

FOREWORD

The West Virginia Department of Education is please to prepare Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session – 2005 as a document to assist educators and others in understanding and implementing education bills enacted by this year's Legislature.

This document should be placed with your most current copy of the School Laws of West Virginia as it contains new language/laws that must be reviewed in conjunction with the School Law book.

For each of the acts included in this publication, the format is as follows: effective date, date signed by the governor, code reference, title and major new provisions. As time constraints have not permitted an in-depth analysis of these bills from the regular session, it must be emphasized that the information provided in this document must not be considered as official interpretations of the State Superintendent of Schools. Formal interpretations to specific questions will be provided upon request.

The Informal Guidelines for Implementing Public Education Bills Enacted in the Regular Session – 2005 will be of considerable value during the coming school year. Suggestions for improving this document as a service to the Department's clientele are always welcome. This document is also available online at <http://wvde.state.wv.us> .

We would not have been able to assemble this document without the assistance of numerous people including staff members from the House and Senate Education Committees and Howard O'Cull, Executive Director of the West Virginia School Boards Association.

Please feel free to call or write if you need additional information regarding bills enacted during the 2005 regular session of the West Virginia Legislature.

David Stewart
State Superintendent of Schools

REVISED CODES				NEW CODES	
5-1B-1	12-3-6	18B-1B-6	49-9-15	5-1E-1	49-7-34
5-1B-2	12-3-7	18B-2-1	60A-1-101	5-1E-2	60A-10-1
5-1B-3	12-3-8	18B-2-2	60A-2-212	5-1E-3	60A-10-2
5-1B-4	15-1B-24	18B-2-3	60A-3-308	5-1E-4	60A-10-3
5-1B-5	16-3-4a	18B-2A-3	60A-4-401	5-1E-5	60A-10-4
5-1B-6	16-41-7	18B-2A-4	60A-4-409	5A-6-1	60A-10-5
5-1B-7	17-16A-3	18B-3-1	60A-9-4	5A-6-2	60A-10-6
5-1B-8	17-16A-10	18B-3-2	60A-9-5	5A-6-3	60A-10-7
5-22A-2	18-2-6a	18B-3-3	61-8D-1	5A-6-4	60A-10-8
5-22A-3	18-2-6	18B-3-5	61-8D-5	5A-6-5	60A-10-9
5-22A-4	18-2-7a	18B-3-7		5A-6-6	60A-10-10
5-22A-5	18-2-9	18B-3D-4		5A-6-7	60A-10-11
5-22A-6	18-2-23a	18B-4-5		5A-6-8	60A-10-12
5-22A-7	18-2E-3e	18B-4-5a		5-22A-9a	60A-10-13
5-22A-8	18-2J-1	18B-4-6		7-23-1	60A-10-14
5-22A-10	18-2J-2	18B-4-7		7-23-2	60A-10-15
5-22A-11	18-2J-3	18B-5-2d		7-23-3	61-2-9C
5-22A-12	18-2J-4	18B-5-3		10-5-5a	
5-22A-15	18-2J-5	18B-5-4		12-1-12b	
5A-3-45	18-2J-6	18B-5-7		16-3D-1	
5A-7-4	18-2J-7	18B-5-9		16-3D-2	
5A-8-15	18-5-32	18B-10-1		16-3D-3	
5B-1-2	18-5-45	18B-10-5		16-3D-4	
5B-2B-3	18-9-6	18B-10-6		16-3D-5	
5B-3-4	18-9A-5a	18B-14-11		16-3D-6	
5B-3-5	18-9A-5b	18B-17-2		16-3D-7	
5F-2-1	18-9A-15	18B-17-3		16-3D-8	
5F-2-2	18-9A-22	26-5A-1		16-3D-9	
5G-1-2	18-9D-18	26-5A-2		18-2-7c	
6B-1-6	18-14-1	26-5A-3		18-2-24	
6B-2-4	18A-3-1	26-5A-4		18-2-37	
6B-2-10	18A-3-1a	26-5A-5		18B-2A-7	
6B-3-3a	18A-3A-1	26-5A-6		18-2E-8e	
6B-3-3c	18A-3A-2b	26-5A-7		18A-3-11	
7-6-2	18-A-4-8e	29-12-5a		18A-3A-6	
8-13-22a	18B-1-3	39A-3-1		18B-1B-13	
10-5-2	18B-1-6	48-27-403		18B-2B-9	
11-3-9	18B-1-7	49-5-7		18B-10-6a	
11-10A-6	18B-1-9	49-5-13d		18B-11-7	
11-10A-7	18B-1B-4	49-5-17		29-6-28	
11-14C-9	18B-1B-5	49-6-1		49-6A-2a	
11-14C-31	18B-1A-2	39A-3-2		18B-3-4	
12-3-5	18B-1A-6	39A-3-3		18B-5-10	

TABLE OF CONTENTS

<u>ACT CODE NUMBERS</u>	<u>SUBJECT</u>	<u>PAGE NUMBER</u>
HB 2150	Procedures in cases of child neglect or abuse §49-6-1	1
HB 2174	Development and implementation of procedure to notify mandatory reporters of suspected child abuse and neglect §49-6A-2a	4
HB 2286	Encouraging capable students to sound Taps during military honors funerals held in West Virginia §18-2E-8e	6
HB 2334	Relating to placement of at-risk youth §49-7-34	9
HB 2350	Relating to certification for persons holding a valid out of state teaching certificate §18-3-1	14
HB 2466	Relating to removing obsolete provisions §§18-5-32	17
HB 2510	Relating to application procedures for community/ technical colleges to access fund under Workforce Development Initiative Grant Program §18B-3D-4	20
HB 2527	Relating to competency testing for service personnel, other than bus operators §18A-4-8e	23
HB 2528	Language being added for alternative programs for the education of teachers §18A-3-1a	26
HB 2570	Relating to depositories of funds §18-9-6	31

HB 2578	Increases net enrollment limits under the Public School Support Program for professional educators over next three years; establishes separate limits for professional educators §18-9A-5a §18-9A-5b	35
HB 2592	Amends West Virginia's Design Procurement Act §5-22A-2 §5-22A-3 §5-22A-4 §5-22A-5 §5-22A-6 §5-22A-7 §5-22A-8 §5-22A-9a §5-22A-10 §5-22A-11 §5-22A-12 §5-22A-15	39
HB 2816	Creation of Office of Healthy Lifestyles within the Dept. of Health and Human Services §5-1E-1 §5-1E-2 §5-1E-3 §5-1E-4 §5-1E-5 §18-2-6a §18-2-7a §18-2-9	49
HB 2837	Requiring State Board to develop program of instruction on personal finance, which may be integrated into curriculum of students in secondary schools §18-2-7c	56
HB 2885	Relating to compulsory tuberculosis testing for out-of-state transfer students and new school employees §16-3D-1 §16-3D-2 §16-3D-3 §16-3D-4 §16-3D-5 §16-3D-6 §16-3D-7 §16-3D-8 §16-3D-9	58
HB 2891	Relating to the reorganization of the executive branch of state government §5A-6-1 §5A-6-2 §5A-6-4 §5A-6-5 §5A-6-6 §5A-6-7 §5A-6-8 §5A-7-4 §5A-8-15 §5B-1-2 §5B-3-4 §5B-3-5 §5F-2-1 §5F-2-2 §10-5-2 §10-5-5a §11-10A-6 §11-10A-7 §17-16A-3 §17-16A-10 §49-9-15	64
HB 3012	Property exempt from taxation §§11-3-9	85
HB 3018	Relating to cooperation of State Board of Education with the Mountaineer Challenge Academy §15-1B-24 §18-2-6	89

HB 3049	Relating to new crime	94
	§61-2-9c	
HB 3098	Relating to sexual crimes committed against children	96
	§61-8D-1 §61-8D-5	
HB 3152	Clarifies that the Board of Risk and Insurance Management	100
	is not required to provide insurance coverage for every property, activity, or responsibility of county boards of education §29-12-5a	
SB 94	Relating to school calendar	103
	§18-5-45	
SB 147	Limiting the purchase of substance used in the production	109
	of methamphetamine	
	§60A-1-101 §60A-2-212 §60A-3-308	
	§60A-4-401 §60A-4-409 §60A-9-4	
	§60A-9-5 §60A-10-1 §60A-10-2	
	§60A-10-3 §60A-10-4 §60A-10-5	
	§60A-10-6 §60A-10-8 §60A-10-9	
	§60A-10-10 §60A-10-11 §60A-10-12	
	§60A-10-13 §60A-10-14 §60A-10-15	
SB 153	Relating generally to ethical standards of public officers	125
	and employees	
	§§6B-1-6 §§6B-2-4 §§6B-2-10	
	§§6B-3-3a §§6B-3-3c	
SB 213	Continuation of the Oral Health Program	135
	§§16-41-7	
SB 222	Redefines the membership, meetings and quorum	137
	requirements of the West Virginia Workforce Investment Council §5B-2B-3	
SB 240	Granting state employees paid leave for organ	140
	donation §29-6-28	
SB 248	Relating to public and higher education technology	142
	strategic plan	
	§18-2J-1 §18-2J-2 §18-2J-3	
	§18-2J-4 §18-2J-5 §18-2J-6	
	§18-2J-7	

SB 667	Relating to motor fuel excise tax §11-14C-9 §11-14C-31	239
SB 728	Relating to disposition of surplus state property §5A-3-45	245
SCR 65	Designating the month of December, 2005, as West Virginia Legislators Back to School Month	250
HCR 19	Requesting the Joint Committee on Government and Finance study the possible expansion of in-home family education programs (Early Parent Education) as a research based and cost effective way to bringing resources and families together to ensure that children grow up healthy and ready to learn	251
HCR 21	Requesting the Department of Education to create a position in the Department to coordinate, oversee and advocate for public school libraries	252
HCR 69	Recognizing the importance of the Health Sciences and Technology Academy (HSTA) and its significant contributions to African American and under represented high school students in West Virginia	253

vi
House Bill 2150

Effective Date: Passed April 8, 2005, in effect ninety days from passage

Signed by Governor: April 20, 2005

Code Reference:

Amends and reenacts §49-6-1

Title:

Procedures in Cases of Child Neglect or Abuse

Major Provisions:

No impact on public schools. Provided for informational purposes.

**ENROLLED
H. B. 2150**

(By Delegates Amores, Mahan, Pino and Schadler)

[Passed April 8, 2005 ; in effect ninety days from passage.]

1
2
3
4
5
6
7
8
9
10
11
12
13

AN ACT to amend and reenact §49-6-1 of the Code of West Virginia, 1931, as amended, relating to expanding the possible venues where a child neglect or abuse petition may be filed.

Be it enacted by the Legislature of West Virginia:

That §49-6-1 of the Code of West Virginia, 1931, as amended, be amended and

1 reenacted to read as follows:

2 **ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.**

3 **§49-6-1. Petition to court when child believed neglected or abused; notice.**

4 (a) If the department or a reputable person believes that a child is neglected or abused,
5 the department or the person may present a petition setting forth the facts to the circuit
6 court in the county in which the child resides, or if the petition is being brought by the
7 Department, in the county in which the custodial respondent or other named party
8 abuser resides, or in which the abuse or neglect occurred, or to the judge of such the
9 court in vacation. Under no circumstance may a party file a petition in more than one
10 county based on the same set of facts. The petition shall be verified by the oath of some

11 credible person having knowledge of the facts. The petition shall allege specific conduct
12 including time and place, how such conduct comes within the statutory definition of
13 neglect or abuse with references thereto, any supportive services provided by the
14 department to remedy the alleged circumstances and the relief sought. Upon filing of the
15 petition, the court shall set a time and place for a hearing and shall appoint counsel for
16 the child. When there is an order for temporary custody pursuant to section three of this
17 article, ~~such~~ the hearing shall be held within thirty days of the order, unless a
18 continuance for a reasonable time is granted to a date certain, for good cause shown.

19 (b) The petition and notice of the hearing shall be served upon both parents and any
20 other custodian, giving to ~~such~~ the parents or custodian at least ten days' notice. Notice
21 shall also be given to the department, any foster or preadoptive parent, and any relative
22 providing care for the child. In cases wherein personal service within West Virginia
23 cannot be obtained after due diligence upon any parent or other custodian, a copy of the
24 petition and notice of the hearing shall be mailed to ~~such~~ the person by certified mail,
25 addressee only, return receipt requested, to the last known address of such person. If
26 the person signs the certificate, service shall be complete and ~~said~~ the certificate shall
27 be filed as proof of ~~said~~ the service with the clerk of the circuit court. If service cannot
28 be obtained by personal service or by certified mail, notice shall be by publication as a
29 Class II legal advertisement in compliance with the provisions of article three, chapter
30 fifty-nine of this code. A notice of hearing shall specify the time and place of the hearing,
31 the right to counsel of the child and parents or other custodians at every stage of the
32 proceedings and the fact that the proceedings can result in the permanent termination
33 of the parental rights. Failure to object to defects in the petition and notice shall not be
34 construed as a waiver.

35 (c) At the time of the institution of any proceeding under this article, the department shall
36 provide supportive services in an effort to remedy circumstances detrimental to a child.

House Bill 2174

Effective Date: Passed April 5, 2005, in effect ninety days from passage

Signed by Governor: April 14, 2005

Code Reference: Amends and reenacts §49-6A-2a

Title: Reports of Children Suspected to be Abused or Neglected

Major Provisions:

- The Department of Health and Human Resources shall develop and implement a procedure to notify mandatory reporters of suspected child abuse and neglect of whether an investigation has been initiated and when the investigation is completed.
- All school personnel are mandatory reporters and therefore would be entitled to this notification for any suspected case of child abuse and neglect that they have reported.
- This procedure is to be in place on or before January 1, 2006.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

**ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2174**

(By Delegates Spencer, Perdue and Amores)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-6A-2a, relating to requiring the Department of Health and Human Resources to develop a procedure to notify persons mandated to report child abuse and neglect of whether an investigation of the report has occurred.

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 §49-6A-2a, to read as follows:

**ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR
NEGLECTED.**

§49-6A-2a. Notification of disposition of reports.

(a) The Department of Health and Human Resources shall develop and implement a procedure to notify any person mandated to report suspected child abuse and neglect under the provisions of section two of this article, of whether an investigation into the reported suspected abuse or neglect has been initiated and when the investigation is completed.

(b) The Department of Health and Human Resources shall develop and implement the above described procedure on or before the first day of January, two thousand six.

House Bill 2286

Effective Date: Passed February 21, 2005; in effect ninety days from passage

Signed by Governor: February 25, 2005

Code Reference: Amends and enacts §18-2E-8e

Title: High Quality Education Programs: Veteran's honors funeral assistant community service program

Major Provisions:

- Facilitates collaboration that will encourage capable young people to assist with the sounding of Taps at military funerals.
- Requires the State Board, in collaboration with organizations and supporters of veterans, to establish general guidelines for the establishment of school level programs that encourage capable students to sound Taps during military honors funerals held in West Virginia.
- Requires county boards to establish a policy for the implementation of a veteran's honors funeral assistant community service program.
- County board policy must address (1) the distribution of information to music and band teachers for their use in notifying capable students and obtaining parent or guardian consent for a voluntary registry, (2) the awarding of credit toward community service or work based learning requirements to a student for the registry and sounding of Taps, and (3) the limits on the amount of classroom instruction that a student may miss for the sounding of Taps.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55

ENROLLED
H. B. 2286

(By Delegates Williams, Beach, DeLong, Perry, Martin and Cann)

[Passed February 21, 2005; In effect ninety days from passage.]

AN ACT to Bill Title 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 Title Language 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 Enacting Section 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.

(a) Findings. - The Legislature makes the following findings:

(1) Serving in the armed services in defense of the life, liberty and pursuit of happiness enjoyed in our democratic society involves a tremendous sacrifice on the behalf of those who serve, often at the cost of their own lives;

(2) It is a fitting tribute to those who have served in the armed forces and the families who have shared in their sacrifice to honor that service and that sacrifice in the most respectful manner;

(3) It is often difficult for the families of deceased veterans who wish to lay their loved ones finally to rest in a military honors funeral to find a bugler to sound their final Taps; and

(4) Organizations within the state and nationally, such as the Veterans of Foreign Wars, the American Legion, Bugles Across America and many others, have recognized the difficulty of finding buglers to sound Taps at military honors funerals and may be able to assist.

(b) Purpose. - The purpose of this section is to facilitate collaboration that will encourage capable young people to assist with the sounding of Taps at military funerals honoring our veterans and, thereby, help them to develop a better understanding of the sacrifices, a respect for the commitment and an appreciation of the privileges that the men and women of the armed services have protected through their service.

(c) State board guidelines. - The state board shall, in collaboration with organizations and supporters of veterans, establish general guidelines for the establishment of school level programs that encourage capable students in grades six through twelve, inclusive, to sound Taps on a standard or valved bugle, trumpet, cornet or flugelhorn during military honors funerals held in this state. The general guidelines shall address the issues to be set forth in the county board policies required under this section and shall include contact information for technical assistance from the department of education and organizations and supporters of veterans assisting in these programs. The state board shall distribute the guidelines to every county board. The state board shall also distribute an appropriate program summary and contact information to the colleges and universities in the state so that they may establish similar programs for their students.

