of the extent to which the center will
97 fulfill the purposes of this article. The determination shall be
98 based upon the application of the center, the extent to which the
99 company or center fulfilled those purposes in prior years after
100 receiving tax credits authorized under this section, the extent to
101 which the center is expected to stimulate economic develop-
102 ment and high technology research in the chemical industry and
103 such other similarly related criteria as the authority may
104 establish by vote of the majority of authority.

105 (c) Any investor, including an individual, partnership,
106 limited liability company, corporation or other entity who
107 makes a capital investment in a qualified West Virginia capital
108 company, is entitled to a tax credit equal to fifty percent of the
109 investment, except as otherwise provided in this section or in
110 this article: *Provided*, That the tax credit available to investors
111 who make a capital investment in an economic development
112 and technology advancement center shall be one hundred
113 percent of the investment. The credit allowed by this article
114 shall be taken after all other credits allowed by chapter eleven
115 of this code. It shall be taken against the same taxes and in the
116 same order as set forth in subsections (c) through (i), inclusive,
117 section five, article thirteen-c, chapter eleven of this code. The
118 credit for investments by a partnership, limited liability
119 company, a corporation electing to be treated as a subchapter S
120 corporation or any other entity which is treated as a pass
121 through entity under federal and state income tax laws may be
122 divided pursuant to election of the entity's partners, members,
123 shareholders or owners.

124 (d) The tax credit allowed under this section is to be
125 credited against the taxpayer's tax liability for the taxable year
126 in which the investment in a qualified West Virginia capital
127 company or economic development and technology advance-
128 ment center is made. If the amount of the tax credit exceeds the

129 taxpayer's tax liability for the taxable year, the amount of the
130 credit which exceeds the tax liability for the taxable year may
131 be carried to succeeding taxable years until used in full or until
132 forfeited: *Provided*, That: (i) Tax credits may not be carried
133 forward beyond fifteen years; and (ii) tax credits may not be
134 carried back to prior taxable years. Any tax credit remaining
135 after the fifteenth taxable year is forfeited.

136 (e) The tax credit provided for in this section is available
137 only to those taxpayers whose investment in a qualified West
138 Virginia capital company or economic development and
139 technology advancement center occurs after the first day of
140 July, one thousand nine hundred eighty-six.

141 (f) The tax credit allowed under this section may not be
142 used against any liability the taxpayer may have for interest,
143 penalties or additions to tax.

144 (g) Notwithstanding any provision in this code to the
145 contrary, the tax commissioner shall publish in the state register
146 the name and address of every taxpayer and the amount, by
147 category, of any credit asserted under this article. The catego-
148 ries by dollar amount of credit received are as follows:

149 (1) More than \$1.00, but not more than \$50,000;

150 (2) More than \$50,000, but not more than \$100,000;

151 (3) More than \$100,000, but not more than \$250,000;

152 (4) More than \$250,000, but not more than \$500,000;

153 (5) More than \$500,000, but not more than \$1,000,000; and

154 (6) More than \$1,000,000.

CHAPTER 9

**(H. B. 305 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed November 16, 2004; in effect from passage.]

[Approved by the Governor on December 2, 2004.]

AN ACT to amend and reenact §15-2B-3 and §15-2B-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §15-2B-14, all relating to DNA testing for convicts under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §15-2B-3 and §15-2B-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §15-2B-14, all to read as follows:

ARTICLE 2B. DNA DATA.

§15-2B-3. Definitions.

§15-2B-6. DNA sample required for DNA analysis upon conviction; DNA sample required for certain prisoners.

§15-2B-14. Right to DNA testing.

§15-2B-3. Definitions.

1 As used in this article the following terms mean:

2 (a) “DNA” means deoxyribonucleic acid. DNA is located
3 in the nucleus of cells and provides an individual’s personal
4 genetic blueprint. DNA encodes genetic information that is the
5 basis of human heredity and forensic identification.

6 (b) "DNA record" means DNA identification information
7 stored in any state DNA database pursuant to this article. The
8 DNA record is the result obtained from DNA typing tests. The
9 DNA record is comprised of the characteristics of a DNA
10 sample which are of value in establishing the identity of
11 individuals. The results of all DNA identification tests on an
12 individual's DNA sample are also included as a "DNA record".

13 (c) "DNA sample" means a tissue, fluid or other bodily
14 sample, suitable for testing, provided pursuant to this article or
15 submitted to the division laboratory for analysis pursuant to a
16 criminal investigation.

17 (d) "FBI" means the federal bureau of investigation.

18 (e) "State DNA database" means all DNA identification
19 records included in the system administered by the West
20 Virginia state police.

21 (f) "State DNA databank" means the repository of DNA
22 samples collected under the provisions of this article.

23 (g) "Division" means the West Virginia state police.

§15-2B-6. DNA sample required for DNA analysis upon conviction; DNA sample required for certain prisoners.

1 (a) Any person convicted of an offense described in section
2 one, four, seven, nine, nine-a (when that offense constitutes a
3 felony), ten, ten-a, ten-b, twelve, fourteen or fourteen-a, article
4 two, chapter sixty-one of this code or section twelve, article
5 eight of said chapter (when that offense constitutes a felony),
6 shall provide a DNA sample to be used for DNA analysis as
7 described in this article. Further, any person convicted of any
8 offense described in article eight-b or eight-d of said chapter
9 shall provide a DNA sample to be used for DNA analysis as
10 described in this article.

11 (b) Any person presently incarcerated in a state correctional
12 facility or a county or regional jail in this state after conviction
13 of any offense listed in subsection (a) of this section shall
14 provide a DNA sample to be used for purposes of DNA analysis
15 as described in this article.

16 (c) Any person convicted of a violation of section five or
17 thirteen, article two, chapter sixty-one of this code, section one,
18 two, three, four, five, seven, eleven, twelve (when that offense
19 constitutes a felony) or subsection (a), section thirteen, article
20 three of said chapter, section three, four, five or ten, article
21 three-e of said chapter or section three, article four of said
22 chapter, shall provide a DNA sample to be used for DNA
23 analysis as described in this article.

24 (d) Any person convicted of an offense which constitutes a
25 felony violation of the provisions of article four, chapter sixty-a
26 of this code; or of an attempt to commit a violation of section
27 one or section fourteen-a, article two, chapter sixty-one of this
28 code; or an attempt to commit a violation of article eight-b of
29 said chapter shall provide a DNA sample to be used for DNA
30 analysis as described in this article.

31 (e) The method of taking the DNA sample is subject to the
32 testing methods utilized by the West Virginia state police crime
33 lab.

34 (f) When a person required to provide a DNA sample
35 pursuant to this section refuses to comply, the state shall apply
36 to a circuit court for an order requiring the person to provide a
37 DNA sample. Upon a finding of failure to comply, the circuit
38 court shall order the person to submit to DNA testing in
39 conformity with the provisions of this article.

40 (g) The West Virginia state police may, where not other-
41 wise mandated, require any person convicted of a felony
42 offense under the provisions of this code, to provide a DNA

43 sample to be used for the sole purpose of criminal identification
44 of the convicted person who provided the sample: *Provided*,
45 That the person is under the supervision of the criminal justice
46 system at the time the request for the sample is made. Supervi-
47 sion includes prison, the regional jail system, parole, probation,
48 home confinement, community corrections program, and work
49 release.

50 (h) No part of the genetic information that is authorized to
51 be collected pursuant to this article may be used for any
52 purpose other than to establish the identity of the individual.
53 The biological sample obtained to conduct the identity test not
54 necessary to conduct a present or future identity test shall be
55 destroyed following the performance of the initial identity test
56 analysis.

§15-2B-14. Right to DNA testing.

1 (a) A person convicted of a felony currently serving a term
2 of imprisonment may make a written motion before the trial
3 court that entered the judgment of conviction for performance
4 (DNA) testing.

5 (b) (1) An indigent convicted person may request appoint-
6 ment of counsel to prepare a motion under this section by
7 sending a written request to the court. The request must include
8 the person's statement that he or she was not the perpetrator of
9 the crime and that DNA testing is relevant to his or her asser-
10 tion of innocence. The request must also include the person's
11 statement as to whether he or she previously had appointed
12 counsel under this section.

13 (2) If any of the information required in subdivision (1) of
14 this section is missing from the request, the court shall return
15 the request to the convicted person and advise him or her that
16 the matter cannot be considered without the missing informa-
17 tion.

18 (3) (A) Upon a finding of indigency, the inclusion of
19 information required in subdivision (1) of this section, and that
20 counsel has not previously been appointed pursuant to this
21 subdivision, the court shall appoint counsel. Counsel shall
22 investigate and, if appropriate, file a motion for DNA testing
23 under this section. Counsel represents the indigent person solely
24 for the purpose of obtaining DNA testing under this section.

25 (B) Upon a finding of indigency, and that counsel has been
26 previously appointed pursuant to this subdivision, the court
27 may, in its discretion, appoint counsel. Counsel shall investigate
28 and, if appropriate, file a motion for DNA testing under this
29 section. Counsel represents the person solely for the purpose of
30 obtaining DNA testing under this section.

31 (4) Nothing in this section provides for a right to the
32 appointment of counsel in a post-conviction collateral proceed-
33 ing or sets a precedent for any such right. The representation
34 provided an indigent convicted person under this article is
35 solely for the limited purpose of filing and litigating a motion
36 for DNA testing pursuant to this section.

37 (c) (1) The motion shall be verified by the convicted person
38 under penalty of perjury and must do the following:

39 (A) Explain why the identity of the perpetrator was, or
40 should have been, a significant issue in the case.

41 (B) Explain, in light of all the evidence, how the requested
42 DNA testing would raise a reasonable probability the convicted
43 person's verdict or sentence would be more favorable if the
44 results of DNA testing had been available at the time of
45 conviction.

46 (C) Make every reasonable attempt to identify both the
47 evidence that should be tested and the specific type of DNA
48 testing sought.

49 (D) Reveal the results of any DNA or other biological
50 testing previously conducted by either the prosecution or
51 defense, if known.

52 (E) State whether any motion for testing under this section
53 has been filed previously and the results of that motion, if
54 known.

55 (2) Notice of the motion shall be served on the prosecuting
56 attorney in the county of conviction and, if known, the govern-
57 mental agency or laboratory holding the evidence sought to be
58 tested. Responses, if any, shall be filed within sixty days of the
59 date on which the prosecuting attorney is served with the
60 motion, unless a continuance is granted for good cause.

61 (d) If the court finds evidence was subject to prior DNA or
62 other forensic testing, by either the prosecution or defense, it
63 shall order the party at whose request the testing was conducted
64 to provide all parties and the court with access to the laboratory
65 reports, underlying data, and laboratory notes prepared in
66 connection with the DNA or other biological evidence testing.

67 (e) The court, in its discretion, may order a hearing on the
68 motion. The motion shall be heard by the judge who conducted
69 the trial or accepted the convicted person's plea, unless the
70 presiding judge determines that judge is unavailable. Upon
71 request of either party, the court may order, in the interest of
72 justice, that the convicted person be present at the hearing of the
73 motion.

74 (f) The court shall grant the motion for DNA testing if it
75 determines all of the following have been established:

76 (1) The evidence to be tested is available and in a condition
77 that would permit the DNA testing requested in the motion;

78 (2) The evidence to be tested has been subject to a chain of
79 custody sufficient to establish it has not been substituted,
80 tampered with, replaced or altered in any material aspect;

81 (3) The identity of the perpetrator of the crime was, or
82 should have been, a significant issue in the case;

83 (4) The convicted person has made a prima facie showing
84 that the evidence sought for testing is material to the issue of
85 the convicted person's identity as the perpetrator of or accom-
86 plice to, the crime, special circumstance, or enhancement
87 allegation resulting in the conviction or sentence;

88 (5) The requested DNA testing results would raise a
89 reasonable probability that, in light of all the evidence, the
90 convicted person's verdict or sentence would have been more
91 favorable if DNA testing results had been available at the time
92 of conviction. The court in its discretion may consider any
93 evidence regardless of whether it was introduced at trial;

94 (6) The evidence sought for testing meets either of the
95 following conditions:

96 (A) The evidence was not previously tested;

97 (B) The evidence was tested previously, but the requested
98 DNA test would provide results that are reasonably more
99 discriminating and probative of the identity of the perpetrator
100 or accomplice or have a reasonable probability of contradicting
101 prior test results;

102 (7) The testing requested employs a method generally
103 accepted within the relevant scientific community;

104 (8) The evidence or the presently desired method of testing
105 DNA were not available to the defendant at the time of trial or
106 a court has found ineffective assistance of counsel at the trial
107 court level;

108 (9) The motion is not made solely for the purpose of delay.

109 (g) If the court grants the motion for DNA testing, the court
110 order shall identify the specific evidence to be tested and the
111 DNA technology to be used. Testing shall be conducted by a
112 DNA forensic laboratory in this state.

113 (h) The result of any testing ordered under this section shall
114 be fully disclosed to the person filing the motion and the
115 prosecuting attorney. If requested by any party, the court shall
116 order production of the underlying laboratory data and notes.

117 (i) If testing was requested by the state or the individual is
118 an indigent, the cost of DNA testing shall be borne by the state.

119 (j) An order granting or denying a motion for DNA testing
120 under this section is not to be appealable and is subject to
121 review only through a petition for writ of mandamus or
122 prohibition filed with the supreme court of appeals by the
123 person seeking DNA testing or the prosecuting attorney. The
124 petition shall be filed within twenty days of the court's order
125 granting or denying the motion for DNA testing. The court shall
126 expedite its review of a petition for writ of mandamus or
127 prohibition filed under this subsection.

128 (k) DNA testing ordered by the court pursuant to this
129 section shall be done as soon as practicable. However, if the
130 court finds that a miscarriage of justice will otherwise occur
131 and that it is necessary in the interests of justice to give priority
132 to the DNA testing, the court may require the DNA laboratory
133 to give priority to the DNA testing ordered pursuant to this
134 section over the laboratory's other pending casework.

135 (l) DNA profile information from biological samples taken
136 from a convicted person pursuant to a motion for post-convic-
137 tion DNA testing is exempt from any law requiring disclosure
138 of information to the public.

139 (m) Notwithstanding any other provision of law, the right
140 to file a motion for post-conviction DNA testing provided by
141 this section is absolute and may not be waived. This prohibition
142 applies to, but is not limited to, a waiver that is given as part of
143 an agreement resulting in a plea of guilty or nolo contendere.

CHAPTER 10

**(H. B. 308 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed November 16, 2004; in effect from passage.]

[Approved by the Governor on December 2, 2004.]

AN ACT to amend and reenact §18-2E-5 and §18-2E-5c of the Code of West Virginia, 1931, as amended; to amend and reenact §18-5-15f of said code; to amend said code by adding thereto a new section, designated §18-5-46; to amend and reenact §18-20-5 of said code; to amend and reenact §18A-2-12 of said code; to amend said code by adding thereto a new section, designated §18A-2-12a; and to amend and reenact §18A-5-1 and §18A-5-1a of said code, all relating to the process for improving education and removing impediments to improving performance and progress; making technical references, grammatical corrections and stylistic changes; refocusing school and county improvement plans; requiring unified school improvement plan boilerplate; adding requirement for standards; revising performance measures and specifying their use; modifying requirements for assessments; adding indicators of exemplary performance and progress; specifying use of efficiency indicators; reorienting system of education performance audits; changing policy for making on-site reviews of schools and school systems; modifying who office of education performance audits reports to; modifying salary cap for

office director; revising and adding items specified for compliance documentation on checklist format; modifying process for selection of schools and school systems for on-site review; open meetings exemption for state board during certain discussions; modifying limitation in scope of on-site review; modifying persons to be included in an on-site review; expanding on-site exit conferences and specifying purpose; modifying time limitations for on-site review reports; making certain findings and excluding certain areas from review by performance audits; further specifying conditions for student transfers from seriously impaired schools; granting certain authority for real estate transactions to state board during state intervention; clarifying rights of principal removed from seriously impaired school; specifying certain notice requirements by state board to process for improving education council; recording suspensions and expulsions on the West Virginia education information system; prohibiting a teacher from being required to change grade; exception; limiting state rules, policies and standards for exceptional children programs to federal requirements and directing report of review and comparison of laws to legislative oversight commission; restricting publication of lesson plans; setting forth general statement on relations between county boards and school personnel; and placing sole responsibility for proper student discipline with county boards and requiring county board policies.

Be it enacted by the Legislature of West Virginia:

That §18-2E-5 and §18-2E-5c of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §18-5-15f of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18-5-46; that §18-20-5 of said code be amended and reenacted; that §18A-2-12 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §18A-2-12a; and that §18A-5-1 and §18A-5-1a of said code be amended and reenacted, all to read as follows:

Chapter**18. Education.****18A. School Personnel.****CHAPTER 18. EDUCATION.****Article****2E. High Quality Educational Programs.****5. County Board of Education.****20. Education of Exceptional Children.****ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.**

§18-2E-5. Process for improving education; education standards and accountability measures; office of education performance audits; school accreditation and school system approval; intervention to correct impairments.

§18-2E-5c. Process for improving education council established; membership; expenses; meetings; powers.

§18-2E-5. Process for improving education; education standards and accountability measures; office of education performance audits; school accreditation and school system approval; intervention to correct impairments.

1 (a) *Legislative findings, purpose and intent.* — The Legisla-
2 ture makes the following findings with respect to the process
3 for improving education and its purpose and intent in the
4 enactment of this section:

5 (1) The process for improving education includes four
6 primary elements, these being:

7 (A) Standards which set forth the things that students
8 should know and be able to do as the result of a thorough and
9 efficient education including measurable criteria to evaluate
10 student performance and progress;

11 (B) Assessments of student performance and progress
12 toward meeting the standards;

13 (C) A system for holding schools and school systems
14 accountable for student performance and progress toward
15 obtaining a high quality education which is delivered in an
16 efficient manner; and

17 (D) A method for building the capacity and improving the
18 efficiency of schools and school systems to improve student
19 performance and progress.