(d) County board policies. - Each county board shall establish a policy for the implementation of a veteran's honors funeral assistant community service program that addresses at least the following:

(1) The distribution of information to music and band teachers for their use in notifying

1 capable students and obtaining the consent of their parents or guardians for voluntary
2 registry as a candidate able to sound Taps during military honors funerals held within a
3 reasonable distance from their residence;
4 (2) The credit toward community service or work based learning requirements of the county
5 or other recognition that will be awarded to a student for the registry and sounding of Taps
6 during military honors funerals; and
7 (3) The limits on the amount of regular classroom instruction that a student may miss for
8 the sounding of Taps during military honors funerals to fulfill a community service or work
9 based learning requirement or, if none, on the excused absences that the student may
10 accrue for this activity.
11 County boards are not responsible for any costs associated with the program, may not be
12 required to provide or pay for student transportation to funerals and are not liable for
13 student supervision while absent to participate in funerals. However, county boards are
14 encouraged to collaborate with organizations of veterans and supporters of veterans to
15 assist with the veteran's honors funeral assistant community service program.

House Bill 2334

Effective Date: Passed April 9, 2005; in effect 90 days from passage

Signed by Governor: May 11, 2005

Code Reference: Adds a new section, designated §49-7-34

Title: Commission to study residential placement of children

Major Provisions:

- The Legislature finds that the current system of serving at-risk children and families is fragmented, and more than ten percent of children presently in care are in out-of-state placements.
- The purpose of the bill is to establish a mechanism to achieve systemic reform by which all of the state's child-serving agencies involved in the residential placement of at-risk youth jointly and continually study and improve upon this system and make recommendations to their respective agencies and to the Legislature regarding funding and statutory, regulatory and policy changes.
- It is the Legislature's intent to build upon these recommendations to establish an integrated system of care for at-risk youth and families by drawing upon the experience of successful models and best practices which focuses on delivering services in the least restrictive environment setting appropriate to the needs of the child.
- The bill creates within the Department of Health and Human Resources (DHHR) a Commission to Study the Residential Placement of Children. The Commission includes, among the designated members named in the bill, the State Superintendent of Schools, a representative of local education agencies, the Superintendent of Institutional Education Programs and the Executive Director of the Office of Special Education. The Secretary of DHHR is designated the chair of the Commission.
- The Commission is charged with studying the current practices of placing children out-of-home and into residential placements, with special emphasis on out-of-state placements. The Commission is also charged with studying the capacity of the state to serve the needs of children requiring residential placements and to develop strategies to reduce the number of children placed out-of-state and to return children from existing out-of-state placements. Other specific charges of the Commission are detailed in the bill.
- The Commission is required to issue a report to the Legislature on or before December 1, 2005. The components of the report are specified in the bill including the development of a plan to reduce out-of-state placements by fifty percent within three years and recommendations for changes in fiscal, statutory and regulatory provisions for legislative action.

1 ENROLLED
2 COMMITTEE SUBSTITUTE
3 FOR
4 H. B. 2334

5 (By Mr. Speaker, Mr. Kiss and Delegates Michael, Perdue, Amores, Brown and
6 Palumbo)

7 [Passed April 9, 2005; in effect ninety days from passage.]
8

9 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new
10 section, designated §49-7-34, relating to creating a commission to study the out-of-state
11 placement of children; providing for members and a chair; providing study topics; and
12 requiring certain reporting requirements on specific goals.
13

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

15 **ARTICLE 7. GENERAL PROVISIONS.**

16 **§49-7-34. Commission to study residential placement of children.**

17 (a) The Legislature finds that the state's current system of serving children and families in
18 need of or at risk of needing social, emotional and behavioral health services is
19 fragmented. The existing categorical structure of government programs and their funding
20 streams discourages collaboration, resulting in duplication of efforts and a waste of limited
21 resources. Children are usually involved in multiple child-serving systems, including child
22 welfare, juvenile justice and special education. More than ten percent of children presently
23 in care are presently in out-of-state placements. Earlier efforts at reform have focused on
24 quick fixes for individual components of the system at the expense of the whole. It is the
25 purpose of this section therefore to establish a mechanism to achieve systemic reform by
26 which all of the state's child-serving agencies involved in the residential placement of at-
27 risk youth jointly and continually study and improve upon this system and make
28 recommendations to their respective agencies and to the Legislature regarding funding and
29 statutory, regulatory and policy changes. It is further the Legislature's intent to build upon
30 these recommendations to establish an integrated system of care for at-risk youth and
31 families that makes prudent and cost-effective use of limited state resources by drawing
32 upon the experience of successful models and best practices in this and other jurisdictions,
33 which focuses on delivering services in the least restrictive setting appropriate to the needs
34 of the child, and which produces better outcomes for children, families and the state.

35 (b) There is hereby created within the Department of Health and Human Resources a
36 Commission to Study the Residential Placement of Children. The Commission shall
37 consist of the Secretary of the Department of Health and Human Resources, the
38 Commissioner of the Bureau for Children and Families, the Commissioner for the Bureau
39 for Behavioral Health and Health Facilities, the Commissioner for the Bureau for Medical
40 Services, the State Superintendent of Schools, a representative of local educational
41 agencies, the Director of the Office of Institutional Educational Programs, the Director of
42 the Office of Special Education Programs and Assurance, the Director of the Division of
43 Juvenile Services and the Executive Director of the Prosecuting Attorney's Institute. At the
44 discretion of the West Virginia Supreme Court of Appeals, circuit and family court judges
45 and other court personnel, including the administrator of the Supreme Court of Appeals
46 and the director of the Juvenile Probation Services Division, may serve on the
47 Commission.

1 These statutory members may further designate additional persons in their respective
2 offices who may attend the meetings of the Commission if they are the administrative head
3 of the office or division whose functions necessitate their inclusion in this process. In its
4 deliberations, the Commission shall also consult and solicit input from families and service
5 providers.

6 (c) The Secretary of the Department of Health and Human Resources shall serve as chair
7 of the Commission, which shall meet on a monthly basis at the call of the chairman.

1 (d) At a minimum, the Commission shall study:
2 (1) The current practices of placing children out-of-home and into residential placements,
3 with special emphasis on out-of-state placements;
4 (2) The adequacy, capacity, availability and utilization of existing in-state facilities to serve
5 the needs of children requiring residential placements;
6 (3) Strategies and methods to reduce the number of children who must be placed in out-of-
7 state facilities and to return children from existing out-of-state placements, initially targeting
8 older youth who have been adjudicated delinquent;
9 (4) Staffing, facilitation and oversight of multidisciplinary treatment planning teams;
10 (5) The availability of and investment in community-based, less restrictive and less costly
11 alternatives to residential placements;
12 (6) Ways in which up-to-date information about in-state placement availability may be
13 made readily accessible to state agency and court personnel, including an interactive
14 secure web site;
15 (7) Strategies and methods to promote and sustain cooperation and collaboration between
16 the courts, state and local agencies, families and service providers, including the use of
17 inter-agency memoranda of understanding, pooled funding arrangements and sharing of
18 information and staff resources;
19 (8) The advisability of including "no-refusal" clauses in contracts with in-state providers for
20 placement of children whose treatment needs match the level of licensure held by the
21 provider;
22 (9) Identification of in-state service gaps and the feasibility of developing services to fill
23 those gaps, including funding;
24 (10) Identification of fiscal, statutory and regulatory barriers to developing needed services
25 in-state in a timely and responsive way;
26 (11) Ways to promote and protect the rights and participation of parents, foster parents and
27 children involved in out-of-home care; and
28 (12) Ways to certify out-of-state providers to ensure that children who must be placed out-
29 of-state receive high quality services consistent with this state's standards of licensure and
30 rules of operation.
31 (e) Beginning July 1, 2005, the Chair, or his or her designee, shall report on the work of the
32 Commission to the legislative Juvenile Task Force during the Legislature's monthly interim
33 meetings.
34 (f) On or before December 1, 2005, the Commission shall report to the Joint Committee
35 on Government and Finance its conclusions and recommendations, including an
36 implementation plan whereby:
37 (1) Out-of-state placements shall be reduced by at least ten per cent per year and by at
38 least fifty percent within three years;
39 (2) Child-serving agencies shall develop joint operating and funding proposals to serve the
40 needs of children and families that cross their jurisdictional boundaries in a more seamless
41 way;

1 (3) Steps shall be taken to obtain all necessary federal plan waivers or amendments in
2 order for agencies to work collaboratively while maximizing the availability of federal funds;
3 (4) Agencies shall enter into memoranda of understanding to assume joint responsibilities;
4 (5) System of care components and cooperative relationships shall be incrementally
5 established at the local, state and regional levels, with links to existing resources, such as
6 family resource networks and regional summits, wherever possible; and
7 (6) Recommendations for changes in fiscal, statutory and regulatory provisions are
8 included for legislative action.

House Bill 2350

Effective Date: Passed April 5, 2005; in effect ninety days from passage.

Signed by Governor: April 14, 2005

Code Reference: Amends and reenacts W.Va. Code §18A-3-1 relating to conditions for awarding teaching certificates

Title: Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

Major Provisions:

- Language is added to §18A-3-1 (b)(3) to require any teacher who has graduated from a teacher preparation program at a regionally accredited institution of higher education to possess the minimum of a bachelor's degree; and hold a valid teaching certificate issued by another state.
- Language is also added to allow WV to grant certification to a person who holds a certificate of eligibility issued by another state, provided the person meets all of the requirements of the state for full certification except employment.

1 ENROLLED
2 H. B. 2350
3

4 (By Delegates Schadler, Marshall, Leggett and Williams)
5

6 [Passed April 5, 2005; in effect ninety days from passage.]
7

8 AN ACT to amend and reenact §18A-3-1 of the Code of West Virginia, 1931, as
9 amended, relating to conditions for awarding teaching certificates.
10

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

12 That §18A-3-1 of the Code of West Virginia, 1931, as amended, be amended and
13 reenacted to read as follows:

14 **ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL**
15 **DEVELOPMENT.**

16 **§18A-3-1. Teacher preparation programs; program approval and standards;**
17 **authority to issue teaching certificates.**

18 (a) The education of professional educators in the state shall be under the general
19 direction and control of the ~~s~~State ~~b~~Board of ~~e~~Education after consultation with the
20 ~~s~~Secretary of ~~e~~Education and the ~~a~~Arts and the chancellor for higher education who shall
21 represent the interests of teacher preparation programs within the institutions of higher
22 education in this state as those institutions are defined in section two, article one, chapter
23 eighteen-b of this code.

24 The education of professional educators in the state includes all programs leading to
25 certification to teach or serve in the public schools including: (1) Those programs in all
26 institutions of higher education, including student teaching in the public schools; (2)
27 beginning teacher internship programs; (3) the granting of West Virginia certification to
28 persons who received their preparation to teach outside the boundaries of this state,
29 except as provided in subsection (b) of this section; (4) any alternative preparation
30 programs in this state leading to certification, including programs established pursuant to
31 the provisions of section one-a of this article and programs which are in effect on the
32 effective date of this section; and (5) any continuing professional education, professional
33 development and in-service training programs for professional educators employed in the
34 public schools in the state.

35 (b) The ~~s~~State ~~b~~Board of ~~e~~Education, after consultation with the ~~s~~Secretary of ~~e~~Education
36 and the ~~a~~Arts and the chancellor for higher education who shall represent the interests of
37 teacher preparation programs within the institutions of higher education in this state as
38 those institutions are defined in section two, article one, chapter eighteen-b of this code,
39 shall adopt standards for the education of professional educators in the state and for the
40 awarding of certificates valid in the public schools of this state subject to the following conditions:

41 (1) The standards approved by the ~~b~~Board for teacher preparation shall include a provision
42 for the study of multicultural education. As used in this section, multicultural education
43 means the study of the pluralistic nature of American society including its values,
44 institutions, organizations, groups, status positions and social roles;

45 (2) Effective the first day of January, one thousand nine hundred ninety-three, the
46 standards approved by the ~~b~~Board shall also include a provision for the study of classroom
47 management techniques and shall include methods of effective management of disruptive
48 behavior which shall include societal factors and their impact on student behavior; and

49 (3) Effective on the effective date of this section, any teacher who: (i) ~~h~~Has graduated from
50 a teacher preparation program at a regionally accredited institution of higher education; (ii)
51 possesses the minimum of a bachelor's degree; and (iii) who holds a valid teaching
52 certificate or certificates issued by another state, or holds a certificate of eligibility issued
53 by another state and meets all of the requirements of the state for full certification except
54 employment, shall be, upon application, awarded a teaching certificate or certificates for
55 the same grade level or levels and subject area or areas valid in the public schools of this
56 state, subject only to the provisions of section ten of this article.

57 (c) To give prospective teachers the teaching experience needed to demonstrate
58 competence as a prerequisite to certification, the ~~s~~State ~~b~~Board of ~~e~~Education may enter

1 into an agreement with county boards for the use of the public schools. Such agreement
2 shall recognize student teaching as a joint responsibility of the teacher preparation
3 institution and the cooperating public schools and shall include: (1) The minimum
4 qualifications for the employment of public school teachers selected as supervising
5 teachers; (2) the remuneration to be paid public school teachers by the ~~s~~State ~~b~~Board, in
6 addition to their contractual salaries, for supervising student teachers; and (3) minimum
7 standards to guarantee the adequacy of the facilities and program of the public school
8 selected for student teaching. The student teacher, under the direction and supervision of
9 the supervising teacher, shall exercise the authority of a substitute teacher.

10 (d) The ~~s~~State ~~s~~Superintendent of ~~s~~Schools may issue certificates to graduates of teacher
11 education programs and alternative teacher education programs approved by the ~~s~~State
12 ~~b~~Board of ~~e~~Education and in accordance with this section and rules adopted by the ~~s~~State
13 ~~b~~Board after consultation with the ~~s~~Secretary of ~~e~~Education and the ~~a~~Arts and the
14 chancellor for higher education. A certificate to teach shall not be granted to any person
15 who is not a citizen of the United States, is not of good moral character and physically,
16 mentally and emotionally qualified to perform the duties of a teacher and who has not
17 attained the age of eighteen years on or before the first day of October of the year in which
18 his or her certificate is issued; except that an exchange teacher from a foreign country, or
19 an alien person who meets the requirements to teach, may be granted a permit to teach
20 within the public schools of the state.

21 (e) In consultation with the ~~s~~Secretary of ~~e~~Education and the ~~a~~Arts and the chancellor for
22 higher education, institutions of higher education approved for teacher preparation may
23 cooperate with each other, with the center for professional development and with one or
24 more county boards in the organization and operation of centers to provide selected
25 phases of the teacher preparation program such as student teaching, beginning teacher
26 internship programs, instruction in methodology and seminar programs for college
27 students, teachers with provisional certification, professional support team members and
28 supervising teachers.

29 The institutions of higher education, the center for professional development and county
30 boards may by mutual agreement budget and expend funds for the operation of the
31 centers through payments to the appropriate fiscal office of the participating institutions,
32 the center for professional development and the county boards.

33 (f) The provisions of this section shall not be construed to require the discontinuation of an
34 existing student teacher training center or school which meets the standards of the ~~s~~State
35 ~~b~~Board of ~~e~~Education.

36 (g) All institutions of higher education approved for teacher preparation in the school year
37 of one thousand nine hundred sixty-two--sixty-three shall continue to hold that distinction
38 so long as they meet the minimum standards for teacher preparation. Nothing contained
39 herein shall infringe upon the rights granted to any institution by charter given according
40 to law previous to the adoption of this code.

House Bill 2466

Effective Date: Passed April 7, 2005; in effect ninety days from passage

Signed by Governor: April 20, 2005

Code Reference: Repeals §18-14-1; amends and reenacts §18-5-32

Title: Removing obsolete provisions

Major Provisions:

- Removes from state code the provision that empowered county boards that employ assistant superintendents and employ “fifty or more negro teachers” to also employ “one negro assistant superintendent.”
- Repeals a provision allowing county boards to cooperate with the “extension division of the college of agriculture” in employing an agricultural agent to organize and direct boys’ and girls’ agriculture club.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58

ENROLLED
Committee Substitute
for
H. B. 2466

(By Delegates Spencer, Moore and Marshall)

[Passed April 7, 2005; in effect ninety days from passage.]

AN ACT to repeal §§18-14-1 of the Code of West Virginia, 1931, as amended; and to amend and reenact §§18-5-32 of said code, all relating to education; eliminating provisions that created unlawful classifications based on race; deleting an obsolete provision relating to the cooperative extension service; and removing obsolete language relating to Bluefield State College.