20 (2) As the constitutional body charged with the general
21 supervision of schools as provided by general law, the state
22 board has the authority and the responsibility to establish the
23 standards, assess the performance and progress of students
24 against the standards, hold schools and school systems account-
25 able, and assist schools and school systems to build capacity
26 and improve efficiency so that the standards are met, including,
27 when necessary, seeking additional resources in consultation
28 with the Legislature and the governor.

29 (3) As the constitutional body charged with providing for
30 a thorough and efficient system of schools, the Legislature has
31 the authority and the responsibility to establish and be engaged
32 constructively in the determination of the things that students
33 should know and be able to do as the result of a thorough and
34 efficient education. This determination is made by using the
35 process for improving education to determine when school
36 improvement is needed, by evaluating the results and the
37 efficiency of the system of schools, by ensuring accountability,
38 and by providing for the necessary capacity and its efficient
39 use.

40 (4) In consideration of these findings, the purpose of this
41 section is to establish a process for improving education that
42 includes the four primary elements as set forth in subdivision
43 (1) of this subsection to provide assurances that the high quality
44 standards are, at a minimum, being met and that a thorough and

45 efficient system of schools is being provided for all West
46 Virginia public school students on an equal education opportu-
47 nity basis.

48 (5) The intent of the Legislature in enacting this section and
49 section five-c of this article is to establish a process through
50 which the Legislature, the governor and the state board can
51 work in the spirit of cooperation and collaboration intended in
52 the process for improving education to consult and examine the
53 performance and progress of students, schools and school
54 systems and, when necessary, to consider alternative measures
55 to ensure that all students continue to receive the thorough and
56 efficient education to which they are entitled. However,
57 nothing in this section requires any specific level of funding by
58 the Legislature.

59 (b) *Unified county and school improvement plans.* — The
60 state board shall promulgate a rule consistent with the provi-
61 sions of this section and in accordance with article three-b,
62 chapter twenty-nine-a of this code establishing a unified county
63 improvement plan for each county board and a unified school
64 improvement plan for each public school in this state. Each
65 respective plan shall be a five-year plan that includes the
66 mission and goals of the school or school system to improve
67 student, school or school system performance and progress, as
68 applicable. The plan shall be revised annually in each area in
69 which the school or system is below the standard on the annual
70 performance measures. The revised annual plan also shall
71 identify any deficiency which is reported on the check lists
72 identified in paragraph (G), subdivision (5), subsection (j) of
73 this section including any deficit more than a casual deficit by
74 the county board. The plan shall be revised when required
75 pursuant to this section to include each annual performance
76 measure upon which the school or school system fails to meet
77 the standard for performance and progress, the action to be
78 taken to meet each measure, a separate time line and a date

79 certain for meeting each measure, a cost estimate and, when
80 applicable, the assistance to be provided by the department and
81 other education agencies to improve student, school or school
82 system performance and progress to meet the annual perfor-
83 mance measure.

84 The department shall make available to all public schools
85 through its web site or the West Virginia education information
86 system an electronic unified school improvement plan
87 boilerplate designed for use by all schools to develop a unified
88 school improvement plan which incorporates all required
89 aspects and satisfies all improvement plan requirements of the
90 No Child Left Behind Act.

91 (c) *High quality education standards and efficiency*
92 *standards.* — In accordance with the provisions of article three-
93 b, chapter twenty-nine-a of this code, the state board shall adopt
94 and periodically review and update high quality education
95 standards for student, school and school system performance
96 and processes in the following areas:

- 97 (1) Curriculum;
- 98 (2) Workplace readiness skills;
- 99 (3) Finance;
- 100 (4) Transportation;
- 101 (5) Special education;
- 102 (6) Facilities;
- 103 (7) Administrative practices;
- 104 (8) Training of county board members and administrators;
- 105 (9) Personnel qualifications;

- 106 (10) Professional development and evaluation;
- 107 (11) Student performance and progress;
- 108 (12) School and school system performance and progress;
- 109 (13) A code of conduct for students and employees;
- 110 (14) Indicators of efficiency; and
- 111 (15) Any other areas determined by the state board.

112 The standards shall assure that graduates are prepared for
113 continuing post-secondary education, training and work and
114 that schools and school systems are making progress toward
115 achieving the education goals of the state.

116 (d) *Annual performance measures.* — The standards shall
117 include annual measures of student, school and school system
118 performance and progress. The following annual measures of
119 student, school and school system performance and progress
120 shall be the only measures for determining school accreditation
121 and school system approval:

122 (1) The acquisition of student proficiencies as indicated by
123 student performance and progress in grades three through eight,
124 inclusive, and grade ten shall be measured by a uniform
125 statewide assessment program. The indicators for student
126 progress in reading and mathematics in grades kindergarten
127 through second grade shall be measured by the informal
128 assessment established by the West Virginia department of
129 education or other assessments, as determined by the school
130 curriculum team. If the school fails to meet adequate yearly
131 progress in reading or mathematics for two consecutive years,
132 the county superintendent, the school principal and the school
133 curriculum team shall decide whether a different assessment
134 should be used to verify that benchmarks are being met. If the

135 county superintendent, the school principal and the school
136 curriculum team differ on what assessment is used, then each
137 entity shall have one vote. Furthermore, the state board may
138 require that student proficiencies be measured through the West
139 Virginia writing assessment at any of the grades that are
140 determined by the state board to be appropriate. It is the intent
141 of the Legislature that in the future a grade eleven uniform
142 statewide assessment be administered in lieu of the grade ten
143 uniform statewide assessment. The state board shall perform an
144 analysis of the costs and the benefits of administering the grade
145 eleven uniform statewide assessment in lieu of the grade ten
146 uniform statewide assessment. The analysis shall include a
147 review of the need for end of course exams in grades nine
148 through twelve. The state board shall report the results of the
149 analysis to the legislative oversight commission on education
150 accountability. The state board may provide other testing or
151 assessment instruments applicable to grade levels kindergarten
152 through grade twelve through the statewide assessment program
153 for optional use by each school as determined by the school
154 curriculum team to measure student performance and progress;

155 (2) Only for schools that do not include grade twelve, the
156 school attendance rate which shall be no less than ninety
157 percent in attendance. The following absences shall be ex-
158 cluded:

159 (A) Student absences excused in accordance with the state
160 board rule promulgated pursuant to section four, article eight of
161 this chapter;

162 (B) Students not in attendance due to disciplinary measures;
163 and

164 (C) Absent students for whom the attendance director has
165 pursued judicial remedies compelling attendance to the extent
166 of his or her authority; and

167 (3) The high school graduation rate which shall be no less
168 than eighty percent, or if the high school graduation rate is less
169 than eighty percent, the high school graduation rate shall be
170 higher than the high school graduation rate of the preceding
171 year as determined from information on the West Virginia
172 education information system on the fifteenth day of August.

173 (e) *Indicators of exemplary performance and progress.* —
174 The standards shall include indicators of exemplary student,
175 school and school system performance and progress. The
176 indicators of exemplary student, school and school system
177 performance and progress shall be used only as indicators for
178 determining whether accredited and approved schools and
179 school systems should be granted exemplary status. These
180 indicators shall include, but are not limited to, the following:

181 (1) The percentage of graduates who declare their intent to
182 enroll in college and other post-secondary education and
183 training following high school graduation;

184 (2) The percentage of graduates who receive additional
185 certification of their skills, competence and readiness for
186 college, other post-secondary education or employment above
187 the level required for graduation; and

188 (3) The percentage of students who successfully complete
189 advanced placement, dual credit and honors classes.

190 (f) *Indicators of efficiency.* — In accordance with the
191 provisions of article three-b, chapter twenty-nine-a of this code,
192 the state board shall adopt by rule and periodically review and
193 update indicators of efficiency for use by the appropriate
194 divisions within the department to ensure efficient management
195 and use of resources in the public schools in the following
196 areas:

197 (1) Curriculum delivery including, but not limited to, the
198 use of distance learning;

199 (2) Transportation;

200 (3) Facilities;

201 (4) Administrative practices;

202 (5) Personnel;

203 (6) Utilization of regional educational service agency
204 programs and services, including programs and services that
205 may be established by their assigned regional educational
206 service agency, or other regional services that may be initiated
207 between and among participating county boards; and

208 (7) Any other indicators as determined by the state board.

209 (g) *Assessment and accountability of school and school*
210 *system performance and processes.* — In accordance with the
211 provisions of article three-b, chapter twenty-nine-a of this code,
212 the state board shall establish by rule a system of education
213 performance audits which measures the quality of education
214 and the preparation of students based on the annual measures of
215 student, school and school system performance and progress.
216 The system of education performance audits shall provide
217 information to the state board, the Legislature and the governor,
218 individually and collectively as the process for improving
219 education council, upon which they may determine whether a
220 thorough and efficient system of schools is being provided.
221 The system of education performance audits shall include:

222 (1) The assessment of student, school and school system
223 performance and progress based on the annual measures set
224 forth in subsection (d) of this section;

225 (2) The evaluation of records, reports and other information
226 collected by the department upon which the quality of educa-
227 tion and compliance with statutes, policies and standards may
228 be determined;

229 (3) The review of school and school system unified
230 improvement plans; and

231 (4) The on-site review of the processes in place in schools
232 and school systems to enable school and school system perfor-
233 mance and progress and compliance with the standards.

234 (h) *Uses of school and school system assessment informa-*
235 *tion.* — The state board and the process for improving educa-
236 tion council established pursuant to section five-c of this article
237 shall use information from the system of education performance
238 audits to assist them in ensuring that a thorough and efficient
239 system of schools is being provided and to improve student,
240 school and school system performance and progress. Informa-
241 tion from the system of education performance audits further
242 shall be used by the state board for these purposes, including,
243 but not limited to, the following:

244 (1) Determining school accreditation and school system
245 approval status;

246 (2) Holding schools and school systems accountable for the
247 efficient use of existing resources to meet or exceed the
248 standards; and

249 (3) Targeting additional resources when necessary to
250 improve performance and progress.

251 The state board shall make accreditation information
252 available to the Legislature, the governor, the general public
253 and to any individual who requests the information, subject to
254 the provisions of any act or rule restricting the release of
255 information.

256 (i) *Early detection and intervention programs.* — Based on
257 the assessment of student, school and school system perfor-
258 mance and progress, the state board shall establish early
259 detection and intervention programs using the available
260 resources of the department of education, the regional educa-
261 tional service agencies, the center for professional development
262 and the principals academy, as appropriate, to assist under-
263 achieving schools and school systems to improve performance
264 before conditions become so grave as to warrant more substan-
265 tive state intervention. Assistance shall include, but is not
266 limited to, providing additional technical assistance and
267 programmatic, professional staff development, providing
268 monetary, staffing and other resources where appropriate, and,
269 if necessary, making appropriate recommendations to the
270 process for improving education council.

271 (j) *Office of education performance audits.* —

272 (1) To assist the state board and the process for improving
273 education council in the operation of a system of education
274 performance audits, the state board shall establish an office of
275 education performance audits consistent with the provisions of
276 this section. The office of education performance audits shall
277 be operated under the direction of the state board independently
278 of the functions and supervision of the state department of
279 education and state superintendent. The office of education
280 performance audits shall report directly to and be responsible to
281 the state board and the process for improving education council
282 created in section five-c of this article in carrying out its duties
283 under the provisions of this section.

284 (2) The office shall be headed by a director who shall be
285 appointed by the state board and who shall serve at the will and
286 pleasure of the state board. The annual salary of the director
287 shall be set by the state board and may not exceed eighty
288 percent of the salary cap of the state superintendent of schools.

289 (3) The state board shall organize and sufficiently staff the
290 office to fulfill the duties assigned to it by law and by the state
291 board. Employees of the state department of education who are
292 transferred to the office of education performance audits shall
293 retain their benefits and seniority status with the department of
294 education.

295 (4) Under the direction of the state board, the office of
296 education performance audits shall receive from the West
297 Virginia education information system staff research and
298 analysis data on the performance and progress of students,
299 schools and school systems, and shall receive assistance, as
300 determined by the state board, from staff at the state department
301 of education, the regional education service agencies, the center
302 for professional development, the principals academy and the
303 state school building authority to carry out the duties assigned
304 to the office.

305 (5) In addition to other duties which may be assigned to it
306 by the state board or by statute, the office of education perfor-
307 mance audits also shall:

308 (A) Assure that all statewide assessments of student
309 performance used as annual performance measures are secure
310 as required in section one-a of this article;

311 (B) Administer all accountability measures as assigned by
312 the state board, including, but not limited to, the following:

313 (i) Processes for the accreditation of schools and the
314 approval of school systems; and

315 (ii) Recommendations to the state board on appropriate
316 action, including, but not limited to, accreditation and approval
317 action;

318 (C) Determine, in conjunction with the assessment and
319 accountability processes, what capacity may be needed by

320 schools and school systems to meet the standards established by
321 the state board, and recommend to the state board and the
322 process for improving education council, plans to establish
323 those needed capacities;

324 (D) Determine, in conjunction with the assessment and
325 accountability processes, whether statewide system deficiencies
326 exist in the capacity of schools and school systems to meet the
327 standards established by the state board, including the identifi-
328 cation of trends and the need for continuing improvements in
329 education, and report those deficiencies and trends to the state
330 board and the process for improving education council;

331 (E) Determine, in conjunction with the assessment and
332 accountability processes, staff development needs of schools
333 and school systems to meet the standards established by the
334 state board, and make recommendations to the state board, the
335 process for improving education council, the center for profes-
336 sional development, the regional educational service agencies,
337 the higher education policy commission, and the county boards;

338 (F) Identify, in conjunction with the assessment and
339 accountability processes, exemplary schools and school systems
340 and best practices that improve student, school and school
341 system performance, and make recommendations to the state
342 board and the process for improving education council for
343 recognizing and rewarding exemplary schools and school
344 systems and promoting the use of best practices. The state
345 board shall provide information on best practices to county
346 school systems and shall use information identified through the
347 assessment and accountability processes to select schools of
348 excellence; and

349 (G) Develop reporting formats, such as check lists, which
350 shall be used by the appropriate administrative personnel in
351 schools and school systems to document compliance with
352 various of the applicable laws, policies and process standards

353 as considered appropriate and approved by the state board,
354 including, but not limited to, the following:

355 (i) The use of a policy for the evaluation of all school
356 personnel that meets the requirements of sections twelve and
357 twelve-a, article two, chapter eighteen-a of this code;

358 (ii) The participation of students in appropriate physical
359 assessments as determined by the state board, which assessment
360 may not be used as a part of the assessment and accountability
361 system;

362 (iii) The appropriate licensure of school personnel; and

363 (iv) The school provides multi-cultural activities.

364 Information contained in the reporting formats is subject to
365 examination during an on-site review to determine compliance
366 with laws, policies and standards. Intentional and grossly
367 negligent reporting of false information are grounds for
368 dismissal.

369 (k) *On-site reviews.* —

370 (1) The system of education performance audits shall
371 include on-site reviews of schools and school systems which
372 shall be conducted only at the specific direction of the state
373 board upon its determination that the performance and progress
374 of the school or school system are persistently below standard
375 or that other circumstances exist that warrant an on-site review.
376 Any discussion by the state board of schools to be subject to an
377 on-site review or dates for which on-site reviews will be
378 conducted may be held in executive session, and is not subject
379 to the provisions of article nine-a, chapter six of this code,
380 relating to open governmental proceedings. An on-site review
381 shall be conducted by the office of education performance
382 audits of a school or school system for the purpose of investi-

383 gating the reasons for performance and progress that are
384 persistently below standard and making recommendations to
385 the school and school system, as appropriate, and to the state
386 board on such measures as it considers necessary to improve
387 performance and progress to meet the standard. The investiga-
388 tion may include, but is not limited to, the following:

389 (A) Verifying data reported by the school or county board;

390 (B) Examining compliance with the laws and policies
391 affecting student, school and school system performance and
392 progress;

393 (C) Evaluating the effectiveness and implementation status
394 of school and school system unified improvement plans;

395 (D) Investigating official complaints submitted to the state
396 board that allege serious impairments in the quality of educa-
397 tion in schools or school systems;

398 (E) Investigating official complaints submitted to the state
399 board that allege that a school or county board is in violation of
400 policies or laws under which schools and county boards
401 operate; and

402 (F) Determining and reporting whether required reviews
403 and inspections have been conducted by the appropriate
404 agencies, including, but not limited to, the state fire marshal,
405 the health department, the school building authority and the
406 responsible divisions within the department of education, and
407 whether noted deficiencies have been or are in the process of
408 being corrected. The office of education performance audits
409 may not conduct a duplicate review or inspection of any
410 compliance reviews or inspections conducted by the department
411 or its agents or other duly authorized agencies of the state, nor
412 may it mandate more stringent compliance measures.

413 (2) The director of the office of education performance
414 audits shall notify the county superintendent of schools five
415 school days prior to commencing an on-site review of the
416 county school system and shall notify both the county superin-
417 tendent and the principal five school days prior to commencing
418 an on-site review of an individual school: *Provided*, That the
419 state board may direct the office of education performance
420 audits to conduct an unannounced on-site review of a school or
421 school system if the state board believes circumstances warrant
422 an unannounced on-site review.

423 (3) The office of education performance audits shall
424 conduct on-site reviews which are limited in scope to specific
425 areas in which performance and progress are persistently below
426 standard as determined by the state board unless specifically
427 directed by the state board to conduct a review which covers
428 additional areas.