Be it enacted by the Legislature of West Virginia:

That §§18-14-1 of the Code of West Virginia, 1931, as amended, be repealed; and that §§18-5-32 of said code be amended and reenacted, all to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§§18-5-32. Assistant superintendents; directors and supervisors of instruction and other educational activities; ~~agricultural club agents.~~

(a) ~~The county board of education, upon the recommendation of the county superintendent, may employ an assistant whose term of employment shall be not less than one nor more than four years: **Provided**~~ *Provided*, That ~~such~~ his or her term shall not extend beyond that of the incumbent county superintendent.

(b) The board shall not employ more than one assistant for each two hundred teachers or major fraction thereof ~~**Provided, however**, The in such districts in which assistants are employed and fifty or more negro teachers are employed therein, the board may employ on negro assistant superintendent.~~

(c) The county board, upon the recommendation of the county superintendent, ~~shall have~~ is authorized to employ ~~such~~ general and special supervisors or directors of instruction and of ~~such~~ other educational activities as may be ~~deemed~~ considered necessary.

(d) The employment of the assistant superintendent shall be on a twelve-month basis. The period of employment for all others named herein shall be at the discretion of the county board.

(e) ~~Rules and regulations for qualifications of assistant superintendents, and directors and supervisors of instruction and of other educational activities shall be fixed by the sState bBoard of education: **Provided, however**~~ *Provided*, That the qualifications required for any assistant superintendent shall in no event be higher than those required for the county superintendent: ~~**Provided, further**~~ *Provided, however*, That the rules do not affect the status of any incumbent nor his or her right to succeed himself or herself in his or her assigned position.

(f) The county board of education ~~shall have the authority~~ is authorized to reimburse ~~such~~ the employees for their necessary traveling expenses upon presentation of a monthly, itemized, sworn statement approved by the county superintendent.

(g) Any person employed under the foregoing provision of this section, provided he or she holds a valid teacher's certificate, shall be given continuing contract status as a teacher and shall hold ~~such~~ that status unless dismissed for statutory reasons.

~~The board may also cooperate with the extension division of the college of agriculture in employing the agricultural club agent for the organization and direction of the boys' and girls' agricultural clubs.~~

(h) All acts or parts of acts inconsistent with this section are hereby repealed.

House Bill 2510

Effective Date: Passed March 22, 2005; in effect ninety days from passage

Signed by Governor: April 1, 2005

Code Reference: Amends and reenacts §18B-3D-4

Title: Relating to the Workforce Development Initiative

Major Provisions:

- Defines the application procedures for Community/Technical Colleges to access funds under the Workforce Development Initiative Grant Program.
- Allows for collaborative workforce development projects among community/technical colleges and public schools.

1 ENROLLED
2 H. B. 2510
3

4 (By Delegates Frederick, Stalnaker, Walters, Rowan and Cann)
5

6 [Passed March 22, 2005; in effect ninety days from passage.]
7

8 AN ACT to amend and reenact §18B-3D-4 of the Code of West Virginia, 1931, as
9 amended, relating to the Workforce Development Initiative generally; and providing
10 that public sector employers may participate in the initiative under certain
11 circumstances.
12

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

14 That §18B-3D-4 of the Code of West Virginia, one thousand nine hundred thirty-one, as
15 amended, be amended and reenacted to read as follows:

16 **ARTICLE 3D. WORKFORCE DEVELOPMENT INITIATIVE.**

17 **§18B-3D-4. Grant application procedures.**

18 (a) In order to participate in the ~~w~~Workforce ~~d~~Development ~~i~~Initiative ~~g~~Grant ~~p~~Program, a
19 community and technical college must meet the following conditions:

20 (1) ~~Establish a Participate in a community and technical college consortia committee as~~
21 ~~required by section seven, article three-c of this chapter. The cConsortia committee or a~~
22 ~~subcommittee thereof representatives shall participate in the development of and approve~~
23 ~~applications for funding grants under the provisions of this article; and shall approve the~~
24 ~~w~~Workforce ~~d~~Development ~~i~~Initiative budget;

25 (2) Develop a plan to achieve measurable improvements in the quality of the workforce
26 within its service area over a five-year period. The plan must be developed in partnership
27 with employers, local vocational schools; and other workforce education providers; and

28 (3) Establish a special revolving fund under the jurisdiction of the ~~consortia committee~~
29 community and technical college consortia dedicated solely to workforce development
30 initiatives for the purposes provided in this article. Any fees or revenues generated from
31 ~~w~~Workforce ~~d~~Development ~~i~~Initiatives funded by a competitive grant shall be deposited into
32 this fund.

33 (b) To be eligible to receive a ~~w~~Workforce ~~d~~Development ~~i~~Initiative ~~g~~Grant, a community
34 and technical college must provide at least the following information in its application:

35 (1) Identification of the specific business or business sector training needs that will be met
36 if a ~~w~~Workforce ~~d~~Development ~~i~~Initiative ~~g~~Grant is received;

37 (2) A commitment from the private or public sector partner or partners to provide a match
38 of one dollar, cash and in-kind, for each dollar of state grant money received except in
39 cases where the community and technical college can demonstrate in the grant application
40 that it would be a hardship for the business private sector partner or partners being served
41 to provide a the match. In those cases only, the match required commitment to provide a
42 match may be reduced to one ~~private~~ dollar; provided by the private sector partner or
43 partners, cash and in-kind, for every three dollars of state grant money provided. In the
44 case of awards for the modernization of procurement of equipment, the ~~council~~
45 development office may establish a separate match requirement of up to one dollar, cash
46 and in-kind, for each dollar of state grant money received. Beginning in fiscal year 2006,
47 the commitment required by this subdivision may be provided by a public sector partner
48 using state or federal dollars to provide the required match: Provided, That no public sector
49 partner using state or federal dollars to provide the required match is eligible for a grant
50 under the provisions of this section unless the amount of funding provided by the
51 Legislature for the workforce development initiative in that fiscal year exceeds six hundred
52 fifty thousand dollars: Provided, however, That if the amount of funding provided by the
53 Legislature for the workforce investment initiative in a fiscal year exceeds six hundred fifty
54 thousand dollars, only one half of that amount exceeding six hundred fifty thousand dollars
55 may be granted to a qualified applicant whose commitment of the required match is from
56 a public sector partner using state or federal dollars to provide the match ;

57 (3) An agreement to share with other community and technical colleges any curricula

1 developed using funds from a workforce development initiative grant;
2 (4) A specific plan showing how the community and technical college will collaborate with
3 local post-secondary vocational institutions to maximize the use of existing facilities,
4 personnel and equipment; and
5 (5) An acknowledgment that acceptance of a grant under the provisions of this article
6 commits the community and technical college and its consortia committee to such terms,
7 conditions and deliverables as is specified by the ~~council~~ development office in the request
8 for applications, including, but not limited to, the measures by which the performance of
9 the workforce development initiative will be evaluated.
10 (c) Applications submitted by community and technical colleges may be awarded funds for
11 programs which meet the requirements of this article that are operated on a collaborative
12 basis at facilities under the jurisdiction of the public schools and utilized by both secondary
13 and post-secondary students.

House Bill 2527

Effective Date: Passed April 6, 2005; in effect ninety days from passage

Signed by Governor: April 14, 2005

Code Reference: Amends and reenacts §18A-4-8e

Title: Relating to Competency Testing of School Service Personnel

Major Provisions:

- The performance test for all classifications and categories other than bus operator is to be administered by an employee of the County Board of Education or a multi-county vocational school that serves the county at a location designated by the Superintendent and approved by the Board.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58

**ENROLLED
H. B. 2527**

(By Delegates Campbell, Williams, Perry and Beach)

[Passed April 6, 2005 ; in effect ninety days from passage.]

AN ACT to amend and reenact §18A-4-8e of the Code of West Virginia, 1931, as amended, relating to competency testing for service personnel; and authorizing employees of multicounty vocational school that serves county to administer tests.

Be it enacted by the Legislature of West Virginia:

That §18A-4-8e of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8e. Competency testing for service personnel.

(a) The ~~s~~State ~~b~~Board of ~~e~~Education shall develop and cause to be made available competency tests for all of the classification titles defined in section eight and listed in section eight-a of this article for service personnel. Each classification title defined and listed is considered a separate classification category of employment for service personnel and has a separate competency test, except for those class titles having Roman numeral designations, which are considered a single classification of employment and have a single competency test. The cafeteria manager class title is included in the same classification category as cooks and has the same competency test. The executive secretary class title is included in the same classification category as secretaries and has the same competency test. The classification titles of chief mechanic, mechanic and assistant mechanic are included in one classification title and have the same competency test.

(b) The purpose of these tests is to provide county boards of education a uniform means of determining whether school service personnel employees who do not hold a classification title in a particular category of employment meet the definition of the classification title in another category of employment as defined in section eight of this article. Competency tests may not be used to evaluate employees who hold the classification title in the category of their employment.

(c) The competency test consists of an objective written or performance test, or both: *Provided*, That applicants have the opportunity to take the written test orally if requested. Oral tests are recorded mechanically and kept on file. The oral test is administered by persons who do not know the applicant personally. The performance test for all classifications and categories other than bus operator is administered by an employee of the county board of education or an employee of a multi-county vocational school that serves the county at a location designated by the ~~s~~Superintendent and approved by the ~~b~~Board. The location may be a vocational school that serves the county. A standard passing score is established by the ~~s~~State ~~d~~Department of ~~e~~Education for each test and is used by county boards of education. The subject matter of each competency test is commensurate with the requirements of the definitions of the classification titles as provided in section eight of this article. The subject matter of each competency test is designed in such a manner that achieving a passing grade does not require knowledge and skill in excess of the requirements of the definitions of the classification titles. Achieving a passing score conclusively demonstrates the qualification of an applicant for a classification title. Once an employee passes the competency test of a classification title, the applicant is fully qualified to fill vacancies in that classification category of employment as provided in section eight-b of this article and shall not be required to take the competency test again.

(d) An applicant who fails to achieve a passing score is given other opportunities to pass the competency test when making application for another vacancy within the classification category.

(e) Competency tests are administered to applicants in a uniform manner under uniform testing conditions. County boards of education are responsible for scheduling competency

1 tests, notifying applicants of the date and time of the one day of training prior to taking the
2 test and the date and time of the test. County boards of education may not use a
3 competency test other than the test authorized by this section.
4 (f) When scheduling of the competency test conflicts with the work schedule of a school
5 employee who has applied for a vacancy, the employee is excused from work to take the
6 competency test without loss of pay.
7 (g) A minimum of one day of appropriate in-service training is provided to employees to
8 assist them in preparing to take the competency tests.
9 (h) Competency tests are used to determine the qualification of new applicants seeking
10 initial employment in a particular classification title as either a regular or substitute employee.
11 (i) Notwithstanding any provisions in this code to the contrary, once an employee holds or
12 has held a classification title in a category of employment, that employee is considered
13 qualified for the classification title even though that employee no longer holds that classification.
14 (j) The requirements of this section do not alter the definitions of class titles as provided
15 in section eight of this article or the procedure and requirements of section eight-b of this
16 article.

House Bill 2528

Effective Date: Passed April 9, 2005; in effect ninety days from passage.

Signed by Governor: May 3, 2005

Code Reference: Amends and reenacts W.Va. Code §18A-3-1a relating to alternative programs for the education of teachers

Title: Training, certification, licensing, professional development

Major Provisions:

- Language is added to §18A-3-1a to revise the requirements for activities, components and phases of training for alternative programs.
- Language is added to provide for program coordination, training and approval.
- Language is added to authorize separate programs to prepare highly qualified special education teachers.
- Language is added to require the position to be posted in instances in which the teacher who holds the alternative teaching certificate has not previously held a valid WV teaching certificate.
- Language is added to establish a hiring preference for a fully certified teacher whenever one is available.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

**ENROLLED
H. B. 2528**

(By Delegates Campbell, Williams, Perry and Beach)

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

AN ACT to amend and reenact §18A-3-1a of the Code of West Virginia, 1931, as amended, relating to alternative programs for the education of teachers; providing for alternative program certificate, eligibility, issuance, scope and renewal limitation; changing activities, components and phases of training for alternative programs; providing for program coordination, training and approval; authorizing separate programs to prepare highly qualified special education teachers; requiring position to be posted in certain instances; and establishing hiring preference.

Be it enacted by the Legislature of West Virginia:

That §18A-3-1a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-1a. Alternative programs for the education of teachers.

(a) By the fifteenth day of July ~~August~~, ~~one thousand nine hundred ninety-one~~ two thousand five, the ~~s~~State ~~b~~Board of education, after consultation with the ~~s~~Secretary of ~~e~~Education and the ~~a~~Arts, shall ~~adopt~~ promulgate rules in accordance with the provisions of article three-b, chapter twenty-nine-a of this code for the approval and operation of teacher education programs which are an alternative to the regular college or university programs for the education of teachers. To participate in an approved alternative teacher education program, the candidate must hold an alternative program teacher certificate issued by the ~~s~~Superintendent and endorsed for the instructional field in which the candidate seeks certification. An alternative program teacher certificate is a ~~temporary~~ certificate issued for one year to a candidate who does not meet the standard educational requirements for certification. The certificate may be renewed no more than two times. No individual may hold an alternative program teacher certificate for a period exceeding three years. The alternative program teacher certificate shall be considered a professional teaching certificate for the purpose of the issuance of a continuing contract. To be eligible for ~~such a~~ an alternative program teacher certificate, an applicant shall:

(1) Possess at least a bachelor's degree from ~~an~~ a regionally accredited institution of higher education in a discipline taught in the public schools; except that the rules established by the board may exempt candidates in selected vocational and technical areas who have at least ten years experience in the subject field from this requirement;

(2) Pass an appropriate state board approved basic skills and subject matter test ~~or complete three years of successful experience within the last seven years~~ in the area for which licensure is being sought;

(3) Be a citizen of the United States, be of good moral character and physically, mentally and emotionally qualified to perform the duties of a teacher, and have attained the age of eighteen years on or before the first day of October of the year in which the alternative program teacher certificate is issued; ~~and~~

1 (4) Have been offered employment in a school included by a county board in an alternative
2 teacher education plan approved by the board to offer an alternative teacher education
3 program area of critical need and shortage; and Persons who pass the appropriate test as
4 set forth in subdivision (2) above shall be granted a formal document which will enable
5 them to seek employment as an alternative program teacher in a public school approved
6 to offer an alternative teacher education program.

7 (5) Qualify following a criminal history check pursuant to section ten of this article.
8 Persons who satisfy the requirements set forth in subdivisions (1) through (5) of this
9 subsection shall be granted a formal document which will enable them to work in a public
10 school in West Virginia.

11 (b) The rules adopted by the board shall include provisions for the approval of alternative
12 teacher education programs which may be offered by schools, school districts, consortia
13 of schools or regional educational service agency and for the setting of tuition charges to
14 offset the program costs. An approved alternative teacher education program shall be in
15 effect for a school, school district, consortium of schools or regional educational service
16 agency before an alternative program teacher may be employed in that school, school
17 district, consortium of schools or regional educational service agency. Approximately two
18 hundred hours of formal instruction shall be provided in all of the three following phases
19 combined: An approved alternative program shall provide essential knowledge and skills
20 to alternative program teachers through the following phases of training:

21 (1) Instruction. -- A full-time seminar/practicum of no less than twenty and not more than
22 thirty days duration which is accomplished before the alternative program teacher has full
23 responsibility for a classroom. The seminar/practicum shall provide formal instructions in
24 the essential areas for professional study which shall emphasize the topics The alternative
25 preparation program shall provide a minimum of eighteen semester hours of instruction in
26 the areas of student assessment; development and learning; curriculum; classroom
27 management; and the use of educational computers and other technology; and shall
28 introduce basic teaching skills through supervised teaching experiences with students
29 special education and diversity. The seminar and practicum components shall be
30 integrated and shall include an orientation to the policies, organization and curriculum of
31 the employing district; All programs shall contain a minimum of three semester hours of
32 instruction in special education and diversity out of the minimum eighteen required
33 semester hours.

34 (2) Phase I. -- Phase I shall consist of a A period of intensive on-the-job supervision
35 beginning the first day on which the alternative program teacher assumes full responsibility
36 for a classroom and continuing by an assigned mentor and the school administrator for a
37 period of at least ten weeks not less than two weeks and no more than four weeks. The
38 assigned mentor shall meet the requirements for mentor set forth in section two-b of this
39 article and be paid the stipend pursuant to that section. During this time, the alternative
40 program teacher shall be visited and critiqued no less than one time per week by members
41 of a professional support team and shall be observed and formally evaluated at the end
42 of five weeks and at the end of ten weeks by the appropriately certified members of the
43 team daily. During the same period, formal instruction shall be continued in the essential
44 areas for professional study which shall emphasize the topics of teaching skills, student
45 assessment, development and learning, curriculum, classroom management, and the use
46 of educational computers and other technology. At the end of the ten-week period, the
47 alternative program teacher shall receive a formal written progress report from the
48 chairperson of the support team; and This phase shall include an orientation to the policies,
49 organization and curriculum of the employing district. The alternative program teacher
50 shall begin to receive formal instruction in those areas listed in subdivision (1) of this
51 subsection.