429 (4) An on-site review of a school or school system shall
430 include a person or persons from the department of education
431 or a public education agency in the state who has expert
432 knowledge and experience in the area or areas to be reviewed,
433 and who has been trained and designated by the state board to
434 perform such functions. If the size of the school or school
435 system and issues being reviewed necessitate the use of an on-
436 site review team or teams, the person or persons designated by
437 the state board shall advise and assist the director to appoint the
438 team or teams. The person or persons designated by the state
439 board shall be the team leaders.

440 The persons designated by the state board shall be responsi-
441 ble for completing the report on the findings and recommenda-
442 tions of the on-site review in their area of expertise. It is the
443 intent of the Legislature that the persons designated by the state
444 board participate in all on-site reviews that involve their area of
445 expertise, to the extent practicable, so that the on-site review

446 process will evaluate compliance with the standards in a
447 uniform, consistent and expert manner.

448 (5) The office of education performance audits shall
449 reimburse a county board for the costs of substitutes required to
450 replace county board employees while they are serving on a
451 review team.

452 (6) At the conclusion of an on-site review of a school
453 system, the director and team leaders shall hold an exit confer-
454 ence with the superintendent and shall provide an opportunity
455 for principals to be present for at least the portion of the
456 conference pertaining to their respective schools. In the case of
457 an on-site review of a school, the exit conference shall be held
458 with the principal and curriculum team of the school and the
459 superintendent shall be provided the opportunity to be present.
460 The purpose of the exit conference is to review the initial
461 findings of the on-site review, clarify and correct any inaccura-
462 cies and allow the opportunity for dialogue between the
463 reviewers and the school or school system to promote a better
464 understanding of the findings.

465 (7) The office of education performance audits shall report
466 the findings of an on-site review to the county superintendent
467 and the principals whose schools were reviewed within thirty
468 days following the conclusion of the on-site review. The office
469 of education performance audits shall report the findings of the
470 on-site review to the state board within forty-five days after the
471 conclusion of the on-site review. A copy of the report shall be
472 provided to the process for improving education council at its
473 request.

474 (8) The Legislature finds that the accountability and
475 oversight of the following activities and programmatic areas in
476 the public schools is controlled through other mechanisms and
477 that additional accountability and oversight are not only

478 unnecessary but counter productive in distracting necessary
479 resources from teaching and learning. Therefore, notwithstand-
480 ing any other provision of this section to the contrary, the
481 following activities and programmatic areas are not subject to
482 review by the office of education performance audits:

- 483 (A) Work-based learning;
- 484 (B) Use of advisory councils;
- 485 (C) Program accreditation and student credentials;
- 486 (D) Student transition plans;
- 487 (E) Graduate assessment form;
- 488 (F) Casual deficit;
- 489 (G) Accounting practices;
- 490 (H) Transportation services;
- 491 (I) Special education services;
- 492 (J) Safe, healthy and accessible facilities;
- 493 (K) Health services;
- 494 (L) Attendance director;
- 495 (M) Business/community partnerships;
- 496 (N) Pupil-teacher ratio/split grade classes;
- 497 (O) Local school improvement council, faculty senate,
498 student assistance team and curriculum team;
- 499 (P) Planning and lunch periods;

- 500 (Q) Skill improvement program;
- 501 (R) Certificate of proficiency;
- 502 (S) Training of county board members;
- 503 (T) Excellence in job performance;
- 504 (U) Staff development; and
- 505 (V) Preventive discipline, character education and student
506 and parental involvement.

507 (1) *School accreditation.* — The state board annually shall
508 review the information from the system of education perfor-
509 mance audits submitted for each school and shall issue to every
510 school one of the following approval levels: Exemplary
511 accreditation status, full accreditation status, temporary
512 accreditation status, conditional accreditation status, or seri-
513 ously impaired status.

514 (1) Full accreditation status shall be given to a school when
515 the school's performance and progress meet or exceed the
516 standards adopted by the state board pursuant to subsection (d)
517 of this section and it does not have any deficiencies which
518 would endanger student health or safety or other extraordinary
519 circumstances as defined by the state board. A school that
520 meets or exceeds the performance and progress standards but
521 has the other deficiencies shall remain on full accreditation
522 status for the remainder of the accreditation period and shall
523 have an opportunity to correct those deficiencies, notwithstand-
524 ing other provisions of this subsection.

525 (2) Temporary accreditation status shall be given to a
526 school when the school's performance and progress are below
527 the level required for full accreditation status. Whenever a
528 school is given temporary accreditation status, the county board

529 shall ensure that the school's unified improvement plan is
530 revised in accordance with subsection (b) of this section to
531 increase the performance and progress of the school to a full
532 accreditation status level. The revised plan shall be submitted
533 to the state board for approval.

534 (3) Conditional accreditation status shall be given to a
535 school when the school's performance and progress are below
536 the level required for full accreditation, but the school's unified
537 improvement plan meets the following criteria:

538 (A) The plan has been revised to improve performance and
539 progress on the standard or standards by a date or dates certain;

540 (B) The plan has been approved by the state board; and

541 (C) The school is meeting the objectives and time line
542 specified in the revised plan.

543 (4) Exemplary accreditation status shall be given to a
544 school when the school's performance and progress meet or
545 exceed the standards adopted by the state board pursuant to
546 subsections(d) and (e) of this section. The state board shall
547 promulgate legislative rules in accordance with the provisions
548 of article three-b, chapter twenty-nine-a, designated to establish
549 standards of performance and progress to identify exemplary
550 schools.

551 (5) Seriously impaired accreditation status shall be given to
552 a school whenever extraordinary circumstances exist as defined
553 by the state board.

554 (A) These circumstances shall include, but are not limited
555 to, the following:

556 (i) The failure of a school on temporary accreditation status
557 to obtain approval of its revised unified school improvement

558 plan within a reasonable time period as defined by the state
559 board;

560 (ii) The failure of a school on conditional accreditation
561 status to meet the objectives and time line of its revised unified
562 school improvement plan; or

563 (iii) The failure of a school to meet a standard by the date
564 specified in the revised plan.

565 (B) Whenever the state board determines that the quality of
566 education in a school is seriously impaired, the state board shall
567 appoint a team of improvement consultants to make recommen-
568 dations within sixty days of appointment for correction of the
569 impairment. When the state board approves the recommenda-
570 tions, they shall be communicated to the county board. If
571 progress in correcting the impairment as determined by the state
572 board is not made within six months from the time the county
573 board receives the recommendations, the state board shall place
574 the county board on temporary approval status and provide
575 consultation and assistance to the county board to assist it in the
576 following areas:

577 (i) Improving personnel management;

578 (ii) Establishing more efficient financial management
579 practices;

580 (iii) Improving instructional programs and rules; or

581 (iv) Making any other improvements that are necessary to
582 correct the impairment.

583 (C) If the impairment is not corrected by a date certain as
584 set by the state board:

585 (i) The state board shall appoint a monitor who shall be
586 paid at county expense to cause improvements to be made at the

587 school to bring it to full accreditation status within a reasonable
588 time period as determined by the state board. The monitor's
589 work location shall be at the school and the monitor shall work
590 collaboratively with the principal. The monitor shall, at a
591 minimum, report monthly to the state board on the measures
592 being taken to improve the school's performance and the
593 progress being made. The reports may include requests for
594 additional assistance and recommendations required in the
595 judgment of the monitor to improve the school's performance,
596 including, but not limited to, the need for targeting resources
597 strategically to eliminate deficiencies;

598 (ii) The state board may make a determination, in its sole
599 judgment, that the improvements necessary to provide a
600 thorough and efficient education to the students at the school
601 cannot be made without additional targeted resources, in which
602 case, it shall establish a plan in consultation with the county
603 board that includes targeted resources from sources under the
604 control of the state board and the county board to accomplish
605 the needed improvements. Nothing in this subsection shall be
606 construed to allow a change in personnel at the school to
607 improve school performance and progress, except as provided
608 by law;

609 (iii) If the impairment is not corrected within one year after
610 the appointment of a monitor, the state board may make a
611 determination, in its sole judgment, that continuing a monitor
612 arrangement is not sufficient to correct the impairment and may
613 intervene in the operation of the school to cause improvements
614 to be made that will provide assurances that a thorough and
615 efficient system of schools will be provided. This intervention
616 may include, but is not limited to, establishing instructional
617 programs, taking such direct action as may be necessary to
618 correct the impairments, declaring the position of principal is
619 vacant and assigning a principal for the school who shall serve
620 at the will and pleasure of and, under the sole supervision of,

621 the state board: *Provided*, That prior to declaring that the
622 position of the principal is vacant, the state board must make a
623 determination that all other resources needed to correct the
624 impairment are present at the school. If the principal who was
625 removed elects not to remain an employee of the county board,
626 then the principal assigned by the state board shall be paid by
627 the county board. If the principal who was removed elects to
628 remain an employee of the county board, then the following
629 procedure applies:

630 (I) The principal assigned by the state board shall be paid
631 by the state board until the next school term, at which time the
632 principal assigned by the state board shall be paid by the county
633 board;

634 (II) The principal who was removed shall be eligible for all
635 positions in the county, including teaching positions, for which
636 the principal is certified, by either being placed on the transfer
637 list in accordance with section seven, article two, chapter
638 eighteen-a of this code, or by being placed on the preferred
639 recall list in accordance with section seven-a, article four,
640 chapter eighteen-a of this code; and

641 (III) The principal who was removed shall be paid by the
642 county board and may be assigned to administrative duties,
643 without the county board being required to post that position
644 until the end of the school term;

645 (6) The county board shall take no action nor refuse any
646 action if the effect would be to impair further the school in
647 which the state board has intervened.

648 (7) The state board may appoint a monitor pursuant to the
649 provisions of this subsection to assist the school principal after
650 intervention in the operation of a school is completed.

651 (m) *Transfers from seriously impaired schools.* — When-
652 ever a school is determined to be seriously impaired and fails to
653 improve its status within one year, following state intervention
654 in the operation of the school to correct the impairment, any
655 student attending the school may transfer once to the nearest
656 fully accredited school in the county, subject to approval of the
657 fully accredited school and at the expense of the school from
658 which the student transferred.

659 (n) *School system approval.* — The state board annually
660 shall review the information submitted for each school system
661 from the system of education performance audits and issue one
662 of the following approval levels to each county board: Full
663 approval, temporary approval, conditional approval, or
664 nonapproval.

665 (1) Full approval shall be given to a county board whose
666 schools have all been given full, temporary or conditional
667 accreditation status and which does not have any deficiencies
668 which would endanger student health or safety or other extraor-
669 dinary circumstances as defined by the state board. A fully
670 approved school system in which other deficiencies are
671 discovered shall remain on full accreditation status for the
672 remainder of the approval period and shall have an opportunity
673 to correct those deficiencies, notwithstanding other provisions
674 of this subsection.

675 (2) Temporary approval shall be given to a county board
676 whose education system is below the level required for full
677 approval. Whenever a county board is given temporary ap-
678 proval status, the county board shall revise its unified county
679 improvement plan in accordance with subsection (b) of this
680 section to increase the performance and progress of the school
681 system to a full approval status level. The revised plan shall be
682 submitted to the state board for approval.

683 (3) Conditional approval shall be given to a county board
684 whose education system is below the level required for full
685 approval, but whose unified county improvement plan meets
686 the following criteria:

687 (i) The plan has been revised in accordance with subsection
688 (b) of this section;

689 (ii) The plan has been approved by the state board; and

690 (iii) The county board is meeting the objectives and time
691 line specified in the revised plan.

692 (4) Nonapproval status shall be given to a county board
693 which fails to submit and gain approval for its unified county
694 improvement plan or revised unified county improvement plan
695 within a reasonable time period as defined by the state board or
696 which fails to meet the objectives and time line of its revised
697 unified county improvement plan or fails to achieve full
698 approval by the date specified in the revised plan.

699 (A) The state board shall establish and adopt additional
700 standards to identify school systems in which the program may
701 be nonapproved and the state board may issue nonapproval
702 status whenever extraordinary circumstances exist as defined by
703 the state board.

704 (B) Whenever a county board has more than a casual
705 deficit, as defined in section one, article one of this chapter, the
706 county board shall submit a plan to the state board specifying
707 the county board's strategy for eliminating the casual deficit.
708 The state board either shall approve or reject the plan. If the
709 plan is rejected, the state board shall communicate to the county
710 board the reason or reasons for the rejection of the plan. The
711 county board may resubmit the plan any number of times.
712 However, any county board that fails to submit a plan and gain
713 approval for the plan from the state board before the end of the

714 fiscal year after a deficit greater than a casual deficit occurred
715 or any county board which, in the opinion of the state board,
716 fails to comply with an approved plan may be designated as
717 having nonapproval status.

718 (C) Whenever nonapproval status is given to a school
719 system, the state board shall declare a state of emergency in the
720 school system and shall appoint a team of improvement
721 consultants to make recommendations within sixty days of
722 appointment for correcting the emergency. When the state
723 board approves the recommendations, they shall be communi-
724 cated to the county board. If progress in correcting the emer-
725 gency, as determined by the state board, is not made within six
726 months from the time the county board receives the recommen-
727 dations, the state board shall intervene in the operation of the
728 school system to cause improvements to be made that will
729 provide assurances that a thorough and efficient system of
730 schools will be provided. This intervention may include, but is
731 not limited to, the following:

732 (i) Limiting the authority of the county superintendent and
733 county board as to the expenditure of funds, the employment
734 and dismissal of personnel, the establishment and operation of
735 the school calendar, the establishment of instructional programs
736 and rules and any other areas designated by the state board by
737 rule, which may include delegating decision-making authority
738 regarding these matters to the state superintendent;

739 (ii) Declaring that the office of the county superintendent
740 is vacant;

741 (iii) Delegating to the state superintendent both the author-
742 ity to conduct hearings on personnel matters and school closure
743 or consolidation matters and, subsequently, to render the
744 resulting decisions, and the authority to appoint a designee for
745 the limited purpose of conducting hearings while reserving to

746 the state superintendent the authority to render the resulting
747 decisions;

748 (iv) Functioning in lieu of the county board of education in
749 a transfer, sale, purchase or other transaction regarding real
750 property; and

751 (v) Taking any direct action necessary to correct the
752 emergency including, but not limited to, the following:

753 (I) Delegating to the state superintendent the authority to
754 replace administrators and principals in low performing schools
755 and to transfer them into alternate professional positions within
756 the county at his or her discretion; and

757 (II) Delegating to the state superintendent the authority to
758 fill positions of administrators and principals with individuals
759 determined by the state superintendent to be the most qualified
760 for the positions. Any authority related to intervention in the
761 operation of a county board granted under this paragraph is not
762 subject to the provisions of article four, chapter eighteen-a of
763 this code;

764 (o) Notwithstanding any other provision of this section, the
765 state board may intervene immediately in the operation of the
766 county school system with all the powers, duties and responsi-
767 bilities contained in subsection (n) of this section, if the state
768 board finds the following:

769 (1) That the conditions precedent to intervention exist as
770 provided in this section; and that delaying intervention for any
771 period of time would not be in the best interests of the students
772 of the county school system; or

773 (2) That the conditions precedent to intervention exist as
774 provided in this section and that the state board had previously
775 intervened in the operation of the same school system and had
776 concluded that intervention within the preceding five years.

777 (p) *Capacity*. — The process for improving education
778 includes a process for targeting resources strategically to
779 improve the teaching and learning process. Development of
780 unified school and school system improvement plans, pursuant
781 to subsection (b) of this section, is intended, in part, to provide
782 mechanisms to target resources strategically to the teaching and
783 learning process to improve student, school and school system
784 performance. When deficiencies are detected through the
785 assessment and accountability processes, the revision and
786 approval of school and school system unified improvement
787 plans shall ensure that schools and school systems are effi-
788 ciently using existing resources to correct the deficiencies.
789 When the state board determines that schools and school
790 systems do not have the capacity to correct deficiencies, the
791 state board shall work with the county board to develop or
792 secure the resources necessary to increase the capacity of
793 schools and school systems to meet the standards and, when
794 necessary, seek additional resources in consultation with the
795 Legislature and the governor.

796 The state board shall recommend to the appropriate body
797 including, but not limited to, the process for improving educa-
798 tion council, the Legislature, county boards, schools and
799 communities methods for targeting resources strategically to
800 eliminate deficiencies identified in the assessment and account-
801 ability processes. When making determinations on recommen-
802 dations, the state board shall include, but is not limited to, the
803 following methods:

804 (1) Examining reports and unified improvement plans
805 regarding the performance and progress of students, schools
806 and school systems relative to the standards and identifying the
807 areas in which improvement is needed;

808 (2) Determining the areas of weakness and of ineffective-
809 ness that appear to have contributed to the substandard perfor-

810 mance and progress of students or the deficiencies of the school
811 or school system;

812 (3) Determining the areas of strength that appear to have
813 contributed to exceptional student, school and school system
814 performance and progress and promoting their emulation
815 throughout the system;

816 (4) Requesting technical assistance from the school
817 building authority in assessing or designing comprehensive
818 educational facilities plans;

819 (5) Recommending priority funding from the school
820 building authority based on identified needs;

821 (6) Requesting special staff development programs from the
822 center for professional development, the principals academy,
823 higher education, regional educational service agencies and
824 county boards based on identified needs;

825 (7) Submitting requests to the Legislature for appropriations
826 to meet the identified needs for improving education;

827 (8) Directing county boards to target their funds strategi-
828 cally toward alleviating deficiencies;

829 (9) Ensuring that the need for facilities in counties with
830 increased enrollment are appropriately reflected and recom-
831 mended for funding;

832 (10) Ensuring that the appropriate person or entity is held
833 accountable for eliminating deficiencies; and

834 (11) Ensuring that the needed capacity is available from the
835 state and local level to assist the school or school system in
836 achieving the standards and alleviating the deficiencies.