52 (3) Phase II. -- Phase II shall consist of An a period of continued intensive on-the-job
53 supervision and evaluation of no less than twenty weeks duration beginning the first day
54 following the completion of Phase I and continuing for a period of at least ten weeks.
55 During this period Phase II, the alternative program teacher shall be visited and critiqued
56 at least twice per month no less than one time per week by members of a professional
57 support team, defined in subsection (c) of this section, and shall be observed and formally
58 evaluated at least twice the end of five weeks and at the end of ten weeks by the

1 appropriately certified members of the team. No more than two months At the end of the
2 ten-week period, the alternative program teacher shall pass without receive a formal
3 evaluation written progress report from the chairperson of the support team. Format
4 instruction The alternative program teacher shall continue in the essential areas for
5 professional study to receive formal instruction in those areas listed above under
6 subdivision (1) of this subsection. Opportunities shall be provided for the alternative
7 program teacher to observe the teaching of experienced colleagues.
8 (4) Phase III. -- Phase III shall consist of an additional period of continued supervision and
9 evaluation of no less than twenty weeks duration. The professional support team will
10 determine the requirements of this phase with at least one formal evaluation being
11 conducted at the completion of the phase. The alternative program teacher shall continue
12 to receive formal instruction in those areas listed above under subdivision (1) of this
13 subsection, and receive opportunities to observe the teaching of experienced colleagues.
14 (c) Training and supervision of alternative program teachers shall be provided by a
15 professional support team comprised of a school principal, an experienced classroom
16 teacher who satisfies the requirements for mentor for the Beginning Educator Internship
17 as specified in section two-b of this article, a college or university education faculty member
18 and a curriculum supervisor. Districts or schools which do not employ curriculum
19 supervisors or have been unable to establish a relationship with a college or university shall
20 provide for comparable expertise on the team. The school principal shall serve as
21 chairperson of the team. In addition to other duties assigned to it under this section and
22 section one-b of this article, the professional support team shall submit a written evaluation
23 of the alternative program teacher to the county superintendent. The written evaluation
24 shall be in a form specified by the county superintendent and submitted on a date specified
25 by the county superintendent that is prior to the first Monday of May. The evaluation shall
26 report the progress of the alternative program teacher toward meeting the academic and
27 performance requirements of the program.
28 (d) ~~The training efforts of the districts for professional support team members shall be~~
29 ~~coordinated and provided by the eCenter for pProfessional dDevelopment and the center~~
30 ~~shall provide an orientation and training program for professional support team members~~
31 ~~in coordination with the school district, consortium of schools, regional educational service~~
32 ~~agency, and institution of higher education, or any combination of these agencies as set~~
33 ~~forth in the plan approved by the state board pursuant to subsection (e) of this section.~~
34 (e) A school, school district, consortium of schools or regional educational service agency
35 seeking to employ an alternative program teacher must submit a plan to the sState bBoard
36 of Education and receive approval in accordance with the same procedures used for
37 approval of collegiate preparation programs. Each plan shall describe how the proposed
38 training program will accomplish the key elements of an alternative program for the
39 education of teachers as set forth in this section. Each school, school district, consortium
40 of schools or regional educational service agency shall show evidence in its plan of having
41 sought joint sponsorship of their training program with institutions of higher education.
42 (f) The state board shall promulgate a rule in accordance with article three-b, chapter
43 twenty-nine-a of this code for the approval and operation of alternative education programs
44 to prepare highly qualified special education teachers that are separate from the programs
45 established under the other provisions of this section and are applicable only to teachers
46 who have at least a Bachelor's degree in a program for the preparation of teachers from
47 a regionally accredited institution of higher education. These programs are subject to the
48 other provisions of this section only to the extent specifically provided for in the rule. These
49 programs may be an alternative to the regular college and university programs for the
50 education of special education teachers and also may address the content area
51 preparation of certified special education teachers. The programs shall incorporate
52 professional development to the maximum extent possible to help teachers who are
53 currently certified in special education to obtain the required content area preparation.
54 Participation in an alternative education program pursuant to this subsection shall not
55 affect any rights, privileges or benefits to which the participant would otherwise be entitled
56 as a regular employee, nor does it alter any rights, privileges or benefits of participants on
57 continuing contract status. The state board shall report to the legislative oversight
58 commission on education accountability on the programs authorized under this subsection

1 during the July, two thousand five, interim meetings or as soon thereafter as practical prior
2 to implementation of the programs.

3 (g) The State Board shall promulgate a rule in accordance with article three-b, chapter
4 twenty-nine-a of this code for the approval and operation of alternative education programs
5 to prepare highly qualified special education teachers that are separate from the programs
6 established under the other provisions of this section and are applicable only to persons
7 who hold a bachelor's degree from a regionally accredited institution of higher education.
8 These programs are subject to the other provisions of this section only to the extent
9 specifically provided for in this rule. These programs may be an alternative to the regular
10 college and university programs for the education of special education teachers and also
11 may address the content area preparation of such persons. The State Board shall report
12 to the Legislative Oversight Commission on Education Accountability on the programs
13 authorized under this subsection during the July, two thousand five, interim meetings or as
14 soon thereafter as practical prior to implementation of the programs.

15 (h) For the purposes of this section, "area of critical need and shortage" means an opening
16 in an established, existing or newly created position which has been posted in accordance
17 with the provisions of section seven-a, article four of this chapter, and for which no fully
18 qualified applicant has been employed.

19 (i) The recommendation to rehire an alternative education program teacher pursuant to
20 section eight-a, article two of this chapter is subject to the position being posted and no
21 fully qualified applicant being employed: *Provided*, That this provision does not apply to
22 teachers who hold a valid West Virginia professional teaching certificate and who are
23 employed under a program operated pursuant to subsection (f).

24 (j) When making decisions affecting the hiring of an alternative program teacher under the
25 provisions of this section, a county board shall give preference to applicants who hold a
26 valid West Virginia professional teaching certificate.

House Bill 2570

Effective Date: Passed April 7, 2005; in effect ninety days from passage

Signed by Governor: April 20, 2005

Code Reference: Amends and reenacts §7-6-2; amends and reenacts §18-9-6

Title: Depositories of Funds

Major Provisions:

- Exempts banking institutions from the requirement that they post bond or other security for the deposit of county board of education funds, provided that the deposits are placed in certificates of deposit that meet certain requirements.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58

**ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2570**

(By Delegates Ron Thompson, Perry and H. White)

[Passed April 7, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §7-6-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §8-13-22a of said code; to amend and reenact §18-9-6 of said code, all relating generally to depositories for county, municipal or county board of education funds; excepting banking institutions from the requirement to post bond or other security for the deposit of county, municipal or county board of education funds when the deposits are placed in certificates of deposits through a designated state depository; and conditions.

Be it enacted by the Legislature of West Virginia:

That §7-6-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §8-13-22a of said code be amended and reenacted; and that §18-9-6 of said code be amended and reenacted, all to read as follows

CHAPTER 18. EDUCATION.

ARTICLE 9. SCHOOL FINANCES.

§18-9-6. Transfer of moneys; appointment of treasurer; bonding of treasurer; approval of bank accounts; authority to invest; security for funds invested.

The sheriff of each county shall remit to the board of education all moneys in his or her possession held on behalf of the county board of education, whether or not deposited in a bank or depository, unless the sheriff has been designated treasurer of the board of education as provided in this section. ~~Such The~~ transfer of funds shall be made as of the balances on hand on the thirtieth day of June of the year in which the board of education appoints a treasurer other than the sheriff, and shall be completed no later than the first day of August of that year. ~~Such The~~ transfer shall be adjudged complete and final upon the approval of the sheriff's official settlement for the fiscal year ending on the thirtieth day of June of the year in which the board of education appoints a treasurer other than the sheriff, and any minor adjustment made necessary by the actually known figures shall also be made at that time. All balances in all county school funds at the end of each month after the thirtieth day of June of the year in which the board of education appoints a treasurer other than the sheriff shall be transferred by the sheriff to the county board of education not later than the tenth day of the following month.

On or before the first Monday in May each county board of education shall upon recommendation of the county superintendent appoint a treasurer for the board. ~~Such The~~ treasurer ~~shall be~~ is the fiscal officer of the board, or an employee commonly designated as the person in charge of the financial affairs of the county board, or the county sheriff: *Provided*, That once a board of education has appointed a treasurer other than the sheriff, the sheriff ~~shall~~ may not be named treasurer of the board in a subsequent year. Upon appointment this person shall be titled and referred to as treasurer of the board of education. For the faithful performance of this duty, ~~such the~~ treasurer shall execute a bond, to be approved by the board of education, in the penalty to be fixed by the board of education, not to exceed the amount of school funds which it is estimated the treasurer will handle within any period of two months. The premium on the bond shall be paid by the board of education.

The board of education may open a bank account, or accounts, as required to adequately and properly transact the business of the district in a depository, or banks, within the county. ~~Such The~~ depositories, or banks, shall provide bond to cover the maximum amount to be deposited at any one time. However, the county board of education may, in lieu of such bond, accept as security for money deposited securities of the United States, or of

1 a state, county, district or municipal corporation, or federal agency securities: *Provided,*
2 That a banking institution is not required to provide a bond or security in lieu of bond if the
3 deposits accepted are placed in certificates of deposit meeting the following requirements:
4 (1) the funds are invested through a designated state depository selected by the county
5 board of education; (2) the selected depository arranges for the deposit of the funds in
6 certificates of deposit in one or more banks or savings and loan associations wherever
7 located in the United States, for the account of the county board of education; (3) the full
8 amount of principal and accrued interest of each certificate of deposit is insured by the
9 Federal Deposit Insurance Corporation; (4) the selected depository acts as custodian for
10 the county board of education with respect to such certificates of deposit issued for the
11 county's account; and (5) at the same time that the county board of education's funds are
12 deposited and the certificates of deposit are issued, the selected depository receives an
13 amount of deposits from customers of other financial institutions wherever located in the
14 United States equal to or greater than the amount of the funds invested by the county
15 board of education through the selected depository . One hundred ten percent of the face
16 or par value of ~~such the~~ securities may not be less than the sum hereinbefore specified as
17 the amount to be named in the bond in lieu of which ~~such the~~ securities are accepted, or
18 the county board of education may accept the securities as partial security to the extent
19 of their face value for the money so deposited and require bond for the remainder of the
20 full amount hereinbefore specified, to be named in the bond, and, in the bond so required,
21 ~~such the~~ acceptance of securities as partial security and the extent thereof shall be set
22 forth. The hypothecation of the securities shall be by proper legal transfer as collateral
23 security to protect and indemnify by trust any and all loss in case of any default on the part
24 of the banking institution in its capacity as depository as aforesaid. All such securities shall
25 be delivered to or deposited for the account of the county board of education, and
26 withdrawal or substitution thereof may be permitted from time to time upon approval by the
27 county board of education by order of record, but ~~such the~~ collateral security shall be
28 released only by order of record of the county board of education when satisfied that full
29 and faithful accounting and payment of all the moneys has been made under the
30 provisions hereof. In the event actual possession of ~~such the~~ hypothecated securities is
31 delivered to the county board of education, it shall make ample provision for the
32 safekeeping thereof, and the interest thereon when paid shall be turned over to the
33 banking institution, so long as it is not in default as aforesaid. The county board of
34 education may permit the deposit under proper receipt of such securities with one or more
35 banking institutions within the ~~s~~State of West Virginia and may contract with any such
36 institution for safekeeping and exchange of any such hypothecated securities, and may
37 prescribe the rules ~~and regulations~~ for handling and protecting the same.
38 On and after the first day of July, one thousand nine hundred seventy-three, all levies and
39 any other school moneys received by the sheriff and paid to the treasurer of the county
40 board of education shall be deposited in these accounts, and all proper payments from
41 such funds shall be made by the designated depository or bank upon order or draft
42 presented for payment and signed by the duly authorized signatories of the board of
43 education: *Provided, however,* That in determining the depository for board of education
44 funds a board member who has a pecuniary interest in a bank within the county shall not
45 participate in the determination of the depository for such funds.
46 If it is ~~deemed~~ considered that sufficient funds are on hand in any account at any one time
47 which may be more than are normally required for the payment of incurred expenses, ~~such~~
48 the funds in the amount so ~~deemed~~ considered available may be invested by the treasurer
49 of the county board with the West Virginia municipal bond commission, or in guaranteed
50 certificates of deposit issued by the depository or bank, or other guaranteed investments
51 such as treasury bills, treasury notes or certificates of deposit issued by either the United
52 States government or a banking institution in which federal or state guarantees are
53 applicable. Interest earned in such investments is to be credited to the fund from which the
54 moneys were originally available.

House Bill 2578

<u>Effective Date:</u>	Passed April 9, 2005; in effect July 1, 2005
<u>Signed by Governor:</u>	May 3, 2005
<u>Code Reference:</u>	Repeals §18-2E-3e and amends and reenacts §§18-9A-5a and 18-9A-5b
<u>Title:</u>	Public School Support
<u>Major Provisions:</u>	

- Repeals §18-2E-3e related to the West Virginia Science Education Enhancement Initiative Grant Program.
- Increases the net enrollment limits under the Public School Support Program for professional educators and service personnel over the next three years and establishes separate limits for professional educators, as follows:
 - o For the 2005-06 year:
 - Professional educators – 74.10 for the school districts whose student population density is greater than the state average and 74.20 for the districts whose student population density is less than the state average.
 - Service personnel – 43.73 for the school districts whose student population density is greater than the state average and 44.69 for the districts whose student population density is less than the state average.
 - o For the 2006-07 year:
 - Professional educators – 74.20 for the school districts whose student population density is greater than the state average and 74.40 for the districts whose student population density is less than the state average.
 - Service personnel – 43.85 for the school districts whose student population density is greater than the state average and 44.89 for the districts whose student population density is less than the state average.
 - o For the 2007-08 year:
 - Professional educators – 74.30 for the school districts whose student population density is greater than the state average and 74.60 for the districts whose student population density is less than the state average.
 - Service personnel – 43.97 for the school districts whose student population density is greater than the state average and 45.10 for the districts whose student population density is less than the state average.

- Reiterates the Legislature's intent to further examine the state basic foundation program in context with the changing educational environment and address the staffing and other needs of the public schools as may be indicated through that examination.

1

ENROLLED
Committee Substitute
for
H. B. 2578

(By Delegates Williams, Crosier and Sumner)

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

AN ACT to repeal §18-2E-3e of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-9A-5a and §18-9A-5b of said code, all relating to repealing section creating the West Virginia Science Education Enhancement Initiative Grant Program; increasing the ratios of professional and service personnel to students in net enrollment; establishing the ratios for certain school years; and making certain findings; stating legislative intent to examine state basic foundation program and address staffing and other needs as indicated by examination.

Be it enacted by the Legislature of West Virginia:

That §18-2E-3e of the Code of West Virginia, 1931, as amended, be repealed; and that §18-9A-5a of said code be amended and reenacted, all to read as follows:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-5a. Ratio of foundation allowances for professional educators and service personnel to net enrollment.

(a) The purpose of this section is to establish maximum ratios between the numbers of professional educators and service personnel in the counties which are funded through the public school support plan and the net enrollment in the counties, ~~such~~. These ratios are in addition to the ratios provided for in sections four and five of this article. It is the intent of the Legislature to adjust these ratios pursuant to legislative act as may be appropriate when additional personnel are needed to perform additional duties.

(b) ~~Commencing Beginning with on the school year one thousand nine hundred eight-nie--~~ ~~ninety, first day of July, two thousand five,~~ and each school year thereafter, in computing the basic foundation allowance to a county for professional educators and the basic foundation allowance to a county for service personnel under sections four and five of this article, a county shall not receive an allowance for ~~such these~~ personnel which number per one thousand students in net enrollment is in excess of the number of professional educators and the number of service personnel in the county computed as follows:

Maximum professional educators per 1000 net enrollment the preceding year		Maximum service personnel per 1000 net enrollment the preceding year
--	--	---

1998-99 74.0 43.5

Maximum service personnel per 1000		Maximum service personnel per 1000
---------------------------------------	--	---------------------------------------

Maximum professional net enrollment the net enrollment the educators per 1000 preceding year for preceding year for		Maximum service personnel per 1000
For the school year net enrollment the each high density each low density		preceding year county county
1999-2000 preceding year county county		and thereafter 74.0 43.6 44.5

<u>Maximum professional educators per 1000 students in net enrollment</u>		<u>Maximum service personnel per 1000 students in net enrollment</u>
---	--	--

<u>For the school</u>	<u>High density</u> <u>Low density</u>	<u>High density</u> <u>Low density</u>	
-----------------------	--	--	--

1 year	County	County	County	County
2				
3 <u>2005-2006</u>	<u>74.10</u>	<u>74.20</u>	<u>43.73</u>	<u>44.69</u>
4 <u>2006-2007</u>	<u>74.20</u>	<u>74.40</u>	<u>43.85</u>	<u>44.89</u>
5 <u>and thereafter</u>	<u>74.30</u>	<u>74.60</u>	<u>43.97</u>	<u>45.10</u>

6 (c) Every county shall utilize use methods other than reductions in force, such as attrition
7 and early retirement, before implementing their reductions in force policy to comply with
8 the limitations of this section.

9 **§18-9A-5b. Foundation allowance for increasing professional and service personnel**
10 **positions.**

11 (a) Commencing with the school year beginning on the first day of July, two thousand five,
12 two million five hundred thousand dollars shall be appropriated for the purpose of
13 increasing the ratios of professional and service personnel per one thousand students in
14 net enrollment. For each of the eleven following school years, an additional two million five
15 hundred thousand dollars shall be added to the appropriation for this purpose. The
16 increases in the ratios of professional and service personnel per one thousand students
17 in net enrollment shall be made in a manner which reflects the greater need of counties
18 with a low student population density for additional personnel.

19 (b) The Legislature finds that the state basic foundation program initially was enacted
20 during the regular session of the Legislature, one thousand nine hundred seventy-one, as
21 a seven-step formula driven largely by student enrollment. Although it has been amended
22 many times over the intervening years to effect program improvements, respond to
23 changing enrollment patterns and accommodate budgetary priorities, it remains a formula
24 driven primarily by student enrollment. As such, the state basic foundation program has
25 been credited with providing base level funding from the state which is very equitable on
26 a per student basis among the county school systems. However, the intervening years
27 also have seen substantial changes in the educational environment, the most profound of
28 which include the decline in student enrollment from about four hundred four thousand
29 students when the state basic foundation program was created to about two hundred
30 seventy-eight thousand students in the two thousand five school year, the growth of
31 technology delivered instruction, the advent of performance-based accountability and the
32 accompanying responsibility to target resources to make needed improvements.
33 Therefore, as it pursues the objectives set forth in subsection (a) of this section, it is the
34 intent of the Legislature to examine further the state basic foundation program in context
35 with the changing educational environment and address the staffing and other needs of the
36 public schools as may be indicated through that examination.

House Bill 2592

Effective Date: July 1, 2005

Signed by Governor: April 18, 2005

Code Reference: Amends and reenacts §5-22A-2, §5-22A-3, §5-22-A-4, §5-22A-5, §5-22A-6, §5-22A-7, §5-22A-8, §5-22A-11, §5-22A-12 and §5-22A-15; adds new section, designated §5-22A-9a

Title: Design-Build Procurement Act

Major Provisions:

- This Bill amends West Virginia's Design Procurement Act.
- The Design-Build Board must notify the Secretary of the Department of Administration of any agency, including any county board of education, that proceeds with a Design-Build project without meeting the requirements of the Act.
- An agency must submit additional information to the Design-Build Board for approval.
- The information must include a written funding plan for the project, a written application for approval, and a request to meet with the Design-Build Board to present the project.
- If the Design-Build Board approves the project, the agency must submit monthly reports on the progress of the project until construction is started.
- The bill also sets forth specific guidelines for the invitation for proposals.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59

**ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2592**

(By Delegates Beane, Spencer, Cann and Michael)

[Passed March 30, 2005; in effect July 1, 2005.]

AN ACT to amend and reenact §5-22A-2, §5-22A-3, §5-22A-4, §5-22A-5, §5-22A-6, §5-22A-7, §5-22A-8, §5-22A-10, §5-22A-11, §5-22A-12 and §5-22A-15 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §5-22A-9a, all relating to the Design-Build Procurement Act; definitions; authorizing reimbursement of expenses for Design-Build Board members; clarifying the duties of the Board; modifying requirements for approval of design-build projects; clarifying that authority to enter into design-build contracts terminates when Board terminates; requiring monthly progress reports on design-build projects; requiring annual reports; revising rule-making authority and requirements; specifying requirements for performance criteria developers; establishing requirements for issuing invitations for qualifications and proposals; providing for selection of qualified design-builders; revising proposal requirements; revising submission requirements; and changing the continuation date for the Board.

Be it enacted by the Legislature of West Virginia:

That §5-22A-2, §5-22A-3, §5-22A-4, §5-22A-5, §5-22A-6, §5-22A-7, §5-22A-8, §5-22A-10, §5-22A-11, §5-22A-12 and §5-22A-15 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 §5-22A-9a, all to read as follows:

ARTICLE 22A. DESIGN-BUILD PROCUREMENT ACT.

§5-22A-2. Definitions.

For the purpose of this article:

(1) "Agency" means all state departments, agencies, authorities, quasi-public corporations and all political subdivisions, including cities, counties, boards of education and public service districts and the individual representatives of the agency appointed to oversee or supervise the project.

(2) "Board" means the ~~review Design-Build b~~Board established pursuant to section four of this article to determine whether a public project ~~can be constructed under the design-build method of construction~~ satisfies the requirements of this article.

(3) "Design-build" is defined as providing responsibility within a single contract for design, construction or alteration of a building or buildings, together with incidental approaches, structures and facilities to be constructed, in which services within the scope of the practice of professional engineering or architecture, as defined by the laws of the ~~s~~State of West Virginia, are performed by an engineer or architect duly ~~registered~~ licensed in the ~~s~~State of West Virginia and ~~where in which~~ services within the scope of construction contracting, as defined by the laws of the ~~s~~State of West Virginia, are performed by a contractor qualified and licensed under the applicable statutes. The design-build method of construction may not be used for any other construction projects, such as highway, water or sewer projects.

(4) "Design-build contract" means the contract between an agency and a design-builder to furnish the architecture, engineering, and related services as required, for a given public project, and to furnish the labor, materials and other construction of services for the same public project. A design-build contract may be conditional upon subsequent refinements in scope and price, and may permit the agency to make changes in the scope of the project without invalidating the design-build contract.

(5) "Design-builder" means the entity, whether natural person, partnership, joint venture, corporation, professional corporation, business association; or other legal entity, that proposes to design and construct any public project governed by the procedures of section seven, article six, ~~section seven~~ of this chapter and this article.

1 (6) "Firm" means any individual, firm, partnership, corporation, limited liability company,
2 limited liability partnership, association, joint venture or other legal entity permitted by law
3 to practice engineering, architecture or construction contracting in the State of West Virginia.
4 (7) "Invitation for proposals" means the document or publication by which an agency
5 solicits proposals for a design- build project.
6 (8) "Invitation for qualifications" means the document or publication by which an agency
7 solicits a statement of qualifications from potential design-builders in order to select three
8 to five design-builders to respond to the agency's invitation for proposal.
9 (9) "Performance criteria" means the requirements for the public project, including as
10 appropriate, aesthetics, capacity, durability, production standard, ingress and egress
11 requirements or other criteria for the intended use of the public project, expressed in
12 performance-oriented drawings and specifications suitable to allow the design-builder to
13 make a proposal.
14 (10) "Performance criteria developer" means an architect or engineer ~~duly registered in~~
15 ~~accordance with~~ licensed under the laws of this state and, if applicable, the architect's or
16 engineer's employer, company, partners, joint venturers, affiliates or subcontractors
17 retained by the agency to develop performance criteria and to serve as the agency's
18 technical advisor.
19 (11) "Project" means that project described in the public announcement.
20 (12) "Proposal" means an offer to enter into a design-build contract, as further defined in
21 this article.
22 ~~"Request for proposals" means the document or publication whereby an agency solicits~~
23 ~~proposals for a design-build contract.~~
24 ~~"Substantial completion" means the stage in the progress of the work when the work or~~
25 ~~designated portion thereof is sufficiently complete in accordance with the design-build~~
26 ~~contract so the agency can occupy or utilize the work for its intended use.~~
27 ~~"Work" means the construction and services required by the design-build contract, whether~~
28 ~~completed or partially completed, and includes all other labor, materials, equipment and~~
29 ~~services provided or to be provided by the design-builder to fulfill the design-builder's~~
30 ~~obligations. The work may constitute the whole or a part of the project.~~
31 (13) "Qualified design-builder" means one of the three to five design-builders selected by
32 the agency to respond to the invitation for proposals.
33 (14) "Responsive proposal" means a proposal that scores a minimum of seventy points out
34 of a possible one hundred points in the qualitative evaluation.
35 (15) "Statement of qualifications" means descriptive information or other data submitted
36 by a design-builder indicating its ability to satisfy the requirements set forth in the invitation
37 for qualifications.
38 (16) "Substantial completion" means the stage in the progress of the work when the work
39 or designated portion thereof is sufficiently complete in accordance with the design-build
40 contract so the agency can occupy or utilize the work for its intended use.
41 (17) "Technical review committee" means the group of individuals who have education and
42 experience in the design, construction, operation, administration, and finance requirements
43 of the project and users of the project selected by the agency to review, evaluate and score
44 the statement of qualifications and invitation for proposal.
45 (18) "Work" means the design, construction and services required by the design-build
46 contract, whether completed or partially completed, and includes all other labor, materials,
47 equipment and services provided or to be provided by the design- builder to fulfill the
48 design-builder's obligations. The work may constitute the whole or a part of the project.
49 **§5-22A-3. Public policy; conditions for contract.**
50 (a) Recognizing that the design-bid-build method provides a viable delivery method for
51 public projects, it is ~~also~~ the public policy of this state to permit an agency to enter into
52 design-build contracts for public projects.
53 (b) An agency may not enter into a design-build contract for a public project unless:
54 (1) The ~~d~~Department of ~~a~~Administration or appropriate governing body, prior to issuing
55 ~~requests for proposals~~, promulgates and publishes legislative rules pursuant to section six
56 of this article, and consistent with this article for the solicitation and award of design-build
57 contracts and ~~shall~~ adheres to this article and those rules;
58 (2) The agency, for each public project or projects procured pursuant to this article, ~~must~~
59 determines that it is in the best interest of the public to enter into a design-build contract

1 to complete the public project or projects and adheres to this article and the rules; and
2 (3) The ~~b~~Board established pursuant to section four of this article determines that the
3 public project is appropriate as a design-build project utilizing the mandatory criteria as
4 provided in section five of this article.

5 (c) When the Design-Build Board, established pursuant to section four of this article, is
6 terminated pursuant to the Acts of the Legislature, no agency may enter into a design-build
7 contract: *Provided*, That agencies may pursue and complete any design-build projects
8 approved by the board prior to its termination date.

9 **§5-22A-4. Design-~~b~~Build ~~b~~Board and members; appointments; expense**
10 **reimbursement; meetings; authority to promulgate rules.**

11 ~~(a) There is hereby created t~~The dDesign-~~b~~Build ~~b~~Board is continued within the
12 Department of Administration and shall be is composed of the following nine members who
13 are ~~to be~~ appointed by the ~~g~~Governor with the advice and consent of the Senate: Two
14 contractors licensed in the ~~s~~State of West Virginia; one architect licensed in the ~~s~~State of
15 West Virginia; and one professional engineer licensed in the ~~s~~State of West Virginia; the
16 ~~s~~Secretary of the ~~d~~Department of ~~a~~Administration, ex officio; one representative from labor;
17 and three other members of the public at large. Members of the ~~b~~Board are not entitled to
18 compensation for services performed as members, but may be reimbursed for actual and
19 necessary expenses incurred for each day in which he or she is engaged in the discharge
20 of official business, in accordance with rules promulgated pursuant to section eleven,
21 article three, chapter twelve of this code and travel management policies adopted by the
22 Department of Administration. Each member of the ~~b~~Board must shall take and subscribe
23 to the oath or affirmation required pursuant to section five, article IV of the eConstitution
24 of West Virginia.

25 (b) Within thirty days of the effective date of this section, the governor shall make the initial
26 appointments to the design-build board. Of the initial appointments to the board, four will
27 be for a term ending two years after the effective date of this section and four for a term
28 ending three years after the effective date of this section. Thereafter, terms of office are
29 for three years, each term ending on the same day of the same month of the year as did
30 the term which it succeeds. Terms of office are for three years, which are staggered in
31 accordance with the initial appointments under prior enactment of this section, each term
32 ending on the same day of the same month of the year as did the term which it succeeds.
33 Each member ~~will~~ holds office from the date of his or her appointment or until his or her
34 successor qualifies for office. When a vacancy occurs as a result of death, resignation or
35 removal in the membership of the ~~b~~Board, it must be the Governor shall filled the vacancy
36 by an appointment within thirty days of the vacancy for the unexpired portion of the term
37 in the same manner as original appointments.

38 ~~(c) The board must meet within thirty days of the initial appointments to the board at a time~~
39 ~~and place to be determined by the governor, who must designate a member to preside at~~
40 ~~that meeting until a chairman is elected. At its first meeting, t~~The Board shall elect a
41 chairmanperson and such other necessary officers as are necessary. The Board shall
42 within ninety days after its first meeting adopt rules for its procedures. Five members of the
43 ~~b~~Board constitute is a quorum. Except as may otherwise be provided in this section, a
44 majority of the total membership is necessary to act at all times. Meetings of the board
45 shall be held upon the call of the sSecretary of the ~~d~~Department of ~~a~~Administration, the call
46 of the chairperson or the call of any two members of the Board: *Provided*, That the Board
47 shall meet at least four times each calendar year and all meetings of the Board must be
48 held in accordance with the open governmental proceedings act as set out in article nine-a,
49 chapter six of this code.

50 ~~(d) The board shall promulgate rules to carry out the purposes of this article. Any rules~~
51 ~~adopted by the board prior to the first day of October, one thousand nine hundred ninety-~~
52 ~~nine, are exempt from the provisions of article three, chapter twenty-nine-a of this code:~~
53 ~~*Provided*, That the board shall file a copy of any rule so exempted from the provisions of~~
54 ~~chapter twenty-nine-a of this code with the legislative rule-making review committee~~
55 ~~created pursuant to section eleven, article three of said chapter prior to the thirtieth day of~~
56 ~~November, one thousand nine hundred ninety-nine.~~

57 **§5-22A-5. Duties of board to approve and monitor projects.**

58 (a) Upon receipt of information that an agency wants to pursue the design-build method
59 of project delivery, the board, with the administrative support of the Secretary of the

1 Department of Administration, shall notify the agency that failure to comply with the
2 requirements of this article is a violation of state law. The Board shall notify the Secretary
3 of the Department of Administration of any agency knowingly proceeding without meeting
4 the requirements of this article.

5 ~~(4)(b)~~ Prior to allowing an agency to enter into design-build contracts for issuing an
6 invitation for qualifications for public projects, the Board must determine that the public
7 project is appropriate as a design-build project in accordance with all of the following:

8 (1) The agency has the appropriate legal authority to enter into a design-build contract;

9 ~~(4)(2)~~ The agency requires a project design and construction time line that is faster than
10 the traditional design-bid-build process would allow;

11 ~~(2)(3)~~ The project requires close coordination of design and construction expertise or an
12 extreme amount of coordination; and

13 ~~(3)(4)~~ The agency requires early cost commitments;

14 (5) The agency provides a written plan for funding the project including, but not limited to,
15 the funding necessary to pay for design services and construction costs; and

16 (6) The agency has completed and submitted a written application for approval to the
17 Board and requested a meeting with the Board to present its request for approval from the
18 Board.

19 (c) Upon project approval under subsection (b) of this section, the agency shall submit to
20 the Board monthly reports detailing the progress of the approved project. The reports shall
21 continue until the start of construction to ensure that the agency has complied with any
22 requirements established by the Board in its approval of the project. If any requirement is
23 not satisfied, the Board may withdraw its approval of the project at any time prior to the
24 start of construction. If the board withdraws its approval, the agency may not proceed with
25 the project as a design-build project until the requirements set forth in the board's approval
26 and the requirements of this article are met, as determined by the board.

27 (d) On or before the first day of January of each year, the Board shall file an annual report
28 with the Joint Committee on Government and Finance, and a copy of the report with the
29 Legislative Librarian, setting forth a description of the projects approved during the
30 preceding year, including copies of monthly monitoring reports submitted to the Board
31 pursuant to subsection (c) of this section.