§18-2E-5c. Process for improving education council established; membership; expenses; meetings; powers.

1 (a) *Process for improving education council.* — There is
2 hereby established the process for improving education council
3 for the purpose of providing opportunities for consultation
4 among state policy leaders on the process for improving
5 education, including, but not limited to, determination of the
6 things that students should know and be able to do as the result
7 of a thorough and efficient education, the performance and
8 progress of students toward meeting the high quality standards
9 established by the state board, and any further improvements
10 necessary to increase the capacity of schools and school
11 systems to deliver a thorough and efficient education.

12 (b) *Council membership.* — The legislative oversight
13 commission on education accountability, together with the
14 governor, ex officio, or the governor's designee, and the
15 chancellor of the higher education policy commission, ex
16 officio, or the chancellor's designee, comprise the process for
17 improving education council. Ex officio members are entitled
18 to vote. The governor or the governor's designee shall convene
19 the council, as appropriate, and shall serve as chair. The
20 council may meet at any time at the call of the governor or the
21 governor's designee.

22 (c) *Compensation.* — Members of the council shall serve
23 without compensation, but shall be reimbursed as provided by
24 law by their respective agencies for all reasonable and neces-
25 sary expenses actually incurred in the performance of their
26 official duties under this section upon presentation of an
27 itemized sworn statement of their expenses.

28 (d) *Powers of the council.* —

29 The council has the following powers:

30 (1) To meet and consult with the state board, or their
31 designees, and make recommendations on issues related to
32 student, school and school system performance. The following
33 steps are part of the consultation process:

34 (A) The state board shall notify each member of the council
35 whenever the state board proposes to amend its rules on any of
36 the following issues:

37 (i) High quality education standards and efficiency stan-
38 dards established pursuant to section five of this article;

39 (ii) Indicators of efficiency established pursuant to section
40 five of this article; and

41 (iii) Assessment and accountability of school and school
42 system performance and processes established pursuant to
43 section five of this article.

44 (B) The notice to be given pursuant to paragraph (A) of this
45 subdivision shall contain a summary and explanation of the
46 proposed changes, including a draft of the proposal when
47 available, and shall be sent at least fifteen days prior to filing
48 the proposal with the secretary of state for public comment.

49 (C) If the governor, or the governor's designee, believes it
50 is necessary for the council to meet and consult with the state
51 board, or its designees, on changes proposed to any of the issues
52 outlined in subdivision (1) of this subsection, he or she may
53 convene a meeting of the council.

54 (D) If both the president of the Senate and the speaker of
55 the House of Delegates believe it is necessary for the council to
56 meet and consult with the state board, or its designees, they
57 shall notify the governor who shall convene a meeting of the
58 council.

59 (E) If the chancellor, or the chancellor's designee, believes
60 that it is necessary for the council to meet and consult with the
61 state board, or its designees, he or she may request the governor
62 to convene a meeting of the council.

63 (2) To require the state board, or its designees, to meet with
64 the council to consult on issues that lie within the scope of the
65 council's jurisdiction;

66 (3) To participate as observers in any on-site review of a
67 school or school system conducted by the office of education
68 performance audits; and

69 (4) To authorize any employee of the agencies represented
70 by council members to participate as observers in any on-site
71 review of a school or school system conducted by the office of
72 education performance audits.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-15f. Affirmation regarding the suspension or expulsion of a pupil from school.

§18-5-46. Requiring teacher to change grade prohibited.

§18-5-15f. Affirmation regarding the suspension or expulsion of a pupil from school.

1 (a) Prior to the admission of a pupil to any public school in
2 West Virginia, the county superintendent shall require the
3 pupil's parent(s), guardian(s) or custodian(s) to provide, upon
4 registration, a sworn statement or affirmation indicating
5 whether the student is, at the time, under suspension or expul-
6 sion from attendance at a private or public school in West
7 Virginia or another state. Any person willfully making a
8 materially false statement or affirmation shall be guilty of a
9 misdemeanor and, upon conviction, the penalty shall be the
10 same as provided for "false swearing" pursuant to section three,
11 article five, chapter sixty-one of this code.

12 (b) Prior to the admission of a pupil to any public school,
13 the principal of that school or his or her designee shall consult
14 the uniform integrated regional computer information system
15 (commonly known as the West Virginia Education Information
16 System) described in subsection (f), section twenty-six, article
17 two, chapter eighteen of this code, to determine whether the
18 pupil requesting admission is, at the time of the request for
19 admission, serving a suspension or expulsion from another
20 public school in West Virginia.

21 (c) The state board of education shall provide for the West
22 Virginia Education Information System to disallow the record-
23 ing of the enrollment of any pupil who is, at the time of
24 attempted enrollment, serving a suspension or expulsion from
25 another public school in West Virginia, and for that system to
26 notify the user who has attempted to record the enrollment that
27 the pupil may not be enrolled, and to notify that user of the
28 reason therefor.

29 (d) Notwithstanding any other provision of this code to the
30 contrary, any pupil who has been suspended or expelled from
31 school pursuant to section one-a, article five, chapter eighteen-a
32 of this code, or who has been suspended or expelled from a
33 public or private school in another state, due to actions de-
34 scribed in section one-a, article five, chapter eighteen-a of this
35 code, may not be admitted to any public school within the state
36 of West Virginia until the period of suspension or expulsion has
37 expired.

§18-5-46. Requiring teacher to change grade prohibited.

1 No teacher may be required by a principal or any other
2 person to change a student's grade on either an individual
3 assignment or a report card unless there is clear and convincing
4 evidence that there was a mathematical error in calculating the
5 student's grade.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**§18-20-5. Powers and duties of state superintendent.**

1 The state superintendent of schools shall organize, promote,
2 administer and be responsible for:

3 (1) Stimulating and assisting county boards of education in
4 establishing, organizing and maintaining special schools,
5 classes, regular class programs, home-teaching and visiting-
6 teacher services.

7 (2) Cooperating with all other public and private agencies
8 engaged in relieving, caring for, curing, educating and rehabili-
9 tating exceptional children, and in helping coordinate the
10 services of such agencies.

11 (3) Preparing the necessary rules, policies, formula for
12 distribution of available appropriated funds, reporting forms
13 and procedures necessary to define minimum standards in
14 providing suitable facilities for education of exceptional
15 children and ensuring the employment, certification and
16 approval of qualified teachers and therapists subject to approval
17 by the state board of education: *Provided*, That no state rule,
18 policy or standard under this article or any county board rule,
19 policy or standard governing special education may exceed the
20 requirements of federal law or regulation. The state superinten-
21 dent shall conduct a comprehensive review and comparison of
22 the rules, policies and standards of the state with federal law
23 and report the findings to the legislative oversight commission
24 on education accountability at its February, two thousand five
25 interim meeting or as soon thereafter as requested by the
26 commission.

27 (4) Receiving from county boards of education their
28 applications, annual reports and claims for reimbursement from
29 such moneys as are appropriated by the Legislature, auditing

30 such claims and preparing vouchers to reimburse said counties
31 the amounts reimbursable to them.

32 (5) Assuring that all exceptional children in the state,
33 including children in mental health facilities, residential
34 institutions, private schools and correctional facilities as
35 provided in section thirteen-f, article two of this chapter receive
36 an education in accordance with state and federal laws:
37 *Provided*, That the state superintendent shall also assure that
38 adults in correctional facilities and regional jails receive an
39 education to the extent funds are provided therefor.

40 (6) Performing other duties and assuming other responsibil-
41 ities in connection with this program as needed.

42 (7) Receive the county plan for integrated classroom
43 submitted by the county boards of education and submit a state
44 plan, approved by the state board of education, to the legislative
45 oversight commission on education accountability no later than
46 the first day of December, one thousand nine hundred ninety-
47 five.

48 Nothing contained in this section shall be construed to
49 prevent any county board of education from establishing and
50 maintaining special schools, classes, regular class programs,
51 home-teaching or visiting-teacher services out of funds avail-
52 able from local revenue.

CHAPTER 18A. SCHOOL PERSONNEL.

Article

2. School Personnel.

5. Authority; Rights; Responsibility.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-12. Performance evaluations of school personnel; professional personnel
evaluation process.

§18A-2-12a. Statement of policy and practice for the county boards and school personnel to minimize possible disagreement and misunderstanding.

§18A-2-12. Performance evaluations of school personnel; professional personnel evaluation process.

1 (a) The state board of education shall adopt a written
2 system for the evaluation of the employment performance of
3 personnel, which system shall be applied uniformly by county
4 boards of education in the evaluation of the employment
5 performance of personnel employed by the board.

6 (b) The system adopted by the state board of education for
7 evaluating the employment performance of professional
8 personnel shall be in accordance with the provisions of this
9 section.

10 (c) For purposes of this section, “professional personnel”,
11 “professional” or “professionals”, means professional personnel
12 as defined in section one, article one of this chapter.

13 (d) In developing the professional personnel performance
14 evaluation system, and amendments thereto, the state board
15 shall consult with the professional development project of the
16 center for professional development created in section three,
17 article three-a of this chapter. The center shall participate
18 actively with the state board in developing written standards for
19 evaluation which clearly specify satisfactory performance and
20 the criteria to be used to determine whether the performance of
21 each professional meets such standards.

22 (e) The performance evaluation system shall contain, but
23 shall not be limited to, the following information:

24 (1) The professional personnel positions to be evaluated,
25 whether they be teachers, substitute teachers, administrators,
26 principals, or others;

27 (2) The frequency and duration of the evaluations, which
28 shall be on a regular basis and of such frequency and duration
29 as to insure the collection of a sufficient amount of data from
30 which reliable conclusions and findings may be drawn:
31 *Provided*, That for school personnel with five or more years of
32 experience, who have not received an unsatisfactory rating,
33 evaluations shall be conducted no more than once every three
34 years unless the principal determines an evaluation for a
35 particular school employee is needed more frequently: *Pro-*
36 *vided, however*, That a classroom teacher may exercise the
37 option of being evaluated at more frequent intervals;

38 (3) The evaluation shall serve the following purposes:

39 (A) Serve as a basis for the improvement of the perfor-
40 mance of the personnel in their assigned duties;

41 (B) Provide an indicator of satisfactory performance for
42 individual professionals;

43 (C) Serve as documentation for a dismissal on the grounds
44 of unsatisfactory performance; and

45 (D) Serve as a basis for programs to increase the profes-
46 sional growth and development of professional personnel;

47 (4) The standards for satisfactory performance for profes-
48 sional personnel and the criteria to be used to determine
49 whether the performance of each professional meets such
50 standards and other criteria for evaluation for each professional
51 position evaluated. Effective the first day of July, two thousand
52 three and thereafter, professional personnel, as appropriate,
53 shall demonstrate competency in the knowledge and implemen-
54 tation of the technology standards adopted by the state board.
55 If a professional fails to demonstrate competency, in the
56 knowledge and implementation of these standards, he or she
57 will be subject to an improvement plan to correct the deficien-
58 cies; and

59 (5) Provisions for a written improvement plan, which shall
60 be specific as to what improvements, if any, are needed in the
61 performance of the professional and shall clearly set forth
62 recommendations for improvements, including recommenda-
63 tions for additional education and training during the profes-
64 sional's recertification process.

65 (f) A professional whose performance is considered to be
66 unsatisfactory shall be given notice of deficiencies. A
67 remediation plan to correct deficiencies shall be developed by
68 the employing county board of education and the professional.
69 The professional shall be given a reasonable period of time for
70 remediation of the deficiencies and shall receive a statement of
71 the resources and assistance available for the purposes of
72 correcting the deficiencies.

73 (g) No person may evaluate professional personnel for the
74 purposes of this section unless the person has an administrative
75 certificate issued by the state superintendent and has success-
76 fully completed education and training in evaluation skills
77 through the center for professional development, or equivalent
78 education training approved by the state board, which will
79 enable the person to make fair, professional, and credible
80 evaluations of the personnel whom the person is responsible for
81 evaluating. After the first day of July, one thousand nine
82 hundred ninety-four, no person may be issued an administrative
83 certificate or have an administrative certificate renewed unless
84 the state board determines that the person has successfully
85 completed education and training in evaluation skills through
86 the center for professional development, or equivalent educa-
87 tion and training approved by the state board.

88 (h) Any professional whose performance evaluation
89 includes a written improvement plan shall be given an opportu-
90 nity to improve his or her performance through the implementa-
91 tion of the plan. If the next performance evaluation shows that

92 the professional is now performing satisfactorily, no further
93 action may be taken concerning the original performance
94 evaluation. If the evaluation shows that the professional is still
95 not performing satisfactorily, the evaluator either shall make
96 additional recommendations for improvement or may recom-
97 mend the dismissal of the professional in accordance with the
98 provisions of section eight of this article.

99 (i) Lesson plans are intended to serve as a daily guide for
100 teachers and substitutes for the orderly presentation of the
101 curriculum. Lesson plans may not be used as a substitute for
102 observations by an administrator in the performance evaluation
103 process. A classroom teacher, as defined in section one, article
104 one of this chapter, may not be required to post his or her lesson
105 plans on the internet or otherwise make them available to
106 students and parents or to include in his or her lesson plans any
107 of the following:

108 (1) Teach and reteach strategies;

109 (2) Write to learn activities;

110 (3) Cultural diversity;

111 (4) Color coding; or

112 (5) Any other similar items which are not required to serve
113 as a guide to the teacher or substitute for daily instruction; and

114 (j) The Legislature finds that classroom teachers must be
115 free of unnecessary paper work so that they can focus their time
116 on instruction. Therefore, classroom teachers may not be
117 required to keep records or logs of routine contacts with parents
118 or guardians.

119 (k) Nothing in this section may be construed to prohibit
120 classroom teachers from voluntarily posting material on the
121 internet.

§18A-2-12a. Statement of policy and practice for the county boards and school personnel to minimize possible disagreement and misunderstanding.

1 (a) The Legislature makes the following findings:

2 (1) The effective and efficient operation of the public
3 schools depends upon the development of harmonious and
4 cooperative relationships between county boards and school
5 personnel;

6 (2) Each group has a fundamental role to perform in the
7 educational program and each has certain separate, distinct and
8 clearly defined areas of responsibility as provided in chapters
9 eighteen and eighteen-a of this code; and

10 (3) There are instances, particularly involving questions of
11 wages, salaries and conditions of work, that are subject to
12 disagreement and misunderstanding between county boards and
13 school personnel and may not be so clearly set forth.

14 (b) The purpose of this section is to establish a statement of
15 policy and practice for the county boards and school personnel,
16 as follows, in order to minimize possible disagreement and
17 misunderstanding:

18 (1) County boards, subject to the provisions of this chapter,
19 chapter eighteen of this code and the policies and rules of the
20 state board, are responsible for the management of the schools
21 within their respective counties. The powers and responsibili-
22 ties of county boards in setting policy and in providing manage-
23 ment are broad, but not absolute;

24 (2) The school personnel shares the responsibility for
25 putting into effect the policies and practices approved by the
26 county board that employs them and the school personnel also
27 have certain rights and responsibilities as provided in statute,
28 and in their contracts;

29 (3) School personnel are entitled to meet together, form
30 associations and work in concert to improve their circumstances
31 and the circumstances of the schools;

32 (4) County boards and school personnel can most effec-
33 tively discharge their total responsibilities to the public and to
34 each other by establishing clear and open lines of communica-
35 tion. School personnel should be encouraged to make sugges-
36 tions, proposals and recommendations through appropriate
37 channels to the county board. Decisions of the county board
38 concerning the suggestions, proposals and recommendations
39 should be communicated to the school personnel clearly and
40 openly;

41 (5) Official meetings of county boards are public meetings.
42 School personnel are free to attend the meetings without fear of
43 reprisal and should be encouraged to attend;

44 (6) All school personnel are entitled to know how well they
45 are fulfilling their responsibilities and should be offered the
46 opportunity of open and honest evaluations of their perfor-
47 mance on a regular basis and in accordance with the provisions
48 of section twelve of this article. All school personnel are
49 entitled to opportunities to improve their job performance prior
50 to the termination or transfer of their services. Decisions
51 concerning the promotion, demotion, transfer or termination of
52 employment of school personnel, other than those for lack of
53 need or governed by specific statutory provisions unrelated to
54 performance, should be based upon the evaluations, and not
55 upon factors extraneous thereto. All school personnel are
56 entitled to due process in matters affecting their employment,
57 transfer, demotion or promotion; and

58 (7) All official and enforceable personnel policies of a
59 county board must be written and made available to its employ-
60 ees.

ARTICLE 5. AUTHORITY; RIGHTS; RESPONSIBILITY.

§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; corporal punishment abolished.

§18A-5-1a. Possessing deadly weapons on premises of educational facilities; possessing a controlled substance on premises of educational facilities; assaults and batteries committed by pupils upon teachers or other school personnel; temporary suspension, hearing; procedure, notice and formal hearing; extended suspension; sale of narcotic; expulsion; exception; alternative education.

§18A-5-1. Authority of teachers and other school personnel; exclusion of pupils having infectious diseases; suspension or expulsion of disorderly pupils; corporal punishment abolished.

1 (a) The teacher shall stand in the place of the parent(s),
2 guardian(s) or custodian(s) in exercising authority over the
3 school and shall have control of all pupils enrolled in the school
4 from the time they reach the school until they have returned to
5 their respective homes, except that where transportation of
6 pupils is provided, the driver in charge of the school bus or
7 other mode of transportation shall exercise such authority and
8 control over the children while they are in transit to and from
9 the school.