32 **§5-22A-6. Design-build regulations rules.**

33 ~~The Department of Administration shall adopt propose rules for legislative approval~~
34 ~~pursuant to article three, chapter twenty- nine-a of this code and consistent with this article~~
35 ~~for the award of design-build contracts. Any rules so adopted by the department of~~
36 ~~administration prior to the first day of October, one thousand nine hundred ninety-nine, are~~
37 ~~exempt from the provisions of article three, chapter twenty-nine-a of this code: *Provided,*~~
38 ~~That the department of administration shall file a copy of any rule so exempted from the~~
39 ~~provisions of chapter twenty-nine-a of this code with the legislative rule-making review~~
40 ~~committee created pursuant to section eleven, article three of said chapter prior to the~~
41 ~~thirtieth day of November, one thousand nine hundred ninety-nine. The rules must consist~~
42 ~~of, but not be limited to , which provide, at a minimum:~~

43 (1) The procedures to select or designate a performance criteria developer and prepare
44 performance criteria;

45 (2) The application process for approval of a design-build project;

46 (3) The procedures for selecting the most qualified design- builders prior to the release of
47 the invitation for proposals;

48 ~~(2)(4)~~ The procedures for the preparation and contents of requests invitations for proposals;

49 ~~(3)(5)~~ The procedures for preparing and submitting proposals;

50 ~~(4)(6)~~ The procedures for evaluating proposals;

51 ~~(5)(7)~~ The procedures for negotiations between the agency and those submitting proposals
52 prior to the acceptance of a proposal, if any such negotiations are contemplated;

53 ~~(6)(8)~~ The procedures for awarding and executing design-build contracts;

54 ~~(7)(9)~~ The procedures for awarding design-build contracts in the event of public
55 emergencies as defined in the applicable statutes; and

56 ~~(8)(10)~~ The procedures for acting on formal protests relating to the solicitation or award of
57 design-build contracts.

58 **§5-22A-7. Design-builder qualifications; rights duties and powers.**

59 (a) Each design-builder must shall be duly licensed and registered to do business in this

1 state and be a licensed architect or engineer or a general contractor.

2 ~~(b) Each design-builder must have the following rights and powers may:~~

3 ~~(1) The design-builder must a~~Assign or sublet the responsibility for professional design
4 services to ~~a firm an architect or engineer duly licensed and registered to provide~~
5 ~~professional design services~~ in this state. The firm ~~architect or engineer must shall~~ carry,
6 at all times, professional design liability insurance in an appropriate amount as designated
7 by the agency. ~~This professional~~ The architect or engineer may be a full or part-time
8 employee of the design-builder; and,

9 ~~(2) The design-builder must a~~Assign or sublet responsibility for construction or other
10 services requiring a contractor's license to persons or entities ~~duly registered~~, licensed or
11 otherwise qualified to provide those services in this state.

12 ~~(3)(c) The~~ Each design-builder may contract ~~with the agency~~ to provide professional
13 services or construction services to the agency that the design-builder is not ~~itself~~ licensed,
14 registered or otherwise authorized to provide so long as those services are assigned or
15 sublet to a firm that is ~~a member of the design-build team and~~ registered, licensed and
16 qualified to provide those services.

17 **§5-22A-8. Development of performance criteria.**

18 (a) Each ~~request invitation~~ for proposal must contain performance criteria prepared by an
19 architect or engineer ~~duly registered~~ licensed in accordance with ~~under~~ the laws of this
20 state, referred to as the "performance criteria developer." ~~If the performance criteria~~
21 ~~developer is not an employee of the agency, then the performance criteria developer and~~
22 ~~his or her employer, company, partners, joint venturers, affiliates or consultants are~~
23 ~~disqualified from submitting a proposal to enter into the design-build contract and the~~
24 ~~design-builder will not be permitted to delegate services under the design-build contract~~
25 ~~to the performance criteria developer or its consultants. The performance criteria developer~~
26 ~~must be retained by the agency through final completion of the project to monitor~~
27 ~~adherence to the performance criteria. The agency shall select the performance criteria~~
28 ~~developer in accordance with the requirements of article one, chapter five-g of this code,~~
29 ~~and shall retain the performance criteria developer through final completion of the project~~
30 ~~to monitor adherence to the performance criteria.~~

31 (b) ~~The performance criteria developer may be an employee of the agency, and to the~~
32 ~~extent allowed by law may delegate the development of specific aspects of the design~~
33 ~~criteria to an architect or engineer duly registered with this state and his or her employer,~~
34 ~~company, partners, joint venturers, affiliates or other consultants. If the performance~~
35 ~~criteria developer is not an employee of the agency, the performance criteria developer~~
36 ~~shall be selected in accordance with the requirements of article one, chapter five-g of this~~
37 ~~code. The agency may use its own employees to determine whether the agency should~~
38 ~~seek to construct a project using the design-build method of construction. The agency may~~
39 ~~use an employee as its performance criteria developer on projects for which construction~~
40 ~~costs are estimated to be one million dollars or less.~~

41 ~~(c) The performance criteria developer and his or her employer, company, partners, joint~~
42 ~~venturers, affiliates or consultants may not submit a proposal to enter into the design-build~~
43 ~~contract and may not perform services under the design-build contract.~~

44 ~~(d) The performance criteria developer may delegate the development of specific aspects~~
45 ~~of the design criteria to an architect or engineer licensed by this state and his or her~~
46 ~~employer, company, partners, joint venturers, affiliates or other consultants.~~

47 **§5-22A-9a. Invitation for qualifications; selection of design-builders.**

48 (a) The agency shall publish an invitation for qualifications which provides, at a minimum:

49 (1) A descriptive narrative of the type, scope and size of the proposed work;

50 (2) The evaluation criteria for selecting the three to five qualified design-builders; and

51 (3) A request for descriptive information or data supporting a design-builder's claim to be
52 able to perform the work, including, but not limited to:

53 (A) Licensing, insurance and evidence of good standing with the State of West Virginia and
54 the agency;

55 (B) Bonding ability;

56 (C) Experience and technical expertise;

57 (D) History of past performance;

58 (E) Qualifications, experience and licenses of key management and professional staff
59 including contractors, architects and engineers;

- 1 (F) Staffing capabilities;
2 (G) Current workload;
3 (H) Quality control and quality assurance policies and programs; and
4 (I) Safety record, including employee modification rating for the past three years.
5 (b) The agency shall review the statements of qualifications and select not fewer than three
6 nor more than five of the most qualified design-builders to participate in the invitation for
7 proposals. If fewer than three design-builders are determined to be qualified, the agency
8 shall seek approval of the Design-Build Board to continue with the selection process.
9 (c) The agency shall make the results of the selection available to the design-builders
10 within ten working days of the selection.

11 **§5-22A-10. Solicitation of Invitation for proposals.**

12 ~~Proposals must be solicited from not less than three design-builders. A request for~~
13 ~~proposal must be prepared for each design-build contract and shall consist of, but not be~~
14 ~~limited to:~~

15 (a) The agency shall prepare an invitation for proposals for the qualified design-builders,
16 which must provide at a minimum:

- 17 (1) The identity of the agency which will award the design- build contract;
18 (2) The procedures to be followed for submitting proposals, the criteria for evaluation of
19 proposals and their relative weight, and the procedures for making awards, including a
20 reference to the requirements of this article, the legislative rules promulgated herein and
21 ~~any regulations pertaining to~~ pursuant to section six of this article and any specific
22 requirements of the agency;
23 (3) The proposed terms and conditions for the design-build contract;
24 (4) The performance criteria;
25 (5) The description of the drawings, specifications or other submittals information to be
26 submitted with the proposal, with guidance as to the form and level of completeness of the
27 drawings, specifications or submittals that will be acceptable;
28 (6) A schedule for planned commencement and completion of the design-build contract;
29 (7) Budget limits for the design-build contract, if any;
30 (8) ~~Design-builder qualifications;~~ Requirements or restrictions for the subletting of
31 specific portions of the design-build contract, if any; and
32 (9) Requirements for performance bonds, payment bonds, and insurance: professional
33 liability insurance and workers' compensation coverage: Provided, That no officer or
34 employee of this state or of any public agency, public authority, public corporation, or other
35 public entity, and no person acting or purporting to act on behalf of such officer or
36 employee or public entity shall require that any performance bond, payment bond, or bid
37 bond required or permitted by this section be obtained from any particular surety company,
38 agent, broker, or producer.

39 ~~The request for proposals may include any other information that the agency, at its~~
40 ~~discretion, chooses to supply, including, but not limited to, surveys, soils reports, drawings~~
41 ~~or models of existing structures, environmental studies, photographs or references to~~
42 ~~public records.~~

43 ~~Notice of requests for proposals must be advertised as prescribed by the procedures~~
44 ~~utilized by the purchasing division pursuant to article three, chapter five-a of this code.~~

45 (b) The agency shall provide, as applicable, additional information to the design-builder,
46 including, but not limited to, surveys, soils reports, drawings or information regarding
47 existing structures, environmental studies, photographs or references to public records, or
48 other pertinent information.

49 **§5-22A-11. Proposals.**

50 ~~Proposals must be sealed and may not be opened until expiration of the time established~~
51 ~~for making proposals as set forth in the request for proposals. Requests for proposals must~~
52 ~~require and be accompanied by a bid bond not to exceed five percent of the maximum cost~~
53 ~~of the design-build contract, as established by the proposal. In the event the proposal is~~
54 ~~accepted and the design-builder fails to execute the design-build contract, the bid bond will~~
55 ~~be forfeited.~~

56 ~~To the extent required, the request for proposal must identify each firm to whom the~~
57 ~~design-builder proposes to sublet obligations under the design-build contract. At a~~
58 ~~minimum, each proposal must identify each firm responsible for the design and primary~~
59 ~~construction and their affiliation to the design-builder. Proposals must establish a cost of~~

1 the design-build contract that will not be exceeded if the proposal is accepted without
2 change. After award of the proposal, the maximum cost of the proposal may be converted
3 to fixed prices by negotiated agreement between the agency and the design-builder.
4 Prior to the award of the design-build contract, all drawings, specifications and other
5 information submitted in the proposal shall remain the property of the design-builder
6 submitting the proposal. Additionally, prior to the award of the design-build contract, the
7 agency shall maintain the secrecy and confidentiality of all information contained in the
8 proposal. Once a proposal is accepted, the disclosure of the proposal and the information
9 in the proposal, and the ownership of the drawings, specifications and information therein,
10 shall be determined in accordance with existing law and the terms of the design-build contract.
11 Proposals may not be amended during the review process.

12 At the discretion of the agency, a stipend may be paid to the design-builders not ultimately
13 selected.

14 (a) Proposals shall be submitted in two separate, clearly identified, sealed packages, with
15 the first containing the technical submission and the second containing the cost
16 submission. If the technical submission and cost submission are not submitted in two
17 separate, clearly identified sealed packages, the Board shall disqualify the submission.

18 (b) Proposals may not be opened until expiration of the time established for making
19 proposals as set forth in the invitation for proposals.

20 (c) The design-builder shall furnish a bid bond not to exceed five percent of the maximum
21 cost of the design-build contract. In the event the proposal is accepted and the design-
22 builder fails to execute the design-build contract, the bid bond will be forfeited.

23 (d) To the extent required in the invitation for proposal, the design-builder shall identify
24 each firm to whom the design-builder proposes to sublet obligations under the design-build
25 contract. At a minimum, the design-builder shall identify each firm responsible for the
26 design and primary construction and their affiliation to the design-builder.

27 (e) The design-builder shall specify in the proposal the cost of the design-build contract that
28 will not be exceeded if the proposal is accepted without change. After award of the
29 proposal, the maximum cost of the proposal may be converted to fixed prices by negotiated
30 agreement between the agency and the design-builder.

31 (f) Prior to the award of the design-build contract, all drawings, specifications and other
32 information submitted in the proposal shall remain the property of the design-builder
33 submitting the proposal. Additionally, prior to the award of the design-build contract, the
34 agency shall maintain the secrecy and confidentiality of all information contained in the
35 proposal. Once a proposal is accepted, the disclosure of the proposal and the information
36 in the proposal, and the ownership of the drawings, specifications and information therein,
37 shall be determined in accordance with existing law and the terms of the design-build contract.

38 (g) Proposals may not be amended during the review process.

39 (h) At the discretion of the agency, a stipend may be paid to the design-builders not
40 ultimately selected.

41 **§5-22A-12. Acceptance of design-build proposal.**

42 Proposals must be submitted to the purchasing division or agency, as applicable.
43 Clarifications may be required to ensure conformance of proposals with the performance
44 criteria. In seeking clarifications, the performance criteria developer may not reveal any
45 aspect of any proposal to any other design-builder. The performance criteria developer
46 must certify each proposal in regard to compliance with the performance criteria. No
47 proposal or design-build contract may be accepted unless the purchasing division or
48 agency, as applicable, determines that there was adequate competition for the contract.
49 After receiving and evaluating all proposals submitted based upon the criteria and
50 procedures set forward in the request for proposals, the purchasing division or agency, as
51 applicable, must accept the proposal that receives the best score, as set forth in the rules
52 provided for in section six of this article.

53 Acceptance of a proposal shall be by written notice to the design-builder which submitted
54 the accepted proposal. At the same time notice of acceptance is delivered, the purchasing
55 division or agency, as applicable, shall also inform, in writing, the unsuccessful design-
56 builders that their proposals were not accepted. When a design-builder receives
57 notification that its proposal was not accepted, the design-builder may, within three days
58 after receipt of such notification, request in writing a copy of the best score and all other
59 factors used or considered in the selection process.

1 (a) The design-builder shall submit the proposal to the agency as required in the invitation
2 for proposals. Clarifications may be required to ensure conformance of proposals with the
3 performance criteria. In seeking clarifications, the performance criteria developer may not
4 reveal any aspect of any proposal to any other design-builder. The performance criteria
5 developer must certify that the proposal complies with the performance criteria.
6 (b) In the event the agency receives fewer than three proposals, the Board shall, in
7 consultation with the Secretary of the Department of Administration, determine whether the
8 agency may proceed or shall start the invitations for qualifications process over.
9 (c) After receiving the proposals, the technical review committee shall evaluate and score
10 the technical submissions based upon the criteria and procedures set forth in the invitation
11 for proposals.
12 (d) The agency shall submit the technical submissions, including the scores of the technical
13 submissions, to the Board. The agency shall make the scores of the technical submissions
14 available for public review.
15 (e) The Board shall ascertain that the technical submissions comply with the requirements
16 of this article and shall notify the agency of its approval. The agency shall open the cost
17 submissions and accept the proposal that receives the best score, as set forth in the
18 legislative rules promulgated pursuant to section six of this article.
19 (f) The agency shall notify the design-builder in writing that its proposal was accepted. At
20 the same time notice of acceptance is delivered, the agency shall also inform, in writing,
21 the design- builders whose proposals were not accepted. When a design-builder receives
22 notification that its proposal was not accepted, the design-builder may, within three days
23 after receipt of such notification, request in writing a copy of the scores and all other factors
24 used or considered in the selection process.
25 **§5-22A-15. Continuation of the Design-Build bBoard.**
26 Pursuant to the provisions of article ten, chapter four of this code, †The dDesign-bBuild
27 bBoard shall continue to exist until the first day of July, two thousand ten eight, unless
28 sooner terminated, continued or reestablished pursuant to the provisions of article ten,
29 chapter four of this code.

House Bill 2816

Effective Date: Passed April 9, 2005, in effect ninety days from passage

Signed by Governor: May 2, 2005

Code Reference: Amends and reenacts §5-1E-1, §5-1E-2, §5-1E-3, §5-1E-4 and §5-1E-5; and amends and reenacts §18-2-6a, §18-2-7a and §18-2-9.

Title: Relating to Healthy West Virginia Program

Major Provisions:

- Provisions in §5-1E create an Office of Healthy Lifestyles within the Department of Health and Human Services and create a Healthy Lifestyle Council to be appointed by the Governor.
- Provisions of §18-2 include:
 - o regulations for the sale of beverages in schools; those high schools that sale soft drinks must also offer equal access to healthy beverages as defined in the legislation;
 - o time requirements for physical education instruction (30 minutes-3 times/week in grades k-5; everyday for one full semester in grades 6-8; and one unit for graduation plus opportunity to enroll in an elective physical education course in grades 9-12) with a proviso for the development of alternate programs for schools that do not have existing staff and/or facilities to meet the time requirements listed above;
 - o State Board selection of a national fitness test for students in grades 4-8 and the required physical education course;
 - o collection and reporting of body mass index data on students in grades kindergarten, 4-8 and the required high school physical education course through WVEIS with the requirement of an aggregate report to the Governor, State Board, Healthy Lifestyle Coalition and Legislative Oversight Commission on Health and Human Resource Accountability;
 - o State Board selection of a standardized health education assessment to be administered within health education classes to measure student health knowledge and program effectiveness.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59

**ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2816**

(By Mr. Speaker, Mr. Kiss, and Delegate Trump)

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

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5-1E-1, §5-1E-2, §5-1E-3, §5-1E-4 and §5-1E-5; and to amend and reenact §18-2-6a, §18-2-7a and §18-2-9 of said code, all relating to promoting healthy lifestyles; creating a Healthy Lifestyles Office in the Department of Health and Human Resources; establishing the functions of the Office; creating a special revenue account; establishing a voluntary private sector partnership program to encourage healthy lifestyles; establishing physical activity requirements in the schools; using body mass index as an indicator of progress; encouraging the use of healthy beverages in schools; and adding requirements for health education.

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 article, designated §5-1E-1, §5-1E-2, §5-1E-3, §5-1E-4 and §5-1E-5; and that §18-2-6a, §18-2-7a and §18-2-9 of said code be amended and reenacted, all to read as follows:

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

ARTICLE 1E. HEALTHY WEST VIRGINIA PROGRAM.