10 (b) Subject to the rules of the state board of education, the
11 teacher shall exclude from the school any pupil or pupils known
12 to have or suspected of having any infectious disease, or any
13 pupil or pupils who have been exposed to such disease, and
14 shall immediately notify the proper health officer or medical
15 inspector of such exclusion. Any pupil so excluded shall not be
16 readmitted to the school until such pupil has complied with all
17 the requirements of the rules governing such cases or has
18 presented a certificate of health signed by the medical inspector
19 or other proper health officer.

20 (c) The teacher shall have authority to exclude from his or
21 her classroom or school bus any pupil who is guilty of disorderly
22 conduct; who in any manner interferes with an orderly
23 educational process; who threatens, abuses or otherwise
24 intimidates or attempts to intimidate a school employee or a
25 pupil; or who willfully disobeys a school employee; or who
26 uses abusive or profane language directed at a school employee.
27 Any pupil excluded shall be placed under the control of the
28 principal of the school or a designee. The excluded pupil may
29 be admitted to the classroom or school bus only when the
30 principal, or a designee, provides written certification to the
31 teacher that the pupil may be readmitted and specifies the
32 specific type of disciplinary action, if any, which was taken. If
33 the principal finds that disciplinary action is warranted, he or
34 she shall provide written and, if possible, telephonic notice of
35 such action to the parent(s), guardian(s) or custodian(s). When
36 a teacher excludes the same pupil from his or her classroom or
37 from a school bus three times in one school year, and after
38 exhausting all reasonable methods of classroom discipline
39 provided in the school discipline plan, the pupil may be
40 readmitted to the teacher's classroom only after the principal,
41 teacher and, if possible, the parent(s), guardian(s) or custodian(s)
42 of the pupil have held a conference to discuss the
43 pupil's disruptive behavior patterns, and the teacher and the
44 principal agree on a course of discipline for the pupil and
45 inform the parent(s), guardian(s) or custodian(s) of the course
46 of action. Thereafter, if the pupil's disruptive behavior persists,
47 upon the teacher's request, the principal may, to the extent
48 feasible, transfer the pupil to another setting.

49 (d) The Legislature finds that suspension from school is not
50 appropriate solely for a pupil's failure to attend class. Therefore,
51 no pupil may be suspended from school solely for not
52 attending class. Other methods of discipline may be used for the
53 pupil which may include, but are not limited to, detention, extra
54 class time or alternative class settings.

55 (e) Corporal punishment of any pupil by a school employee
56 is prohibited.

57 (f) Each county board is solely responsible for the adminis-
58 tration of proper discipline in the public schools of the county
59 and shall adopt policies consistent with the provisions of this
60 section to govern disciplinary actions. These policies shall
61 encourage the use of alternatives to corporal punishment,
62 providing for the training of school personnel in alternatives to
63 corporal punishment and for the involvement of parent(s),
64 guardian(s) or custodian(s) in the maintenance of school
65 discipline. The county boards of education shall provide for the
66 immediate incorporation and implementation in the schools of
67 a preventive discipline program which may include the respon-
68 sible student program and a student involvement program
69 which may include the peer mediation program, devised by the
70 West Virginia board of education. Each board may modify
71 such programs to meet the particular needs of the county. The
72 county boards shall provide in-service training for teachers and
73 principals relating to assertive discipline procedures and
74 conflict resolution. The county boards of education may also
75 establish cooperatives with private entities to provide middle
76 educational programs which may include programs focusing on
77 developing individual coping skills, conflict resolution, anger
78 control, self-esteem issues, stress management and decision
79 making for students and any other program related to preven-
80 tive discipline.

81 (g) For the purpose of this section: (1) "Pupil or student"
82 shall include any child, youth or adult who is enrolled in any
83 instructional program or activity conducted under board
84 authorization and within the facilities of or in connection with
85 any program under public school direction: *Provided*, That, in
86 the case of adults, the pupil-teacher relationship shall terminate
87 when the pupil leaves the school or other place of instruction or
88 activity; and (2) "teacher" shall mean all professional educators

89 as defined in section one, article one of this chapter and shall
90 include the driver of a school bus or other mode of transporta-
91 tion.

92 (h) Teachers shall exercise such other authority and
93 perform such other duties as may be prescribed for them by law
94 or by the rules of the state board of education not inconsistent
95 with the provisions of this chapter and chapter eighteen of this
96 code.

**§18A-5-1a. Possessing deadly weapons on premises of educa-
tional facilities; possessing a controlled substance
on premises of educational facilities; assaults and
batteries committed by pupils upon teachers or
other school personnel; temporary suspension,
hearing; procedure, notice and formal hearing;
extended suspension; sale of narcotic; expulsion;
exception; alternative education.**

1 (a) A principal shall suspend a pupil from school or from
2 transportation to or from the school on any school bus if the
3 pupil, in the determination of the principal after an informal
4 hearing pursuant to subsection (d) of this section, has: (i)
5 Violated the provisions of subsection (b), section fifteen, article
6 two, chapter sixty-one of this code; (ii) violated the provisions
7 of subsection (b), section eleven-a, article seven of said chapter;
8 or (iii) sold a narcotic drug, as defined in section one hundred
9 one, article one, chapter sixty-a of this code, on the premises of
10 an educational facility, at a school-sponsored function or on a
11 school bus. If a student has been suspended pursuant to this
12 subsection, the principal shall, within twenty-four hours,
13 request that the county superintendent recommend to the county
14 board that the student be expelled. Upon such a request by a
15 principal, the county superintendent shall recommend to the
16 county board that the student be expelled. Upon such recom-
17 mendation, the county board shall conduct a hearing in accor-

18 dance with subsections (e), (f) and (g) of this section to deter-
19 mine if the student committed the alleged violation. If the
20 county board finds that the student did commit the alleged
21 violation, the county board shall expel the student.

22 (b) A principal shall suspend a pupil from school, or from
23 transportation to or from the school on any school bus, if the
24 pupil, in the determination of the principal after an informal
25 hearing pursuant to subsection (d) of this section, has: (i)
26 Committed an act or engaged in conduct that would constitute
27 a felony under the laws of this state if committed by an adult;
28 or (ii) unlawfully possessed on the premises of an educational
29 facility or at a school-sponsored function a controlled substance
30 governed by the uniform controlled substances act as described
31 in chapter sixty-a of this code. If a student has been suspended
32 pursuant to this subsection, the principal may request that the
33 superintendent recommend to the county board that the student
34 be expelled. Upon such recommendation by the county
35 superintendent, the county board may hold a hearing in accor-
36 dance with the provisions of subsections (e), (f) and (g) of this
37 section to determine if the student committed the alleged
38 violation. If the county board finds that the student did commit
39 the alleged violation, the county board may expel the student.

40 (c) A principal may suspend a pupil from school, or
41 transportation to or from the school on any school bus, if the
42 pupil, in the determination of the principal after an informal
43 hearing pursuant to subsection (d) of this section: (i) Threatened
44 to injure, or in any manner injured, a pupil, teacher, administra-
45 tor or other school personnel; (ii) willfully disobeyed a teacher;
46 (iii) possessed alcohol in an educational facility, on school
47 grounds, a school bus or at any school-sponsored function; (iv)
48 used profane language directed at a school employee or pupil;
49 (v) intentionally defaced any school property; (vi) participated
50 in any physical altercation with another person while under the
51 authority of school personnel; or (vii) habitually violated school

52 rules or policies. If a student has been suspended pursuant to
53 this subsection, the principal may request that the superinten-
54 dent recommend to the county board that the student be
55 expelled. Upon such recommendation by the county superin-
56 tendent, the county board may hold a hearing in accordance
57 with the provisions of subsections (e), (f) and (g) of this section
58 to determine if the student committed the alleged violation. If
59 the county board finds that the student did commit the alleged
60 violation, the county board may expel the student.

61 (d) The actions of any pupil which may be grounds for his
62 or her suspension or expulsion under the provisions of this
63 section shall be reported immediately to the principal of the
64 school in which the pupil is enrolled. If the principal deter-
65 mines that the alleged actions of the pupil would be grounds for
66 suspension, he or she shall conduct an informal hearing for the
67 pupil immediately after the alleged actions have occurred. The
68 hearing shall be held before the pupil is suspended unless the
69 principal believes that the continued presence of the pupil in the
70 school poses a continuing danger to persons or property or an
71 ongoing threat of disrupting the academic process, in which
72 case the pupil shall be suspended immediately and a hearing
73 held as soon as practicable after the suspension.

74 The pupil and his or her parent(s), guardian(s) or custo-
75 dian(s), as the case may be, shall be given telephonic notice, if
76 possible, of this informal hearing, which notice shall briefly
77 state the grounds for suspension.

78 At the commencement of the informal hearing, the principal
79 shall inquire of the pupil as to whether he or she admits or
80 denies the charges. If the pupil does not admit the charges, he
81 or she shall be given an explanation of the evidence possessed
82 by the principal and an opportunity to present his or her version
83 of the occurrence. At the conclusion of the hearing or upon the
84 failure of the noticed student to appear, the principal may

85 suspend the pupil for a maximum of ten school days, including
86 the time prior to the hearing, if any, for which the pupil has
87 been excluded from school.

88 The principal shall report any suspension the same day it
89 has been decided upon, in writing, to the parent(s), guardian(s)
90 or custodian(s) of the pupil by regular United States mail. The
91 suspension also shall be reported to the county superintendent
92 and to the faculty senate of the school at the next meeting after
93 the suspension.

94 (e) Prior to a hearing before the county board, the county
95 board shall cause a written notice which states the charges and
96 the recommended disposition to be served upon the pupil and
97 his or her parent(s), guardian(s) or custodian(s), as the case may
98 be. The notice shall state clearly whether the board will attempt
99 at hearing to establish the student as a dangerous student, as
100 defined by section one, article one of this chapter. The notice
101 also shall include any evidence upon which the board will rely
102 in asserting its claim that the student is a dangerous student.
103 The notice shall set forth a date and time at which the hearing
104 shall be held, which date shall be within the ten-day period of
105 suspension imposed by the principal.

106 (f) The county board shall hold the scheduled hearing to
107 determine if the pupil should be reinstated or should or, under
108 the provisions of this section, must be expelled from school. If
109 the county board determines that the student should or must be
110 expelled from school, it may also determine whether the student
111 is a dangerous student pursuant to subsection (g) of this section.
112 At this, or any hearing before a county board conducted
113 pursuant to this section, the pupil may be represented by
114 counsel, may call his or her own witnesses to verify his or her
115 version of the incident and may confront and cross-examine
116 witnesses supporting the charge against him or her. Such a
117 hearing shall be recorded by mechanical means unless recorded

118 by a certified court reporter. Any such hearing may be post-
119 poned for good cause shown by the pupil but he or she shall
120 remain under suspension until after the hearing. The state
121 board may adopt other supplementary rules of procedure to be
122 followed in these hearings. At the conclusion of the hearing the
123 county board shall either: (1) Order the pupil reinstated
124 immediately at the end of his or her initial suspension; (2)
125 suspend the pupil for a further designated number of days; or
126 (3) expel the pupil from the public schools of the county.

127 (g) A county board that did not intend prior to a hearing to
128 assert a dangerous student claim, that did not notify the student
129 prior to the hearing that such a determination would be consid-
130 ered and that determines through the course of the hearing that
131 the student may be a dangerous student shall schedule a second
132 hearing within ten days to decide the issue. The hearing may be
133 postponed for good cause shown by the pupil, but he or she
134 remains under suspension until after the hearing.

135 A county board that expels a student, and finds that the
136 student is a dangerous student, may refuse to provide alternative
137 education. However, after a hearing conducted pursuant to this
138 section for determining whether a student is a dangerous
139 student, when the student is found to be a dangerous student, is
140 expelled and is denied alternative education, a hearing shall be
141 conducted within three months after the refusal by the board to
142 provide alternative education to reexamine whether or not the
143 student remains a dangerous student and whether the student
144 shall be provided alternative education. Thereafter, a hearing
145 for the purpose of reexamining whether or not the student
146 remains a dangerous student and whether the student shall be
147 provided alternative education shall be conducted every three
148 months for so long as the student remains a dangerous student
149 and is denied alternative education. During the initial hearing,
150 or in any subsequent hearing, the board may consider the
151 history of the pupil's conduct as well as any improvements

152 made subsequent to the expulsion. If it is determined during
153 any of the hearings that the student is no longer a dangerous
154 student or should be provided alternative education, the student
155 shall be provided alternative education during the remainder of
156 the expulsion period.

157 (h) The superintendent may apply to a circuit judge or
158 magistrate for authority to subpoena witnesses and documents,
159 upon his or her own initiative, in a proceeding related to a
160 recommended student expulsion or dangerous student determi-
161 nation, before a county board conducted pursuant to the
162 provisions of this section. Upon the written request of any
163 other party, the superintendent shall apply to a circuit judge or
164 magistrate for the authority to subpoena witnesses, documents
165 or both on behalf of the other party in a proceeding related to a
166 recommended student expulsion or dangerous student determi-
167 nation before a county board. If the authority to subpoena is
168 granted, the superintendent shall subpoena the witnesses,
169 documents or both requested by the other party. Furthermore,
170 if the authority to subpoena is granted, it shall be exercised in
171 accordance with the provisions of section one, article five,
172 chapter twenty-nine-a of this code.

173 Any hearing conducted pursuant to this subsection may be
174 postponed: (1) For good cause shown by the pupil; (2) when
175 proceedings to compel a subpoenaed witness to appear must be
176 instituted; or (3) when a delay in service of a subpoena hinders
177 either party's ability to provide sufficient notice to appear to a
178 witness. A pupil remains under suspension until after the
179 hearing in any case where a postponement occurs.

180 The county boards are directed to report the number of
181 pupils determined to be dangerous students to the state board of
182 education. The state board will compile the county boards'
183 statistics and shall report its findings to the legislative oversight
184 commission on education accountability.

185 (i) Pupils may be expelled pursuant to the provisions of this
186 section for a period not to exceed one school year, except that
187 if a pupil is determined to have violated the provisions of
188 subsection (a) of this section the pupil shall be expelled for a
189 period of not less than twelve consecutive months: *Provided,*
190 That the county superintendent may lessen the mandatory
191 period of twelve consecutive months for the expulsion of the
192 pupil if the circumstances of the pupil's case demonstrably
193 warrant. Upon the reduction of the period of expulsion, the
194 county superintendent shall prepare a written statement setting
195 forth the circumstances of the pupil's case which warrant the
196 reduction of the period of expulsion. The county superinten-
197 dent shall submit the statement to the county board, the
198 principal, the faculty senate and the local school improvement
199 council for the school from which the pupil was expelled. The
200 county superintendent may use the following factors as guide-
201 lines in determining whether or not to reduce a mandatory
202 twelve-month expulsion:

203 (1) The extent of the pupil's malicious intent;

204 (2) The outcome of the pupil's misconduct;

205 (3) The pupil's past behavior history; and

206 (4) The likelihood of the pupil's repeated misconduct.

207 (j) In all hearings under this section, facts shall be found by
208 a preponderance of the evidence.

209 (k) For purposes of this section, nothing herein may be
210 construed to be in conflict with the federal provisions of the
211 Individuals with Disabilities Education Act of 1990 (PL 101-
212 476).

213 (l) Each suspension or expulsion imposed upon a pupil
214 under the authority of this section shall be recorded in the

215 uniform integrated regional computer information system
216 (commonly known as the West Virginia Education Information
217 System) described in subsection (f), section twenty-six, article
218 two, chapter eighteen of this code.

219 (1) The principal of the school at which the pupil is enrolled
220 shall create an electronic record within twenty-four hours of the
221 imposition of the suspension or expulsion.

222 (2) Each record of a suspension or expulsion shall include
223 the pupil's name and identification number, the reason for the
224 suspension or expulsion, and the beginning and ending dates of
225 the suspension or expulsion.

226 (3) The state board of education shall collect and dissemi-
227 nate data so that any principal of a public school in West
228 Virginia can review the complete history of disciplinary actions
229 taken by West Virginia public schools against any pupil
230 enrolled or seeking to enroll at that principal's school. The
231 purposes of this provision are to allow every principal to fulfill
232 his or her duty under subsection (b), section fifteen-f, article
233 five, chapter eighteen of this code to determine whether a pupil
234 requesting to enroll at a public school in West Virginia is
235 currently serving a suspension or expulsion from another public
236 school in West Virginia and to allow principals to obtain
237 general information about pupils' disciplinary histories.

238 (m) Principals may exercise any other authority and
239 perform any other duties to discipline pupils consistent with
240 state and federal law, including policies of the state board of
241 education.

242 (n) Each county board is solely responsible for the adminis-
243 tration of proper discipline in the public schools of the county
244 and shall adopt policies consistent with the provisions of this
245 section to govern disciplinary actions.

CHAPTER 11

**(S. B. 3002 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed November 16, 2004; in effect from passage.]

[Approved by the Governor on December 2, 2004.]

AN ACT to amend and reenact §3-1-48 of the Code of West Virginia, 1931, as amended, relating to facilitating implementation of the “Help America Vote Act of 2002”; implementing electronic voting systems; providing legislative findings; continuing the state election fund; establishing special revenue account; specifying criteria for obtaining a loan; providing for investment of fund moneys; allowing loans to counties for electronic voting systems and for upgrades of previously purchased electronic voting systems; specifying eligibility requirements for loans; giving authority to state election commission to waive matching moneys; authorizing emergency and legislative rules; limiting availability of loans; specifying duties of secretary of state; and authorizing methods for compelling repayment of loans.