§5-1E-1. Findings and purposes.

The Legislature finds and declares that the rise in obesity and related weight problems accompanied by the resulting incidence of chronic disease has created a health care crisis that burdens the health care infrastructure of the state. The Legislature also finds that the State of West Virginia must take an informed, sensitive approach to communicate and educate the citizens of the state about health issues related to obesity and inappropriate weight gain. The Legislature further finds that the state must take action to assist West Virginia citizens in engaging in healthful eating and regular physical activity. The Legislature further finds that the state must invest in research that improves understanding of inappropriate weight gain and obesity. These efforts are needed to coordinate the state's interest in improving the health of its citizens and in reducing the cost of health care. Therefore, it is the purpose of this article to create, as an integral part of the Department of Health and Human Resources, an entity to coordinate the efforts of all agencies to prevent and remedy obesity and related weight problems and to ensure that all citizens are being educated on this serious health risk that is affecting the state.

§5-1E-2. Creation of the Office of Healthy Lifestyles.

There is hereby created the Office of Healthy Lifestyles within the Department of Health and Human Resources. The management of this office shall be provided in the manner determined by the Secretary of the Department of Health and Human Resources to be in the best interest of the state and its citizens.

§5-1E-3. Powers and duties of the Office.

The Office of Healthy Lifestyles shall:

(1) Establish a Healthy Lifestyle Coalition to assure consistency of the public health and private sector approach to dealing with programs that address the problems that affect overweight and obese individuals; to provide a forum for discussing the issues that affect healthy lifestyles and to identify best practices that can be replicated. By the first day of July, two thousand five, the Governor shall appoint thirteen members of the Coalition whose terms shall be for a period of four years, and the members may be reappointed to a second term. The terms may be staggered by the Governor to assure continuity of experience on the coalition. Members shall represent state agencies, community

1 organizations and other entities which have an interest and expertise in obesity. Members
2 may not be compensated but shall receive reimbursement for expenses incurred while
3 performing the business of the coalition. The Coalition shall meet monthly for at least the
4 first eighteen months of the Coalition to develop and implement an action plan to meet the
5 goals established by the Coalition;
6 (2) Establish a clinical advisory committee to assure a unified approach using the latest
7 research to assure consistency in program development;
8 (3) Establish a statewide voluntary private sector partnership and recognition program for
9 employers, merchants, restaurants and other private sector businesses to encourage the
10 development or further advance current programs that encourage healthy lifestyles;
11 (4) Coordinate higher education training programs for dietary and exercise physiology
12 students with rural health care providers;
13 (5) Coordinate existing health promotion initiatives to assure clear, concise and consistent
14 communication;
15 (6) Solicit, accept and expend grants, gifts, bequests, donations and other funds from any
16 source for programs that will enable the state to accomplish the goals of this program;
17 (7) Develop a cross-agency series of goals to ensure consistency throughout the system
18 of providers and agencies working in the area of improving lifestyles;
19 (8) Establish as a goal to increase the prevalence of healthy weight among all people in
20 the state because obesity leads to diabetes, heart disease, strokes and kidney failure.
21 These diseases, often arising in older age as a result of unhealthy lifestyles that began
22 during a person's youth, place an undue financial burden on individuals, the health care
23 industry and state health care programs;
24 (9) Consider the resources of the local health departments and recommend ongoing
25 relationships, as appropriate, between local health departments, family resource networks,
26 faith-based organizations, cooperative extension services, farm bureaus and other health
27 care providers;
28 (10) Encourage the development of incentives for participation in employee wellness
29 programs. Incentives may be based upon, but should not be limited to, the employee's
30 completion of health questionnaires or participating in healthy lifestyles initiatives, and may
31 use experiences of successful initiatives that have occurred in this state. The action plan
32 should include among its targets, state government employees in this incentive program;
33 (11) Build upon existing initiatives that focus on any of the coalition's goals, soliciting input
34 from these initiatives and eliminating duplication of efforts;
35 (12) Report its progress annually by the first of December to the Legislative Oversight
36 Commission on Health and Human Resource Accountability.
37 **§5-1E-4. Partnership to encourage healthy lifestyles by children and**
38 **families.**
39 (a) The West Virginia Healthy Lifestyles program will develop a statewide voluntary private
40 sector partnership program to work with businesses throughout the State that encourage
41 and promote healthy lifestyles among their employees and communities.
42 (b) Beginning the first day of July, two thousand five, those businesses voluntarily choosing
43 to participate in the Healthy Lifestyles program shall submit their own detailed programs
44 to the Office of Healthy Lifestyles for review. The programs should be creative and unique,
45 highlighting the efforts of the business to promote healthy lifestyles to West Virginians
46 through sensible diet and physical fitness.
47 (c) The West Virginia Healthy Lifestyles program will develop a recognition program for
48 private sector enterprises that develop or advance programs that address the problems
49 affecting overweight and obese individuals and that promote a healthy lifestyle.
50 (d) Any business program promoting healthy lifestyles that is recognized by the Office of
51 Healthy Lifestyles will be issued a universally recognized logo, suitable for public display
52 by the business.
53 (e) Marketing of programs recognized by the Office of Healthy Lifestyles shall take place
54 through all state agencies. The West Virginia Public Employees Insurance Agency, the
55 Bureau for Medical Services and the West Virginia Workers' Compensation Commission
56 shall aggressively market this program to their members for the purposes of health
57 promotion among their members.
58 (f) The Office of Healthy Lifestyles shall market recognized programs to other businesses,
59 as models, to help create additional programs promoting healthy lifestyles.

1 (g) The Office of Healthy Lifestyles shall report annually by the first day of December to the
2 Legislative Oversight Commission on Health and Human Resources Accountability: (1) The
3 number of participants; (2) the impact on businesses as established by a survey of
4 participating businesses; and (3) the results of consumer satisfaction surveys all designed
5 by the Office of Healthy Lifestyles.

6 **§5-1E-5. Creation of a Healthy Lifestyles Fund.**

7 There is hereby created in the State Treasury a separate special revenue account, which
8 shall be an interest bearing account, to be known as the "Healthy Lifestyles Fund". The
9 special revenue account shall consist of all appropriations made by the Legislature, income
10 from the investment of moneys held in the special revenue account and all other sums
11 available for deposit to the special revenue account from any source, public or private. No
12 expenditures for purposes of this section are authorized from collections except in
13 accordance with the provisions of article three, chapter twelve of this code and upon
14 fulfillment of the provisions set forth in article two, chapter eleven-b of this code. Any
15 balance remaining in the special revenue account at the end of any state fiscal year does
16 not revert to the general revenue fund but remains in the special revenue account and shall
17 be used solely in a manner consistent with this article. No expenses incurred under this
18 section shall be a charge against the general funds of the state.

19 **CHAPTER 18. EDUCATION.**

20 **ARTICLE 2. STATE BOARD OF EDUCATION.**

21 **§18-2-6a. Sale of healthy beverages and soft drinks in schools.**

22 (a) In order to generate funding for necessary programs and supplies, county boards may
23 permit the sale of healthy beverages and soft drinks in county schools except during
24 breakfast and lunch periods as follows:-

25 (1) During a school day, soft drinks may not be sold in areas accessible to students in an
26 elementary school, middle school or junior high school through vending machines on the
27 premises, in school stores or in school canteens or through fund raisers by students,
28 teachers, groups or by any other means. In elementary, middle school or junior high
29 school, only healthy beverages may be sold in vending machines on the premises, in
30 school canteens or through fundraisers by students, teachers, groups or by any other
31 means. Nothing in this section shall be construed to prohibit or limit sale or distribution of
32 any food or beverage item through fund-raising activities of students, teachers or
33 educational groups when the items are intended for sale off the school grounds.

34 (2) Those high schools which permit the sale of soft drinks through vending machines also
35 shall offer for sale healthy beverages. Of the total beverages offered for sale, at least fifty
36 percent shall be healthy beverages. Vending machines containing healthy beverages shall
37 be in the same location or substantially similar location as vending machines containing
38 soft drinks.

39 (3) The sale of healthy beverages and soft drinks shall be in compliance with the rules of
40 the ~~n~~National ~~s~~School ~~l~~Lunch ~~p~~Program and the ~~s~~School ~~b~~Breakfast ~~p~~Program of the
41 ~~s~~State ~~b~~Board and the ~~n~~Nutrition ~~s~~Service of the United States ~~d~~Department of
42 ~~a~~Agriculture, which became effective on the seventeenth day of June, one thousand nine
43 hundred eighty-five: ~~Provided, That, if under such rules, the sale of soft drinks shall~~
44 ~~become prohibited, such rules shall not prohibit the sale of soft drinks in high schools in~~
45 ~~the state of West Virginia. Seventy-five percent of the profits from the sale of healthy~~
46 ~~beverages and soft drinks shall be allocated by a majority vote of the faculty senate of~~
47 ~~each school and twenty-five percent of the profits from the sale of healthy beverages and~~
48 ~~soft drinks shall be allocated to the purchase of necessary supplies by the principal of the~~
49 ~~school.~~

50 (b) For the purposes of this section:

51 (1) "School day" means the period of time between the arrival of the first student at the
52 school building and the end of the last instructional period; and

53 (2) "Healthy beverage" means water, one hundred percent fruit and vegetable juice, low-fat
54 milk and other juice beverages with a minimum of twenty percent real juice.

55 **§18-2-7a. Legislative findings; required physical education; Pprogram in**
56 **physical fitness.**

57 The state board of education shall prescribe a program within the existing health and
58 physical education program which incorporates the testing, awards recognition, fitness
59 events and incentive programs designed under the auspices of the president's council on

1 physical fitness and sports and which requires the participation through grade nine of each
2 student and of each school in the state in both the challenge program and the state
3 champion program of the council. The program shall include the modified test for
4 exceptional students. Each school in the state shall participate in national physical fitness
5 and sports month in May of each year and shall make every effort to involve the community
6 it serves in the related events.

7 (a) The Legislature hereby finds that obesity is a problem of epidemic proportions in this
8 state. There is increasing evidence that all segments of the population, beginning with
9 children, are becoming more sedentary, more overweight, and more likely to develop
10 health risks and diseases including Type II Diabetes, high blood cholesterol and high blood
11 pressure. The Legislature further finds that the promotion of physical activity during the
12 school day for school children is a crucial step in combating this growing epidemic and in
13 changing the attitudes and behavior of the residents of this state toward health promoting
14 physical activity.

15 (b) As a result of these findings, the State Department of Education shall establish the
16 requirement that each child enrolled in the public schools of this state actively participates
17 in physical education classes during the school year to the level of his or her ability as follows:

18 (1) Kindergarten to and including grade five. -- Not less than thirty minutes of physical
19 education, including physical exercise and age appropriate physical activities, for not less
20 than three days a week.

21 (2) Grade six to and including grade eight. -- Not less than one full period of physical
22 education, including physical exercise and age appropriate physical activities, each school
23 day of one semester of the school year.

24 (3) Grade nine to and including grade twelve. -- Not less than one full course credit of
25 physical education, including physical exercise and age appropriate physical activities
26 which shall be required for graduation and the opportunity to enroll in an elective lifetime
27 physical education course.

28 (c) Enrollment in physical education classes and activities required by the provisions of this
29 section shall not exceed, and shall be consistent with, state guidelines for enrollment in all
30 other subjects and classes: *Provided*, That schools which do not currently have the number
31 of certified physical education teachers or required physical setting may develop alternate
32 programs that will enable current staff and physical settings to be used to meet the physical
33 education requirements established herein. These alternate programs shall be submitted
34 to the State Department of Education and the Healthy Lifestyle Council for approval. Those
35 schools needing to develop alternate programs shall not be required to implement this
36 program until the school year commencing two thousand six.

37 (d) The State Board shall prescribe a program within the existing health and physical
38 education program which incorporates fitness testing, reporting, recognition, fitness events
39 and incentive programs which requires the participation in grades four through eight and
40 the required high school course. The program shall be selected from nationally accepted
41 fitness testing programs designed for school-aged children that test cardiovascular fitness,
42 muscular strength and endurance, flexibility and body composition: *Provided*, That nothing
43 in this subsection shall be construed to prohibit the use of programs designed under the
44 auspices of the President's Council on Physical Fitness and Sports. The program shall
45 include modified tests for exceptional students. Each school in the state shall participate
46 in National Physical Fitness and Sports Month in May of each year and shall make every
47 effort to involve the community it serves in the related events.

48 (e) Body mass index measures shall be used as an indicator of progress toward promoting
49 healthy lifestyles among school-aged children. The body mass index measures shall be
50 determined using student height and weight data and reported to the State Department of
51 Education via the West Virginia Education Information System. Body mass index measures
52 shall be included in kindergarten screening procedures. Students in grades four through
53 eight and students enrolled in high school physical education courses shall have their body
54 mass index measured through required fitness testing procedures. All school personnel
55 responsible for conducting and reporting body mass index measures shall receive training
56 or written documentation on the appropriate methodology for assessing the body mass
57 index and reporting data in a manner that protects student confidentiality. All body mass
58 index data shall be reported in aggregate to the Governor, the State Board of Education,

1 the Healthy Lifestyles Coalition and the Legislative Oversight Commission on Health and
2 Human Resource Accountability.

3 **§18-2-9. Required courses of instruction; violation and penalty.**

4 (a) In all public, private, parochial and denominational schools located within this state
5 there shall be given prior to the completion of the eighth grade at least one year of
6 instruction in the history of the state of West Virginia. ~~Such~~ The schools shall require
7 regular courses of instruction by the completion of the twelfth grade in the history of the
8 United States, in civics, in the constitution of the United States, and in the government of
9 the state of West Virginia for the purpose of teaching, fostering and perpetuating the
10 ideals, principles and spirit of political and economic democracy in America and increasing
11 the knowledge of the organization and machinery of the government of the United States
12 and of the state of West Virginia. The ~~s~~State ~~b~~Board of education shall, with the advice of
13 the ~~s~~State ~~s~~Superintendent of schools, prescribe the courses of study covering these
14 subjects for the public schools. It shall be the duty of the officials or boards having authority
15 over the respective private, parochial and denominational schools to prescribe courses of
16 study for the schools under their control and supervision similar to those required for the
17 public schools. To further such study, every high school student eligible by age for voter
18 registration shall be afforded the opportunity to register to vote pursuant to section twenty-
19 two, article two, chapter three of this code.

20 (b) The ~~s~~State ~~b~~Board of education shall cause to be taught in all of the public schools of
21 this state the subject of health education, including instruction in any of the grades six
22 through twelve as ~~deemed~~ considered appropriate by the county board, on (1) the
23 prevention, transmission and spread of acquired immune deficiency syndrome and other
24 sexually transmitted diseases, and (2) substance abuse, including the nature of alcoholic
25 drinks and narcotics, tobacco products, and other potentially harmful drugs, with special
26 instruction as to their effect upon the human system and upon society in general: ~~and~~ (3)
27 the importance of healthy eating and physical activity to maintaining healthy weight. The
28 course curriculum requirements and materials for ~~such~~ the instruction shall be adopted by
29 the ~~s~~State ~~b~~Board by rule in consultation with the ~~d~~Department of ~~h~~Health and Human
30 Resources. The State Board shall prescribe a standardized health education assessment
31 to be administered within health education classes to measure student health knowledge
32 and program effectiveness.

33 An opportunity shall be afforded to the parent or guardian of a child subject to instruction
34 in the prevention, transmission and spread of acquired immune deficiency syndrome and
35 other sexually transmitted diseases to examine the course curriculum requirements and
36 materials to be used in ~~such~~ the instruction. The parent or guardian may exempt ~~such~~ the
37 child from participation in ~~such~~ the instruction by giving notice to that effect in writing to the
38 school principal.

39 (c) Any person violating the provisions of this section shall be guilty of a misdemeanor,
40 and, upon conviction thereof, shall be fined not exceeding ten dollars for each violation,
41 and each week during which there is a violation shall constitute a separate offense. If the
42 person so convicted occupy a position in connection with the public schools, that person
43 shall automatically be removed from ~~such~~ that position and shall be ineligible for
44 reappointment to that or a similar position for the period of one year.

House Bill 2837

Effective Date: Passed April 7, 2005; in effect ninety days from passage

Signed by Governor: April 20, 2005

Code Reference: Amends and enacts §18-2-7c

Title: Program in personal finance

Major Provisions:

- Requires the State Board to develop a program of instruction on personal finance, which may be integrated into the curriculum of an appropriate existing course for students in secondary schools.

1 **ENROLLED**
2 **H. B. 2837**
3

4 (By Mr. Speaker, Mr. Kiss, and Delegates Campbell, R. M. Thompson and Perry)
5

6 [Passed April 7, 2005 in effect ninety days from passage .]
7

8 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new
9 section, designated §18-2-7c, relating to directing the State Board of Education to
10 develop a program of instruction on personal finance that may be integrated into the
11 curriculum in the secondary schools.
12

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

14 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
15 section, designated §18-2-7c, to read as follows:

16 **ARTICLE 2. STATE BOARD OF EDUCATION.**

17 **§18-2-7c. Program in personal finance.**

18 (a) The Legislature finds and declares that persons with an understanding of personal
19 finance are better prepared to manage their money and that providing a personal finance
20 program in secondary schools in West Virginia will prepare students to handle their finances.