Be it enacted by the Legislature of West Virginia:

That §3-1-48 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 1. LIMITS AND JURISDICTION.

§3-1-48. Legislative findings; state election fund; loans to counties; availability of funds; repayment of loans.

1 (a) *Legislative findings.* — The “Help America Vote Act
2 of 2002”, PL 107-252, 42 U. S. C. §15301, *et seq.*, provides

3 funding so that all states will be able to implement some form
4 of electronic voting system to replace punch card and lever
5 machines by two thousand six. The new voting systems must
6 meet several requirements including notifying the voter of over
7 votes and permitting each voter to review his or her ballot and
8 correct errors before casting the vote. The limited, finite
9 funding available to the state will not be sufficient to meet
10 current and future needs for equipment and services as equip-
11 ment needs to be obtained, repaired or replaced as technology
12 changes. It is the intent of the Legislature to maximize the
13 available funds by establishing a no-interest loan program to
14 assist any county, regardless of its current voting system, in
15 purchasing necessary electronic voting equipment and services.
16 As the loans are repaid funds will continue to be available to
17 meet future needs. It is not the intent of the Legislature to
18 mandate any technology for voting systems to be utilized in this
19 state and this section is intended only to establish terms and
20 conditions for providing loan assistance to counties in accor-
21 dance with the provisions of this section.

22 (b) *State election fund.* — The special revenue account
23 created in the state treasury and known as the “State Election
24 Fund” account is continued. Expenditures from the account
25 shall be used by the secretary of state for the administration of
26 this chapter in accordance with the provisions of 42 U. S. C.
27 §15301, *et seq.*, the “Help America Vote Act of 2002”, PL 107-
28 252, in accordance with the provisions of article eleven, chapter
29 four of this code.

30 (c) *Establishment of special revenue account.* — There is
31 created in the state treasury a special revenue revolving fund
32 account known as the “county assistance voting equipment
33 fund” which shall be an interest-bearing account. The fund
34 shall consist of an initial transfer not to exceed eight million
35 five hundred thousand dollars from the state election fund
36 established under subsection (b) of this section pursuant to

37 legislative appropriation; any future funds received from the
38 federal government under the “Help America Vote Act of
39 2002”, PL 107-252, 42 U. S. C. §15301, *et seq.*, or subsequent
40 acts providing funds to states to obtain, modify or improve
41 voting equipment and obtain necessary related services includ-
42 ing voting systems, technology and methods for casting and
43 counting votes; any funds appropriated by the Legislature or
44 transferred by any public agency as contemplated or permitted
45 by applicable federal or state law; and any accrued interest or
46 other return on the moneys in the fund. The balance remaining
47 in the fund at the end of each fiscal year shall remain in the
48 fund and not revert to the state general revenue fund.

49 (d) *Use of funds.* — The money in the fund shall be used
50 only in the manner and for the purposes prescribed in this
51 section. Notwithstanding any provision of law to the contrary,
52 funds in the county assistance voting equipment fund may not
53 be designated or transferred for any purpose other than those set
54 forth in this section.

55 (e) *Administration of the fund.* — The secretary of state
56 shall administer the fund with the approval of the state election
57 commission.

58 (f) *Investment of fund.* — The moneys of the fund shall be
59 invested pursuant to article six, chapter twelve of this code and
60 in such a manner that sufficient moneys are available as needed
61 for loans authorized under this section.

62 (g) *Loans to counties.* — The county assistance voting
63 equipment fund shall be used to make no-interest loans to
64 counties to obtain, modify or replace voting equipment,
65 software and necessary related services including voting
66 systems, technology and methods for casting and counting
67 votes: *Provided*, That any county commission that purchased an
68 electronic voting system prior to the thirteenth day of Novem-
69 ber, two thousand four, is eligible to apply for matching funds

70 under this section to upgrade the system: *Provided, however,*
71 That matching funds available for an upgrade shall not exceed
72 the amount available under subdivision (1) of this subsection
73 for the purchase of a new electronic voting system under the
74 secretary of state's authorized contract. The loans shall be
75 made under the following terms and conditions:

76 (1) The state election commission shall, subject to avail-
77 ability of funds, loan no more than fifty percent of the cost of
78 the voting equipment or services to any county commission:
79 *Provided,* That a portion or all of the county matching require-
80 ment may be waived in limited circumstances as determined by
81 the state election commission pursuant to this section.

82 (2) The county commission shall provide sufficient
83 documentation to establish to the satisfaction of the state
84 election commission that the county commission has at least
85 fifty percent of the money necessary to obtain the voting
86 equipment, software or services for which the loan is sought.

87 (3) The county commission shall enter into a contract with
88 the state election commission for the repayment of the loan
89 over a period not to exceed five years or the length of the
90 contract to obtain the equipment, software or services, which-
91 ever is less.

92 (4) The county commission shall use the loan for voting
93 equipment and services certified by the state election commis-
94 sion pursuant to the provisions of article four-a of this chapter
95 and authorized for use by the secretary of state.

96 (5) A county commission may apply for a loan on a form
97 provided by the secretary of state. The form shall, in addition
98 to requesting information necessary for processing the applica-
99 tion, state the deadline for submitting the application and the
100 eligibility requirements for obtaining a loan.

101 (6) The state election commission may waive a portion or
102 all of the matching money required by this subsection for a
103 county commission that can establish that it has exercised due
104 diligence in raising its share of the costs but has been unable to
105 do so. On forms provided by the secretary of state the county
106 commission shall request a waiver and shall make a full
107 financial disclosure of its assets and liabilities as well as
108 potential for future income when applying for a waiver. The
109 county commission shall demonstrate, to the satisfaction of the
110 state election commission, its inability to meet the matching
111 requirements of this subsection and its ability to repay the loan
112 in a timely manner. Notwithstanding the provisions of subdivi-
113 sion (3) of this subsection, the state election commission may
114 extend the repayment period on a year-to-year basis for a
115 repayment period not to exceed five additional years.

116 (h) *Application.* — An application for a loan shall be
117 approved by the state election commission if the requirements
118 of this section have been met.

119 (i) *Rulemaking.* — The secretary of state shall propose for
120 promulgation in accordance with article three, chapter twenty-
121 nine-a of this code emergency and legislative rules necessary to
122 effectuate the purposes of this section.

123 (j) *Availability of loans.* — The state election commission
124 may not approve a loan under this section until final standards
125 for electronic voting equipment with a voter verified paper
126 ballot have been established by the secretary of state or the
127 national institute for standards and technology. The state
128 election commission may not approve a loan for the purchase,
129 lease, rental or other similar transaction to obtain electronic
130 voting equipment, software or necessary related services unless
131 obtained under a contract authorized by the secretary of state
132 pursuant to rules promulgated under this section.

133 (k) *Repayment of loans.* — The secretary of state may, by
134 civil action, mandamus or other judicial or administrative
135 proceeding, compel performance by a county commission of all
136 the terms and conditions of the loan agreement between the
137 state and that county commission including periodic reduction
138 of any moneys due the county from the state.

CHAPTER 12

**(S. B. 3005 — By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed November 16, 2004; in effect from passage.]
[Approved by the Governor on December 2, 2004.]

AN ACT to amend and reenact §33-48-2, §33-48-4, §33-48-6 and §33-48-7 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §33-48-7a, all relating to the West Virginia health insurance plan; placing the plan within the office of the insurance commissioner; exempting the plan from certain state purchasing requirements; authorizing the hiring of an executive director and exempting such director from the classified service; changing eligibility criteria for the plan; limiting the eligibility of recipients of the West Virginia children's health insurance program; prohibiting balance billing of plan members by health care providers for covered services provided under the plan; authorizing the insurance commissioner to utilize department staff and resources in administering the plan; and creating a special revenue account known as the "West Virginia health insurance plan fund" for the purpose of receiving and expending moneys to be used in connection with the West Virginia health insurance plan.

Be it enacted by the Legislature of West Virginia:

That §33-48-2, §33-48-4, §33-48-6 and §33-48-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §33-48-7a, all to read as follows:

ARTICLE 48. MODEL HEALTH PLAN FOR UNINSURABLE INDIVIDUALS ACT.

- §33-48-2. Operation of the plan.
- §33-48-4. Eligibility.
- §33-48-6. Plan administrator.
- §33-48-7. Funding of the plan.
- §33-48-7a. Special revenue account created.

§33-48-2. Operation of the plan.

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

8 (b) The plan shall operate subject to the supervision and
9 control of the board. The board shall consist of the commis-
10 sioner or his or her designated representative, who shall serve
11 as an ex officio member of the board and shall be its chairper-
12 son, and six members appointed by the governor. At least two
13 board members shall be individuals, or the parent, spouse or
14 child of individuals, reasonably expected to qualify for cover-
15 age by the plan. At least two board members shall be represen-
16 tatives of insurers. At least one board member shall be a
17 hospital administrator. A majority of the board shall be com-
18 posed of individuals who are not representatives of insurers or
19 health care providers.

20 (c) The initial board members shall be appointed as follows:
21 One third of the members to serve a term of two years; one
22 third of the members to serve a term of four years; and one third
23 of the members to serve a term of six years. Subsequent board
24 members shall serve for a term of three years. A board mem-
25 ber's term shall continue until his or her successor is appointed.

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

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

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

47 (g) The plan of operation shall:

48 (1) Establish procedures for operation of the plan: *Pro-*
49 *vided*, That the plan shall be operated so as to qualify as an
50 acceptable alternative mechanism under the federal Health
51 Insurance Portability and Accountability Act and as an option

52 to provide health insurance coverage for individuals eligible for
53 the federal health care tax credit established by the federal
54 Trade Adjustment Assistance Reform Act of 2002 (Section 35
55 of the Internal Revenue Code of 1986);

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

58 (3) Establish procedures for the handling, accounting and
59 auditing of assets, moneys and claims of the plan and the plan
60 administrator;

61 (4) Develop and implement a program to publicize the
62 existence of the plan, the eligibility requirements and proce-
63 dures for enrollment;

64 (5) Establish procedures under which applicants and
65 participants may have grievances reviewed by a grievance
66 committee appointed by the board. The grievances shall be
67 reported to the board after completion of the review. The board
68 shall retain all written complaints regarding the plan for at least
69 three years; and

70 (6) Provide for other matters as may be necessary and
71 proper for the execution of the board's powers, duties and
72 obligations under this article.

73 (h) The plan shall have the general powers and authority
74 granted under the laws of this state to health insurers and, in
75 addition thereto, the specific authority to:

76 (1) Enter into contracts as are necessary or proper to carry
77 out the provisions and purposes of this article, including the
78 authority, with the approval of the commissioner, to enter into
79 contracts with similar plans of other states for the joint perfor-
80 mance of common administrative functions or with persons or
81 other organizations for the performance of administrative

82 functions: *Provided*, That the provisions of article three, chapter
83 five-a of this code relating to the division of purchasing of the
84 department of administration do not apply to any contracts
85 executed by or on behalf of the plan under this article;

86 (2) Sue or be sued, including taking any legal actions
87 necessary or proper to recover or collect assessments due the
88 plan;

89 (3) Take such legal action as necessary:

90 (A) To avoid the payment of improper claims against the
91 plan or the coverage provided by or through the plan;

92 (B) To recover any amounts erroneously or improperly paid
93 by the plan;

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

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

97 (4) Establish and modify, from time to time, as appropriate,
98 rates, rate schedules, rate adjustments, expense allowances,
99 agents' referral fees, claim reserve formulas and any other
100 actuarial function appropriate to the operation of the plan.
101 Rates and rate schedules may be adjusted for appropriate
102 factors such as age, sex and geographic variation in claim cost
103 and shall take into consideration appropriate factors in accor-
104 dance with established actuarial and underwriting practices;

105 (5) Issue policies of insurance in accordance with the
106 requirements of this article;

107 (6) Appoint appropriate legal, actuarial and other commit-
108 tees as necessary to provide technical assistance in the opera-
109 tion of the plan, policy and other contract design and any other
110 function within the authority of the pool;

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

115 (8) Establish rules, conditions and procedures for reinsuring
116 risks of participating insurers desiring to issue plan coverages
117 in their own name. Provision of reinsurance shall not subject
118 the plan to any of the capital or surplus requirements, if any,
119 otherwise applicable to reinsurers;

120 (9) Employ and fix the compensation of employees,
121 including an executive director of the plan. The executive
122 director shall have overall management responsibility for the
123 plan and is exempt from the classified service and not subject
124 to the procedures and protections provided by articles six and
125 six-a, chapter twenty-nine of this code;

126 (10) Prepare and distribute certificate of eligibility forms
127 and enrollment instruction forms to insurance producers and to
128 the general public;

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

130 (12) Issue additional types of health insurance policies to
131 provide optional coverages, including medicare supplemental
132 insurance;

133 (13) Provide for and employ cost containment measures and
134 requirements, including, but not limited to, preadmission
135 screening, second surgical opinion, concurrent utilization
136 review and individual case management for the purpose of
137 making the benefit plan more cost effective;

138 (14) Design, utilize, contract or otherwise arrange for the
139 delivery of cost-effective health care services, including
140 establishing or contracting with preferred provider organiza-

141 tions, health maintenance organizations and other limited
142 network provider arrangements: *Provided*, That all contracts
143 with preferred provider organizations, health maintenance
144 organizations, other network providers or other health care
145 providers shall provide that plan participants are not personally
146 liable for the cost of services covered by the plan other than
147 applicable deductibles or copayments, including any balance
148 claimed by the provider to be owed as being the difference
149 between that provider's charge or charges and the amount
150 payable by the plan; and

151 (15) Adopt bylaws, policies and procedures as may be
152 necessary or convenient for the implementation of this article
153 and the operation of the plan.

154 (i) The board shall make an annual report to the governor
155 which shall also be filed with the Legislature. The report shall
156 summarize the activities of the plan in the preceding calendar
157 year, including the net written and earned premiums, plan
158 enrollment, the expense of administration, and the paid and
159 incurred losses.

160 (j) Study and recommend to the Legislature in January, two
161 thousand six, alternative funding mechanisms for the continua-
162 tion of the health plan for uninsurable individuals.

163 (k) Neither the board nor its employees shall be liable for
164 any obligations of the plan. No member or employee of the
165 board shall be liable, and no cause of action of any nature may
166 arise against them, for any act or omission related to the
167 performance of their powers and duties under this article unless
168 such act or omission constitutes willful or wanton misconduct.
169 The board may provide in its bylaws or rules for indemnifica-
170 tion of, and legal representation for, its members and employ-
171 ees.

§33-48-4. Eligibility.

1 (a) The following persons are eligible for plan coverage:

2 (1) Any individual who is and continues to be a resident of
3 this state if evidence is provided; of a notice of rejection or
4 refusal to issue substantially similar insurance for health
5 reasons by one insurer or of a refusal by an insurer to issue
6 insurance except at a rate exceeding the plan rate, except that a
7 rejection or refusal by an insurer offering only stop loss, excess
8 of loss or reinsurance coverage shall not be sufficient evidence
9 under this subdivision;

10 (2) Any individual who is legally domiciled in this state and
11 is eligible for the credit for health insurance costs under Section
12 35 of the Internal Revenue Code of 1986; and

13 (3) Any federally defined eligible individual who has not
14 experienced a significant break in coverage and who is and
15 continues to be a resident of this state.

16 (b) The board shall promulgate a list of medical or health
17 conditions for which a person is eligible for plan coverage
18 without applying for health insurance coverage pursuant to
19 subdivision (1), subsection (a) of this section. Persons who can
20 demonstrate the existence or history of any medical or health
21 conditions on the list promulgated by the board are not required
22 to prove the evidence specified in said subdivision. The list
23 shall be effective on the first day of the operation of the plan
24 and may be amended, from time to time, as may be appropriate.

25 (c) Each dependent of a person who is eligible for plan
26 coverage is also eligible for plan coverage.

27 (d) A person is not eligible for coverage under the plan if:

28 (1) The person has or obtains health insurance coverage
29 substantially similar to or more comprehensive than a plan

30 policy or would be eligible to have coverage if the person
31 elected to obtain it, except that:

32 (A) A person may maintain other coverage for the period of
33 time the person is satisfying any preexisting condition waiting
34 period under a plan policy; and

35 (B) A person may maintain plan coverage for the period of
36 time the person is satisfying a preexisting condition waiting
37 period under another health insurance policy intended to replace
38 the plan policy;

39 (2) The person is determined to be eligible for health care
40 benefits under the state medicaid law or the West Virginia
41 children's health insurance program;

42 (3) The person has previously terminated plan coverage
43 unless twelve months have lapsed since such terminations,
44 except that this subdivision does not apply with respect to an
45 applicant who is a federally defined eligible individual or with
46 respect to an applicant who has exhausted annual benefits under
47 the West Virginia children's health insurance program;

48 (4) The plan has paid out one million dollars in benefits on
49 behalf of the person;

50 (5) The person is an inmate or resident of a public institu-
51 tion, except that this subdivision does not apply with respect to
52 an applicant who is a federally defined eligible individual; or

53 (6) The person's premiums are paid for or reimbursed under
54 any government sponsored program or by any government
55 agency or health care provider, except as an otherwise qualify-
56 ing full-time employee, or dependent thereof, of a government
57 agency or health care provider.

58 (e) Coverage shall cease:

- 59 (1) On the date a person is no longer a resident of this state;
- 60 (2) On the date a person requests coverage to end;
- 61 (3) Upon the death of the covered person;
- 62 (4) On the date state law requires cancellation of the policy;
- 63 or
- 64 (5) At the option of the plan, thirty days after the plan
- 65 makes any inquiry concerning the person's eligibility or place
- 66 of residence to which the person does not reply.
- 67 (f) Except under the circumstance described in subsection
- 68 (d) of this section, a person who ceases to meet the eligibility
- 69 requirements of this section may be terminated at the end of the
- 70 policy period for which the necessary premiums have been
- 71 paid.

§33-48-6. Plan administrator.

- 1 (a) The board shall select a plan administrator through a
- 2 competitive bidding process to administer the plan. The board
- 3 shall evaluate bids submitted based on criteria established by
- 4 the board which shall include:
- 5 (1) The plan administrator's proven ability to handle health
- 6 insurance coverage to individuals;
- 7 (2) The efficiency and timeliness of the plan administrator's
- 8 claim processing procedures;
- 9 (3) An estimate of total charges for administering the plan;
- 10 (4) The plan administrator's ability to apply effective cost
- 11 containment programs and procedures and to administer the
- 12 plan in a cost efficient manner; and

13 (5) The financial condition and stability of the plan admin-
14 istrator.

15 (b) (1) The plan administrator shall serve for a period
16 specified in the contract between the plan and the plan adminis-
17 trator subject to removal for cause and subject to any terms,
18 conditions and limitations of the contract between the plan and
19 the plan administrator.

20 (2) At least one year prior to the expiration of each period
21 of service by a plan administrator, the board shall invite eligible
22 entities, including the current plan administrator to submit bids
23 to serve as the plan administrator. Selection of the plan
24 administrator for the succeeding period shall be made at least
25 six months prior to the end of the current period.

26 (c) The plan administrator shall perform such functions
27 relating to the plan as may be assigned to it, including:

28 (1) Determination of eligibility;

29 (2) Payment of claims;

30 (3) Establishment of a premium billing procedure for
31 collection of premium from persons covered under the plan;
32 and

33 (4) Other necessary functions to assure timely payment of
34 benefits to covered persons under the plan.

35 (d) The plan administrator shall submit regular reports to
36 the board regarding the operation of the plan. The frequency,
37 content and form of the report shall be specified in the contract
38 between the board and the plan administrator.

39 (e) Following the close of each calendar year, the plan
40 administrator shall determine net written and earned premiums,

41 the expense of administration and the paid and incurred losses
42 for the year and report this information to the board and the
43 commission on a form prescribed by the commissioner.

44 (f) Notwithstanding any other provision in this section to
45 the contrary, the board may elect to designate the public
46 employees insurance agency as the plan administrator. If so
47 designated, the public employees insurance agency shall
48 provide the services set forth in subsection (c) of this section
49 and shall be subject to the reporting requirements of subsections
50 (d) and (e) of this section. The plan shall, if the public employ-
51 ees insurance agency is designated by the board as the plan
52 administrator, reimburse health care providers at the same
53 health care reimbursement rates then in effect for the West
54 Virginia public employees insurance agency and health care
55 providers are subject to the same prohibition against balance
56 billing of plan participants as set forth in section four, article
57 twenty-nine-d, chapter sixteen of this code.

§33-48-7. Funding of the plan.

1 (a) *Premiums.* —

2 (1) The plan shall establish premium rates for plan coverage
3 as provided in subdivision (2) of this subsection. Separate
4 schedules of premium rates based on age, sex and geographical
5 location may apply for individual risks. Premium rates and
6 schedules shall be submitted to the commissioner for approval
7 prior to use.

8 (2) The plan, with the assistance of the commissioner, shall
9 determine a standard risk rate by considering the premium rates
10 charged by other insurers offering health insurance coverage to
11 individuals. The standard risk rate shall be established using
12 reasonable actuarial techniques and shall reflect anticipated
13 experience and expenses for such coverage. Initial rates for
14 plan coverage shall not be less than one hundred twenty-five

15 percent of rates established as applicable for individual standard
16 risks. Subject to the limits provided in this subdivision,
17 subsequent rates shall be established to provide fully for the
18 expected costs of claims including recovery of prior losses,
19 expenses of operation, investment income of claim reserves and
20 any other cost factors subject to the limitations described
21 herein. In no event shall plan rates exceed one hundred fifty
22 percent of rates applicable to individual standard risks.

23 (b) Notwithstanding the provisions of subsection (c),
24 section eight, article twenty-nine-b, chapter sixteen of this code
25 and not to be construed as in conflict therewith, the health care
26 authority is authorized to increase the assessment obligation of
27 hospitals in an amount not to exceed a maximum of twenty-five
28 percent above the one tenth of one percent specified in said
29 subsection and the entire assessment, including the additional
30 assessment, shall be collected as specified in said subsection
31 Upon receipt of the additional assessment, the health care
32 authority shall transfer all proceeds generated from the addi-
33 tional assessment collected to the special revenue account
34 established in section seven-a of this article.

35 (c) The plan is authorized to receive and expend any federal
36 grant.

37 (d) With the consent of the board, the commissioner is
38 authorized to utilize his or her administrative staff and re-
39 sources in administering this article. The board shall reimburse
40 the commissioner for all costs of administrative and actuarial
41 services, supplies and other costs incurred by the commissioner
42 in implementing the provisions of this article.

§33-48-7a. Special revenue account created.

1 (a) There is hereby created a special revenue account in the
2 state treasury, designated the "West Virginia Health Insurance
3 Plan Fund", which shall be an interest-bearing account and may

4 be invested in the manner permitted by article six, chapter
5 twelve of this code, with the interest income a proper credit to
6 the fund, unless otherwise designated in law. The fund shall be
7 administered by the commissioner, under the supervision and
8 control of the board, and used to pay all proper costs incurred
9 in implementing the provisions of this article, all administrative
10 costs of the plan, all claims and all proper ongoing costs of the
11 plan. Moneys deposited into this account are available for
12 expenditure as the commissioner may direct in accordance with
13 the provisions of this article.

14 (b) The following funds shall be paid into this account:

15 (1) All premium payments received from individuals
16 insured by the plan;

17 (2) All other payments, gifts or income from any source;
18 and

19 (3) Transfers from the health care authority of all proceeds
20 generated from the additional assessment collected pursuant to
21 subsection (b), section seven of this article at any time after the
22 first day of July, two thousand four.

CHAPTER 13

**(S. B. 3001— By Senators Tomblin, Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed November 16, 2004; in effect from passage.]

[Approved by the Governor on December 2, 2004.]

AN ACT to amend and reenact §11B-2-15 of the Code of West Virginia, 1931, as amended, relating to appropriation in certain

fiscal years of moneys to the bureau for medical services of the department of health and human resources from funds held in reserve for the public employees insurance agency.

Be it enacted by the Legislature of West Virginia:

That §11B-2-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. STATE BUDGET OFFICE.

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

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

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

18 (c) Annually each state agency, except for the higher
19 education central office created in article four, chapter eigh-
20 teen-b of this code; the higher education governing boards as
21 defined in articles two and three of said chapter; and the state
22 institutions of higher education as defined in section two,

23 article one of said chapter shall transfer one percent of its
24 annualized expenditures from state funds, excluding federal
25 funds based on filled full-time equivalents as determined by the
26 state budget office as of the first day of April for that fiscal
27 year, to the public employees insurance reserve fund. The
28 secretary may exempt that transfer only upon a showing by the
29 requesting agency that the continued operation of that agency
30 is dependent upon receipt of the exemption.

31 (d) Annually the secretary shall provide a report to the
32 governor and the Legislature on the amount of reserves
33 established pursuant to the provisions of this section, the
34 number of exemptions granted and the agencies receiving those
35 exemptions.

CHAPTER 14

**(Com. Sub. for S. B. 3003 — By Senators Tomblin,
Mr. President, and Sprouse)
[By Request of the Executive]**

[Passed November 16, 2004; in effect from passage.]

[Approved by the Governor on December 2, 2004.]

AN ACT to amend and reenact §30-3-10 of the Code of West Virginia, 1931, as amended, relating to granting the board of medicine flexibility under special circumstances to issue a license to applicants who otherwise do not meet the requirement of the article; allowing granting of licensure where there are purely technical, nonmaterial errors or omissions in the application process; setting forth criteria for issuance of licenses in extraordinary circumstances; requiring that those issued licenses under extraordinary circumstances have substantially equivalent

credentials; requiring a three-fourths vote for issuance of an extraordinary circumstances license; requiring reporting to president of the Senate and speaker of the House of Delegates of board's decision; application for extraordinary circumstances applications; and establishing first day of July, two thousand five, as the cut-off date for applying for extraordinary circumstances licensure.

Be it enacted by the Legislature of West Virginia:

That §30-3-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. WEST VIRGINIA MEDICAL PRACTICE ACT.

§30-3-10. Licenses to practice medicine and surgery or podiatry.

1 (a) The board shall issue a license to practice medicine and
2 surgery or to practice podiatry to any individual who is quali-
3 fied to do so in accordance with the provisions of this article.

4 (b) For an individual to be licensed to practice medicine
5 and surgery in this state, he or she must meet the following
6 requirements:

7 (1) He or she shall submit an application to the board on a
8 form provided by the board and remit to the board a reasonable
9 examination fee, the amount of the reasonable fee to be set by
10 the board. The application must, as a minimum, require a
11 sworn and notarized statement that the applicant is of good
12 moral character and that he or she is physically and mentally
13 capable of engaging in the practice of medicine and surgery;

14 (2) He or she must provide evidence of graduation and
15 receipt of the degree of doctor of medicine or its equivalent
16 from a school of medicine, which is approved by the liaison
17 committee on medical education or by the board;

18 (3) He or she must submit evidence to the board of having
19 successfully completed a minimum of one year of graduate
20 clinical training in a program approved by the accreditation
21 council for graduate medical education; and

22 (4) He or she must pass an examination approved by the
23 board, which examination can be related to a national standard.
24 The examination shall be in the English language and be
25 designed to ascertain an applicant's fitness to practice medicine
26 and surgery. The board shall before the date of examination
27 determine what will constitute a passing score: *Provided*, That
28 the board, or a majority of it, may accept in lieu of an examina-
29 tion of applicants the certificate of the national board of
30 medical examiners: *Provided, however*, That the board is
31 authorized to enter into reciprocity agreements with medical
32 licensing authorities in other states, the District of Columbia,
33 Canada or the Commonwealth of Puerto Rico and, for an
34 applicant who: (i) Is currently fully licensed, excluding any
35 temporary, conditional or restricted license or permit, under the
36 laws of another state or jurisdiction having reciprocity; (ii) has
37 been engaged on a full-time professional basis in the practice of
38 medicine within that state or jurisdiction for a period of at least
39 five years; and (iii) is not the subject of any pending disciplin-
40 ary action by a medical licensing board and has not been the
41 subject of professional discipline by a medical licensing board
42 in any jurisdiction, the board may permit licensure in this state
43 by reciprocity. If an applicant fails to pass the examination on
44 two occasions, he or she shall successfully complete a course of
45 study or training, as approved by the board, designed to
46 improve his or her ability to engage in the practice of medicine
47 and surgery before being eligible for reexamination: *Provided*
48 *further*, That an applicant is required to attain a passing score
49 on all components or steps of the examination within a period
50 of seven consecutive years: *And provided further*, That the
51 board may, in its discretion, extend this period of seven
52 consecutive years for up to three additional years for any

53 medical student enrolled in a dual MD-PhD program. The
54 board need not reject a candidate for a nonmaterial technical or
55 administrative error or omission in the application process that
56 is unrelated to the candidate's professional qualifications as
57 long as there is sufficient information available to the board to
58 determine the eligibility of the candidate for licensure.

59 (c) In addition to the requirements of subsection (b) of this
60 section, any individual who has received the degree of doctor
61 of medicine or its equivalent from a school of medicine located
62 outside of the United States, the Commonwealth of Puerto Rico
63 and Canada to be licensed to practice medicine in this state
64 must also meet the following additional requirements and
65 limitations:

66 (1) He or she must be able to demonstrate to the satisfaction
67 of the board his or her ability to communicate in the English
68 language;

69 (2) Before taking a licensure examination, he or she must
70 have fulfilled the requirements of the educational commission
71 for foreign medical graduates for certification, or he or she must
72 provide evidence of receipt of a passing score on the examina-
73 tion of the educational commission for foreign medical gradu-
74 ates: *Provided*, That an applicant who: (i) Is currently fully
75 licensed, excluding any temporary, conditional or restricted
76 license or permit, under the laws of another state, the District of
77 Columbia, Canada or the Commonwealth of Puerto Rico; (ii)
78 has been engaged on a full-time professional basis in the
79 practice of medicine within the state or jurisdiction where the
80 applicant is fully licensed for a period of at least five years; and
81 (iii) is not the subject of any pending disciplinary action by a
82 medical licensing board and has not been the subject of
83 professional discipline by a medical licensing board in any
84 jurisdiction is not required to have a certificate from the
85 educational commission for foreign medical graduates;

86 (3) He or she must submit evidence to the board of either:
87 (i) Having successfully completed a minimum of two years of
88 graduate clinical training in a program approved by the accredi-
89 tation council for graduate medical education; or (ii) current
90 certification by a member board of the American board of
91 medical specialties.

92 (d) For an individual to be licensed to practice podiatry in
93 this state, he or she must meet the following requirements:

94 (1) He or she shall submit an application to the board on a
95 form provided by the board and remit to the board a reasonable
96 examination fee, the amount of the reasonable fee to be set by
97 the board. The application must, as a minimum, require a
98 sworn and notarized statement that the applicant is of good
99 moral character and that he or she is physically and mentally
100 capable of engaging in the practice of podiatric medicine;

101 (2) He or she must provide evidence of graduation and
102 receipt of the degree of doctor of podiatric medicine and its
103 equivalent from a school of podiatric medicine which is
104 approved by the council of podiatry education or by the board;

105 (3) He or she must pass an examination approved by the
106 board, which examination can be related to a national standard.
107 The examination shall be in the English language and be
108 designed to ascertain an applicant's fitness to practice podiatric
109 medicine. The board shall before the date of examination
110 determine what will constitute a passing score. If an applicant
111 fails to pass the examination on two occasions, he or she shall
112 successfully complete a course of study or training, as approved
113 by the board, designed to improve his or her ability to engage
114 in the practice of podiatric medicine, before being eligible for
115 reexamination: *Provided*, That an applicant is required to attain
116 a passing score on all components or steps of the examination
117 within a period of seven consecutive years; and

118 (4) He or she must submit evidence to the board of having
119 successfully completed a minimum of one year of graduate
120 clinical training in a program approved by the council on
121 podiatric medical education or the colleges of podiatric
122 medicine. The board may consider a minimum of two years of
123 graduate podiatric clinical training in the U. S. armed forces or
124 three years' private podiatric clinical experience in lieu of this
125 requirement.

126 (e) Notwithstanding any of the foregoing, the board may
127 grant licenses to an applicant in extraordinary circumstances
128 under the following conditions:

129 (1) Upon a finding by the board that based on the appli-
130 cant's exceptional education, training and practice credentials,
131 the applicant's practice in the state would be beneficial to the
132 public welfare;

133 (2) Upon a finding by the board that the applicant's
134 education, training and practice credentials are substantially
135 equivalent to the requirements of licensure established in this
136 article;

137 (3) That a license granted under these extraordinary
138 circumstances is approved by a vote of three fourths of the
139 members of the board;

140 (4) That orders denying applications for a license under this
141 subsection are not appealable;

142 (5) That the board report to the president of the Senate and
143 the speaker of the House of Delegates all decisions made
144 pursuant to this subsection and the reasons for those decisions;
145 and

146 (6) That the provisions of this subsection exist until the first
147 day of July, two thousand five, unless sooner terminated,
148 continued or reestablished by an act of the Legislature.

149 (f) All licenses to practice medicine and surgery granted
150 prior to the first day of July, one thousand nine hundred
151 ninety-one, and valid on that date shall continue in full effect
152 for the term and under the conditions provided by law at the
153 time of the granting of the license: *Provided*, That the provi-
154 sions of subsection (d) of this section do not apply to any
155 person legally entitled to practice chiropody or podiatry in this
156 state prior to the eleventh day of June, one thousand nine
157 hundred sixty-five: *Provided, however*, That all persons
158 licensed to practice chiropody prior to the eleventh day of June,
159 one thousand nine hundred sixty-five, shall be permitted to use
160 the term “chiropody-podiatry” and shall have the rights,
161 privileges and responsibilities of a podiatrist set out in this
162 article.

CHAPTER 15

**(H. B. 304 — By Mr. Speaker, Mr. Kiss, and Delegate Trump)
[By Request of the Executive]**

[Passed November 16, 2004; in effect from passage.]
[Approved by the Governor on December 2, 2004.]

AN ACT to amend and reenact §15-12-2, §15-12-2a, §15-12-3, §15-12-5, §15-12-6, §15-12-7 and §15-12-8 of the Code of West Virginia, 1931, as amended; and further amending said code by adding thereto a new section, designated §15-12-3a, all relating to sex offender registration; adding information related to motor vehicles owned or regularly operated by a registrant to the registry; providing definition of business days; requiring registration upon conviction, release or other disposition status; providing that sexually violent predators may petition for removal from the registry only if an underlying conviction is reversed or vacated;

clarifying permissible disclosure of information on the registry; clarifying duties of institution officials and persons required to register; and creating a penalty for any person to knowingly fail to report required information or to knowingly refuse or falsify required information.

Be it enacted by the Legislature of West Virginia:

That §15-12-2, §15-12-2a, §15-12-3, §15-12-5, §15-12-6, §15-12-7 and §15-12-8 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §15-12-3a, all to read as follows:

ARTICLE 12. SEX OFFENDER REGISTRATION ACT.

- §15-12-2. Registration.
- §15-12-2a. Court determination of sexually violent predator.
- §15-12-3. Change in registry information.
- §15-12-3a. Petition for removal of sexually violent predator designation.
- §15-12-5. Distribution and disclosure of information; community information programs by prosecuting attorney and state police; petition to circuit court.
- §15-12-6. Duties of institution officials.
- §15-12-7. Information shall be released when person moves out of state.
- §15-12-8. Failure to register or provide notice of registration changes; penalty.

§15-12-2. Registration.

1 (a) The provisions of this article apply both retroactively
2 and prospectively.

3 (b) Any person who has been convicted of an offense or an
4 attempted offense or has been found not guilty by reason of
5 mental illness, mental retardation or addiction of an offense
6 under any of the following provisions of chapter sixty-one of
7 this code or under a statutory provision of another state, the
8 United States code or the uniform code of military justice which
9 requires proof of the same essential elements shall register as

10 set forth in subsection (d) of this section and according to the
11 internal management rules promulgated by the superintendent
12 under authority of section twenty-five, article two of this
13 chapter:

14 (1) Article eight-b, including the provisions of former
15 section six of said article, relating to the offense of sexual
16 assault of a spouse, which was repealed by an act of the
17 Legislature during the year two thousand legislative session;

18 (2) Article eight-c;

19 (3) Sections five and six, article eight-d;

20 (4) Section fourteen, article two; or

21 (5) Sections six, seven, twelve and thirteen, article eight.

22 (c) Any person who has been convicted of a criminal
23 offense and the sentencing judge made a written finding that the
24 offense was sexually motivated shall also register as set forth in
25 this article.

26 (d) Persons required to register under the provisions of this
27 article shall provide or cooperate in providing, at a minimum,
28 the following when registering:

29 (1) The full name of the registrant, including any aliases,
30 nicknames or other names used by the registrant;

31 (2) The address where the registrant intends to reside or
32 resides at the time of registration, the name and address of the
33 registrant's employer or place of occupation at the time of
34 registration, the names and addresses of any anticipated future
35 employers or places of occupation, the name and address of any
36 school or training facility the registrant is attending at the time
37 of registration and the names and addresses of any schools or
38 training facilities the registrant expects to attend;

39 (3) The registrant's social security number;

40 (4) A full-face photograph of the registrant at the time of
41 registration;

42 (5) A brief description of the crime or crimes for which the
43 registrant was convicted;

44 (6) Fingerprints;

45 (7) Information related to any motor vehicle owned or
46 regularly operated by a registrant; and

47 (8) Information relating to any internet accounts the
48 registrant has and the screen names, user names or aliases the
49 registrant uses on the internet.

50 (e) On the date that any person convicted or found not
51 guilty by reason of mental illness, mental retardation or
52 addiction of any of the crimes listed in subsection (b) of this
53 section, hereinafter referred to as a "qualifying offense",
54 including those persons who are continuing under some
55 post-conviction supervisory status, are released, granted
56 probation or a suspended sentence, released on parole, proba-
57 tion, home detention, work release, conditional release or any
58 other release from confinement, the commissioner of correc-
59 tions, regional jail administrator, city or sheriff operating a jail
60 or secretary of the department of health and human resources
61 which releases the person, and any parole or probation officer
62 who releases the person or supervises the person following the
63 release, shall obtain all information required by subsection (d)
64 of this section prior to the release of the person, inform the
65 person of his or her duty to register and send written notice of
66 the release of the person to the state police within three business
67 days of receiving the information. The notice must include the
68 information required by said subsection. Any person having a
69 duty to register for a qualifying offense shall register upon

70 conviction, unless that person is confined or incarcerated, in
71 which case he or she shall register within three business days of
72 release, transfer or other change in disposition status.

73 (f) For any person determined to be a sexually violent
74 predator, the notice required by subsection (d) of this section
75 must also include:

76 (1) Identifying factors, including physical characteristics;

77 (2) History of the offense; and

78 (3) Documentation of any treatment received for the mental
79 abnormality or personality disorder.

80 (g) At the time the person is convicted or found not guilty
81 by reason of mental illness, mental retardation or addiction in
82 a court of this state of the crimes set forth in subsection (b) of
83 this section, the person shall sign in open court a statement
84 acknowledging that he or she understands the requirements
85 imposed by this article. The court shall inform the person so
86 convicted of the requirements to register imposed by this article
87 and shall further satisfy itself by interrogation of the defendant
88 or his or her counsel that the defendant has received notice of
89 the provisions of this article and that the defendant understands
90 the provisions. The statement, when signed and witnessed,
91 constitutes prima facie evidence that the person had knowledge
92 of the requirements of this article. Upon completion of the
93 statement, the court shall provide a copy to the registry. Persons
94 who have not signed a statement under the provisions of this
95 subsection and who are subject to the registration requirements
96 of this article must be informed of the requirement by the state
97 police whenever the state police obtain information that the
98 person is subject to registration requirements.

99 (h) The state police shall maintain a central registry of all
100 persons who register under this article and shall release

101 information only as provided in this article. The information
102 required to be made public by the state police by subdivision
103 (2), subsection (b), section five of this article is to be accessible
104 through the internet. No information relating to internet
105 accounts, screen names, user names or aliases a registrant has
106 or uses may be released through the internet.

107 (i) For the purpose of this article, “sexually violent offense”
108 means:

109 (1) Sexual assault in the first degree as set forth in section
110 three, article eight-b, chapter sixty-one of this code or of a
111 similar provision in another state, federal or military jurisdic-
112 tion;

113 (2) Sexual assault in the second degree as set forth in
114 section four, article eight-b, chapter sixty-one of this code or of
115 a similar provision in another state, federal or military jurisdic-
116 tion;

117 (3) Sexual assault of a spouse as set forth in the former
118 provisions of section six, article eight-b, chapter sixty-one of
119 this code, which was repealed by an act of the Legislature
120 during the two thousand legislative session, or of a similar
121 provision in another state, federal or military jurisdiction;

122 (4) Sexual abuse in the first degree as set forth in section
123 seven, article eight-b, chapter sixty-one of this code or of a
124 similar provision in another state, federal or military jurisdic-
125 tion.

126 (j) For purposes of this article, the term “sexually moti-
127 vated” means that one of the purposes for which a person
128 committed the crime was for any person’s sexual gratification.

129 (k) For purposes of this article, the term “sexually violent
130 predator” means a person who has been convicted or found not

131 guilty by reason of mental illness, mental retardation or
132 addiction of a sexually violent offense and who suffers from a
133 mental abnormality or personality disorder that makes the
134 person likely to engage in predatory sexually violent offenses.

135 (l) For purposes of this article, the term “mental abnormal-
136 ity” means a congenital or acquired condition of a person that
137 affects the emotional or volitional capacity of the person in a
138 manner that predisposes that person to the commission of
139 criminal sexual acts to a degree that makes the person a menace
140 to the health and safety of other persons.

141 (m) For purposes of this article, the term “predatory act”
142 means an act directed at a stranger or at a person with whom a
143 relationship has been established or promoted for the primary
144 purpose of victimization.

145 (n) For the purposes of this article, the term “business
146 days”, means days exclusive of Saturdays, Sundays and legal
147 holidays as defined in section one, article two, chapter two of
148 this code.

§15-12-2a. Court determination of sexually violent predator.

1 (a) The circuit court that has sentenced a person for the
2 commission of a sexually violent offense or that has entered a
3 judgment of acquittal of a charge of committing a sexually
4 violent offense in which the defendant has been found not
5 guilty by reason of mental illness, mental retardation or
6 addiction shall make a determination whether:

7 (1) A person is a sexually violent predator; or

8 (2) A person is not a sexually violent predator.

9 (b) A hearing to make a determination as provided in
10 subsection (a) of this section is a summary proceeding, triable
11 before the court without a jury.

12 (c) A proceeding seeking to establish that a person is a
13 sexually violent predator is initiated by the filing of a written
14 pleading by the prosecuting attorney. The pleading shall
15 describe the record of the judgment of the court on the person's
16 conviction or finding of not guilty by reason of mental illness,
17 mental retardation or addiction of a sexually violent offense and
18 shall set forth a short and plain statement of the prosecutor's
19 claim that the person suffers from a mental abnormality or
20 personality disorder that makes the person likely to engage in
21 predatory sexually violent offenses.

22 (d) Prior to making a determination pursuant to the provi-
23 sions of this section, the sentencing court may order a psychiat-
24 ric or other clinical examination and, after examination, may
25 further order a period of observation in an appropriate facility
26 within this state designated by the court after consultation with
27 the director of the division of health.

28 (e) Prior to making a determination pursuant to the provi-
29 sions of this section, the sentencing court shall request and
30 receive a report by the board established pursuant to section
31 two-b of this article. The report shall set forth the findings and
32 recommendation of the board on the issue of whether the person
33 is a sexually violent predator.

34 (f) At a hearing to determine whether a person is a sexually
35 violent predator, the person shall be present and shall have the
36 right to be represented by counsel, introduce evidence and
37 cross-examine witnesses. The offender shall have access to a
38 summary of the medical evidence to be presented by the state.
39 The offender shall have the right to an examination by an
40 independent expert of his or her choice and testimony from the
41 expert as a medical witness on his or her behalf. At the termina-
42 tion of the hearing the court shall make a finding of fact upon
43 a preponderance of the evidence as to whether the person is a
44 sexually violent predator.

45 (g) If a person is determined by the circuit court to be a
46 sexually violent predator, the clerk of the court shall forward a
47 copy of the order to the state police in the manner promulgated
48 in accordance with the provisions of article three, chapter
49 twenty-nine-a of this code.

§15-12-3. Change in registry information.

1 When any person required to register under this article
2 changes his or her residence, address, place of employment or
3 occupation, vehicle information required by section two of this
4 article, or school or training facility which he or she is attend-
5 ing, or when any of the other information required by this
6 article changes, he or she shall, within ten business days, inform
7 the West Virginia state police of the changes in the manner
8 prescribed by the superintendent of state police in procedural
9 rules promulgated in accordance with the provisions of article
10 three, chapter twenty-nine-a of this code.

§15-12-3a. Petition for removal of sexually violent predator designation.

1 A proceeding seeking to remove a person's designation as
2 a sexually violent predator may be initiated by the filing of a
3 petition by the person so designated in the original sentencing
4 court. The petition shall set forth that the underlying qualifying
5 conviction has been reversed or vacated. Upon receipt of proof
6 that no qualifying conviction exists, the court shall enter an
7 order directing the removal of the designation.

§15-12-5. Distribution and disclosure of information; community information programs by prosecuting attorney and state police; petition to circuit court.

1 (a) Within five business days after receiving any notifica-
2 tion as described in this article, the state police shall distribute
3 a copy of the notification statement to:

4 (1) The supervisor of each county and municipal
5 law-enforcement office and any campus police department in
6 the city and county where the registrant resides, is employed or
7 attends school or a training facility;

8 (2) The county superintendent of schools where the
9 registrant resides, is employed or attends school or a training
10 facility;

11 (3) The child protective services office charged with
12 investigating allegations of child abuse or neglect in the county
13 where the registrant resides, is employed or attends school or a
14 training facility;

15 (4) All community organizations or religious organizations
16 which regularly provide services to youths in the county where
17 the registrant resides, is employed or attends school or a
18 training facility;

19 (5) Individuals and organizations which provide day care
20 services for youths or day care, residential or respite care, or
21 other supportive services for mentally or physically incapacitated
22 or infirm persons in the county where the registrant
23 resides, is employed or attends school or a training facility; and

24 (6) The federal bureau of investigation (FBI).

25 (b) Information concerning persons whose names are
26 contained in the sexual offender registry is not subject to the
27 requirements of the West Virginia freedom of information act,
28 as set forth in chapter twenty-nine-b of this code, and may be
29 disclosed and disseminated only as otherwise provided in this
30 article and as follows:

31 (1) When a person has been determined to be a sexually
32 violent predator under the terms of section two-a of this article,
33 the state police shall notify the prosecuting attorney of the

34 county in which the person resides, is employed or attends a
35 school or training facility. The prosecuting attorney shall
36 cooperate with the state police in conducting a community
37 notification program which is to include publication of the
38 offender's name, photograph, place of residence, employment
39 and education or training, as well as information concerning the
40 legal rights and obligations of both the offender and the
41 community. Information relating to the victim of an offense
42 requiring registration may not be released to the public except
43 to the extent the prosecuting attorney and the state police
44 consider it necessary to best educate the public as to the nature
45 of sexual offenses: *Provided*, That no victim's name may be
46 released in any public notification pursuant to this subsection.
47 No information relating to internet accounts, screen names, user
48 names or aliases a registrant has or uses may be released to the
49 public with this notification program. The prosecuting attorney
50 and state police may conduct a community notification program
51 in the county of residence, employment or where a person is
52 attending school or a training facility of any person who is
53 required to register for life under the terms of subdivision (2),
54 subsection (a), section four of this article. Community notifica-
55 tion may be repeated when determined to be appropriate by the
56 prosecuting attorney;

57 (2) The state police shall maintain and make available to
58 the public at least quarterly the list of all persons who are
59 required to register for life according to the terms of subdivi-
60 sion (2), subsection (a), section four of this article. No informa-
61 tion concerning the identity of a victim of an offense requiring
62 registration or information relating to internet accounts, screen
63 names, user names or aliases a registrant has or uses may be
64 released with this list. The method of publication and access to
65 this list are to be determined by the superintendent; and

66 (3) A resident of a county may petition the circuit court for
67 an order requiring the state police to release information about

68 persons residing in that county who are required to register
69 under section two of this article. The court shall determine
70 whether information contained on the list is relevant to public
71 safety and whether its relevance outweighs the importance of
72 confidentiality. If the court orders information to be released,
73 it may further order limitations upon secondary dissemination
74 by the resident seeking the information. In no event may
75 information concerning the identity of a victim of an offense
76 requiring registration or information relating to internet
77 accounts, screen names, user names or aliases a registrant has
78 or uses be released.

79 (c) The state police may furnish information and documen-
80 tation required in connection with the registration to authorized
81 law enforcement, campus police and governmental agencies of
82 the United States and its territories, of foreign countries duly
83 authorized to receive the same, of other states within the United
84 States and of the state of West Virginia upon proper request
85 stating that the records will be used solely for law enforce-
86 ment-related purposes. The state police may disclose informa-
87 tion collected under this article to federal, state and local
88 governmental agencies responsible for conducting
89 preemployment checks.

90 (d) An elected public official, public employee or public
91 agency is immune from civil liability for damages arising out
92 of any action relating to the provisions of this section except
93 when the official, employee or agency acted with gross negli-
94 gence or in bad faith.

§15-12-6. Duties of institution officials.

1 In addition to the duties imposed by sections two and four
2 of this article, the official in charge of the place of confinement
3 shall inform any person required to register under this article,

4 before parole or release, of the duty to register. Further, the
5 official shall obtain the full address of the person and a state-
6 ment signed by the person acknowledging that the person has
7 been informed of his or her duty to register.

§15-12-7. Information shall be released when person moves out of state.

1 A person who is required to register pursuant to the
2 provisions of this article, who intends to move to another state
3 or country shall at least ten business days prior to such move
4 notify the state police of his or her intent to move and of the
5 location to which he or she intends to move, or if that person is
6 incarcerated he or she shall notify correctional officials of his
7 or her intent to reside in some other state or country upon his or
8 her release, and of the location to which he or she intends to
9 move. Upon such notification, the state police shall notify
10 law-enforcement officials of the jurisdiction where the person
11 indicates he or she intends to reside of the information provided
12 by the person under the provisions of this article.

§15-12-8. Failure to register or provide notice of registration changes; penalty.

1 (a) Except as provided in this section, any person required
2 to register under this article who knowingly provides false
3 information or who refuses to provide accurate information
4 when so required by terms of this article, or who knowingly
5 fails to register or knowingly fails to provide a change in any
6 information as required by this article, is guilty of a misde-
7 meanor and, upon conviction thereof, shall be fined not less
8 than two hundred fifty dollars nor more than ten thousand
9 dollars or imprisoned in the county or regional jail not more
10 than one year, or both: *Provided*, That each time the person has
11 a change in any of the registration information as required by
12 this article and fails to register the change or changes, each

13 failure to register each separate item of information changed
14 shall constitute a separate offense.

15 (b) Any person required to register under this article who is
16 convicted of a second or subsequent offense of failing to
17 register or provide a change in any information as required by
18 this article or any person who is required to register for life
19 pursuant to subsection (2), subdivision (a), section four of this
20 article and who knowingly provides false information or who
21 refuses to provide accurate information when so required by
22 terms of this article or who knowingly fails to register or
23 knowingly fails to provide a change in information as required
24 by this article is guilty of a felony and, upon conviction thereof,
25 shall be imprisoned in a state correctional facility for not less
26 than one year nor more than five years.

27 (c) Any person required to register as a sexual predator who
28 knowingly provides false information or who refuses to provide
29 accurate information when so required by terms of this article
30 or who knowingly fails to register or knowingly fails to provide
31 a change in any information as required by this article is guilty
32 of a felony and, upon conviction thereof, shall, for a first
33 offense, be confined in a state correctional facility not less than
34 two years nor more than ten years and for a second or subse-
35 quent offense, is guilty of a felony and shall be confined in a
36 state correctional facility not less than five years nor more than
37 twenty years.

38 (d) In addition to any other penalty specified for failure to
39 register under this article, any person under the supervision of
40 a probation officer, parole officer or any other sanction short of
41 confinement in jail or prison who knowingly refuses to register
42 or who knowingly fails to provide a change in information as
43 required by this article shall be subject to immediate revocation
44 of probation or parole and returned to confinement for the
45 remainder of any suspended or unserved portion of his or her
46 original sentence.

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First Extraordinary Session, 2005

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