21 (b) To provide students a basic understanding of personal finance, the State Board shall
22 develop a program of instruction on personal finance which may be integrated into the
23 curriculum of an appropriate existing course or courses for students in secondary schools.

House Bill 2885

Effective Date: Passed on April 9, 2005: in effect from passage.

Signed by Governor: April 29, 2005

Code Referenced: Repeals W.Va. Code §16-3-4a, §26-5A-1, §26-5A-2, §26-5A-3, §26-5A-4, §26-5A-5, §26-5A-6 and §26-5A-7. Amends W.Va. Code §16-3D-1, §16-3D-2, §16-3D-3, §16-3D-4, §16-3D-5, §16-3D-6, §16-3D-7, §16-3D-8 and §16-3D-9.

Title: Compulsory tuberculosis testing for out-of-state transfer students and new school employees

Major Provisions:

- Compulsory testing for tuberculosis will be required for all students transferring from schools located outside this state or enrolling for the first time from outside of this state. Proof of testing within the previous four months or a TB test completed with results read and evaluated from a physician must be submitted prior to admittance to school.
- The physician will deal with positive reactors from outside of state transfer students and active TB cases shall be temporarily removed from school until they are deemed safe to return by the local health office.
- All school personnel shall have one approved tuberculin skin test at the time of employment performed by the local health department or the person's physician.
- New school personnel with positive reactors shall have their employment suspended until the local health officer, along with the Commissioner, approves a return to work.
- Local health officers shall be responsible for arranging proper follow-up care for students and school personnel who are unable to obtain a physician for positive TB test.
- The Commissioner has authority to require selective testing of students and school personnel for TB when there is reason to believe exposure has occurred.
- School nurses shall identify and refer any student or school personnel to the local health officer when there is suspicion of TB or TB exposure.
- Other sections of the bill addresses testing, control, treatment and commitment at the medical provider level.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59

**ENROLLED
H. B. 2885**

(By Delegates Perdue, Long and Hatfield)

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

AN ACT to repeal §16-3-4a of the Code of West Virginia, 1931, as amended; to repeal §26-5A-1, §26-5A-2, §26-5A-3, 26-5A-4, 26-5A-5, §26-5A-6 and §26-5A-7 of said code; and to amend said code by adding thereto a new article, designated §16-3D-1, §16-3D-2, §16-3D-3, §16-3D-4, §16-3D-5, §16-3D-6, §16-3D-7, §16-3D-8 and §16-3D-9 all relating to tuberculosis testing, control, treatment and commitment.

Be it enacted by the Legislature of West Virginia:

That §16-3-4a of the Code of West Virginia, 1931, as amended, be repealed; and that §26-5A-1, §26-5A-2, §26-5A-3, 26-5A-4, 26-A-5, §26-5A-6 and §26-5A-7 of said code be repealed; and that said code be amended by adding thereto a new article, designated §16-3D-1, §16-3D-2, §16-3D-3, §16-3D-4, §16-3D-5, §16-3D-6, §16-3D-7, §16-3D-8 and §16-3D-9, all to read as follows:

ARTICLE 3D. TUBERCULOSIS TESTING, CONTROL, TREATMENT AND COMMITMENT.

§16-3D-1. Purpose and legislative findings.

(a) The purpose of this article to bring together the state law governing compulsory testing for tuberculosis (TB) of students and school personnel as well as the statutes pertaining to the treatment, control and commitment of persons with the disease at hospitals, clinics and other health care facilities throughout the state.

(b) The targeted tuberculin testing and treatment guidelines published by the Centers for Disease Control and Prevention (CDC) in the year two thousand recommends that routine testing of low-risk populations for administrative purposes be discontinued. The elimination of routine retesting of school personnel in accordance with this recommendation will result in significant savings to the state.

(c) According to the CDC, high risk groups or persons that should be tested for latent TB infection include:

- (1) Close contacts of a person known or suspected to have TB;
- (2) Foreign-born persons from areas where TB is common;
- (3) Residents and employees of high-risk congregate settings;
- (4) Health care workers who serve high-risk clients;
- (5) Medically underserved, low-income populations;
- (6) High-Risk racial or ethnic minority populations;
- (7) Children exposed to adults in high-risk categories;
- (8) Persons who inject illicit drugs;
- (9) Persons with HIV infection; and

(10) Persons with certain medical conditions, such as substance abuse, chest X-ray findings suggestive of previous TB, diabetes mellitus, silicosis, prolonged corticosteroid therapy, other immunosuppressive therapy, cancer of the head and neck, end-stage renal disease, intestinal bypass or gastrectomy, chronic malabsorption syndromes, or low body weight of ten percent or more below the ideal.

(d) Early diagnosis, proper and complete treatment for people with active TB disease prevents transmission to others as well as preventing the emergence of multidrug resistant TB.

(e) The TB Control Program should be funded at levels necessary to accomplish directly observed therapy for all patients with active TB disease in West Virginia and to implement targeted testing of high-risk groups.

§16-3D-2. Definitions.

As used in this article:

(1) "Tuberculosis" means a communicable disease caused by the bacteria, *Mycobacterium tuberculosis*, which is demonstrated by clinical, bacteriological, radiographic or epidemiological evidence;

(2) "Bureau" means the Bureau for Public Health in the Department of Health and Human

- 1 Resources;
- 2 (3) "Commissioner" means the Commissioner of the Bureau for Public Health, who is the
3 state health officer;
- 4 (4) "Local board of health," "local board" or "board" means a board of health serving one
5 or more counties or one or more municipalities or a combination thereof;
- 6 (5) "Local health department" means the staff of the local board of health; and
- 7 (6) "Local health officer" means the individual physician with a current West Virginia license
8 to practice medicine who supervises and directs the activities of the local health
9 department services, staff and facilities and is appointed by the local board of health with
10 approval by the Commissioner.

11 **§16-3D-3. Compulsory testing for tuberculosis of school children and**
12 **school personnel; Commissioner to approve the test; X-rays required**
13 **for reactors; suspension from school or employment for pupils and**
14 **personnel found to have tuberculosis.**

15 (a) All students transferring from a school located outside this state or enrolling for the first
16 time from outside the state shall furnish a certification from a licensed physician stating that
17 a tuberculin skin test, approved by the Commissioner, has been made within four months
18 prior to the beginning of the school year. If the student cannot produce certification from
19 a physician as required by this section then the student shall have an approved tuberculin
20 skin test done with the result read and evaluated prior to admittance to school.

21 (b) Test results must be recorded on the certification required by subsection (a) of this
22 section. Positive reactors to the skin test must be immediately evaluated by a physician
23 and, if medically indicated, X-rayed, and receive periodic X-rays thereafter, when medically
24 indicated. Pupils found to have tuberculosis shall be temporarily removed from school while
25 their case is reviewed and evaluated by their physician and the local health officer. Pupils
26 shall return to school when the local health officer indicates that it is safe and appropriate
27 for them to return.

28 (c) Notwithstanding any other provision of this code to the contrary, all school personnel
29 shall have one approved tuberculin skin test at the time of employment performed by the
30 local health department or the person's physician. Additional tuberculosis skin tests or
31 other medical screens may be required by the local health department or Commissioner,
32 if medically indicated. Positive reactors and those with previous positive skin tests are to
33 be immediately referred to a physician for evaluation and treatment or further studies.
34 School personnel found to have tuberculosis shall have their employment suspended until
35 the local health officer, in consultation with the Commissioner, approves a return to work.
36 School personnel who have not had the required examination will be suspended from
37 employment until reports of examination are confirmed by the local health officer.

38 (d) The local health officer shall be responsible for arranging proper follow-up of school
39 personnel and students who are unable to obtain physician evaluation for a positive
40 tuberculin skin test.

41 (e) The Commissioner shall have the authority to require selective testing of students and
42 school personnel for tuberculosis when there is reason to believe that they may have been
43 exposed to the tuberculosis organism. School nurses shall identify and refer any students
44 or school personnel to the local health officer in instances where they have reason to
45 suspect that the individual has been exposed to tuberculosis or has symptoms indicative
46 of the disease.

47 **§16-3D-4. Report of cases, admissions, registration of patients.**

48 (a) Every physician practicing in this state, every public health officer in the state, and every
49 chief medical officer having charge of any hospital or clinic or other similar public or private
50 institution in the state shall report electronically or in writing to the local health department
51 in the patient's county of residence all information required by the Commissioner for every
52 person having tuberculosis who comes under his or her observation or care. Such report
53 shall be made within twenty-four hours after diagnosis.

54 (b) Every local health department shall forward all reports of tuberculosis cases filed
55 pursuant to this section to the Bureau tuberculosis program within twenty-four hours of
56 receipt of such reports.

57 (c) The chief medical officer of each tuberculosis institution, hospital or other health care
58 facility shall report the admission of any patient with tuberculosis to the Bureau together
59 with any other information the Commissioner may require. He or she shall make a similar

1 report of the discharge or death of any patient. From such reports and other sources, the
2 Bureau shall prepare and keep current a register of persons in this state with tuberculosis.
3 The name of a person so registered shall not be made public nor shall the register be
4 accessible to anyone except by order of the Bureau, the patient, or by the order of the
5 judge of a court of record.

6 **§16-3D-5. Forms for reporting and committing patients; other records.**

7 (a) The Bureau shall prescribe the written and electronic forms for reporting all required
8 information regarding patients with tuberculosis.

9 (b) The Bureau shall prescribe the written and electronic forms to be used in committing
10 patients to any state hospital or other health care facility where care and treatment of
11 tuberculosis patients is conducted.

12 **§16-3D-6. Cost of maintenance and treatment of patients.**

13 The cost of maintenance and treatment of patients admitted to state designated
14 tuberculosis institutions shall be paid out of funds appropriated for the respective
15 institutions. No patient shall be required to pay for such maintenance and treatment, but
16 the institutions are authorized to receive any voluntary payments therefore.

17 **§16-3D-7. Procedure when patient is a health menace to others; court
18 ordered treatment; requirements for discharge; appeals.**

19 (a) If any practicing physician, public health officer, or chief medical officer having under
20 observation or care any person with tuberculosis is of the opinion that the environmental
21 conditions of that person are not suitable for proper isolation or control by any type of local
22 quarantine as prescribed by the Bureau, and that the person is unable or unwilling to
23 conduct himself or herself and to live in such a manner as not to expose members of his
24 or her family or household or other persons with whom he or she may be associated to
25 danger of infection, he or she shall report the facts to the Bureau which shall investigate
26 or have investigated the circumstances alleged.

27 (b) If the Commissioner or local health officer finds that any person's physical condition is
28 a health menace to others, the Commissioner or local health officer shall petition the circuit
29 court of the county in which the person resides, requesting an individualized course of
30 treatment to deal with the person's current or inadequately treated tuberculosis. Refusal
31 to adhere to prescribed treatment may result in an order of the court committing the person
32 to a health care facility equipped for the treatment of tuberculosis: *Provided*, That if the
33 Commissioner or local health officer determines that an emergency situation exists which
34 warrants the immediate detention and commitment of a person with tuberculosis, an
35 application for immediate involuntary commitment may be filed pursuant to section nine of
36 this article.

37 (c) Upon receiving the petition, the court shall fix a date for hearing thereof and notice of
38 the petition and the time and place for hearing shall be served personally, at least seven
39 days before the hearing, upon the person with tuberculosis alleged to be dangerous to the
40 health of others.

41 (d) If, upon hearing, it appears that the complaint of the Bureau is well founded, that other
42 less restrictive treatment options have been exhausted, that the person has tuberculosis,
43 and that the person is a danger to others, the court shall commit the individual to a health
44 care facility equipped for the care and treatment of persons with tuberculosis. The person
45 shall be deemed to be committed until discharged in the manner authorized in subsection

46 (e) of this section: *Provided*, That the hearing and notice provisions of this subsection do
47 not apply to immediate involuntary commitments as provided in section nine of this article.

48 (e) The chief medical officer of the institution to which any person with tuberculosis has
49 been committed may discharge that person when, after consultation with the
50 Commissioner and the local health officer in the patient's county of residence, it is agreed
51 that the person may be discharged without danger to the health of others. The chief
52 medical officer shall report immediately to the Commissioner and to the local health officer
53 in the patient's county of residence each discharge of a person with tuberculosis.

54 (f) Every person committed under the provisions of this section shall observe all the rules
55 of the institution. Any patient so committed may, by direction of the chief medical officer
56 of the institution, be placed apart from the others and restrained from leaving the institution
57 so long as he or she continues to have tuberculosis and remains a health menace.

58 (g) Nothing in this section may be construed to prohibit any person committed to any
59 institution under the provisions of this section from applying to the Supreme Court of

1 Appeals for a review of the evidence on which the commitment was made. Nothing in this
2 section may be construed or operate to empower or authorize the Commissioner or the
3 chief medical officer of the institution to restrict in any manner the individual's right to select
4 any method of tuberculosis treatment offered by the institution.

5 **§16-3D-8. Return of escapees from state tuberculosis institutions.** If any person
6 confined in a state tuberculosis institution by virtue of an order of a circuit court as provided
7 in sections seven and nine of this article shall escape, the chief medical officer shall issue
8 a notice giving the name and description of the person escaping and requesting his or her
9 apprehension and return to the hospital. The chief medical officer shall issue a warrant
10 directed to the sheriff of the county commanding him or her to arrest and carry the escaped
11 person back to the hospital, which warrant may be executed in any part of the state. If the
12 person flees to another state, the chief medical officer shall notify the appropriate state
13 health official in the state where the person has fled, and that state health official may take
14 the actions that are necessary for the return of the person to the hospital.

15 **§16-3D-9. Procedures for immediate involuntary commitment; rules.**

16 (a) An application for immediate involuntary commitment of a person with tuberculosis may
17 be filed by the Commissioner or local health officer, in the circuit court of the county in
18 which the person resides. The application shall be filed under oath, and shall present
19 information and facts which establish that the person with tuberculosis has been
20 uncooperative or irresponsible with regard to treatment, quarantine or safety measures,
21 presents a health menace to others, and is in need of immediate hospitalization.

22 (b) Upon receipt of the application, the circuit court may enter an order for the individual
23 named in the action to be detained and taken into custody for the purpose of holding a
24 probable cause hearing. The order shall specify that the hearing be held forthwith and shall
25 appoint counsel for the individual: *Provided*, That in the event immediate detention is
26 believed to be necessary for the protection of the individual or others at a time when no
27 circuit court judge is available for immediate presentation of the application, a magistrate
28 may accept the application and, upon a finding that immediate detention is necessary, may
29 order the individual to be temporarily committed until the earliest reasonable time that the
30 application can be presented to the circuit court, which period of time shall not exceed
31 twenty-four hours except as provided in subsection (c) of this section.

32 (c) A probable cause hearing shall be held before a magistrate or circuit judge of the
33 county in which the individual is a resident or where he or she was found. If requested by
34 the individual or his or her counsel, the hearing may be postponed for a period not to
35 exceed forty-eight hours, or as soon thereafter as possible.

36 (d) The individual shall be present at the probable cause hearing and shall have the right
37 to present evidence, confront all witnesses and other evidence against him or her, and to
38 examine testimony offered, including testimony by the Bureau or its designees.

39 (e) At the conclusion of the hearing the magistrate or circuit court judge shall enter an order
40 stating whether there is probable cause to believe that the individual is likely to cause
41 serious harm to himself, herself or others as a result of his or her disease and actions. If
42 probable cause is found, the individual shall be immediately committed to a health care
43 facility equipped for the care and treatment of persons with tuberculosis. The person shall
44 remain so committed until discharged in the manner authorized pursuant to subsection (e),
45 section seven of this article: *Provided*, That in the case of an alcoholic or drug user, the
46 judge or magistrate shall first order the individual committed to a detoxification center for
47 detoxification prior to commitment to health care facility equipped for the care and
48 treatment of persons with tuberculosis.

49 (f) The Bureau shall propose rules for legislative approval in accordance with the provisions
50 of article three, chapter twenty-nine-a of this code to implement the provisions of this
51 article, including, but not limited to, rules relating to the transport and temporary involuntary
52 commitment of patients.

House Bill 2891

- Effective Date: Passed April 9, 2005; in effect ninety days from passage
- Signed by Governor: May 4, 2005
- Code Reference: Repeals §5-1B-1, §5-1B-2, §5-1B-3, §5-1B-4, §5-1B-5, §5-1B-6, §5-1B-7, §5-1B-8; amends by adding a new article §5A-6-1, §5A-6-2, §5A-6-3, §5A-6-4, §5A-6-5, §5A-6-6, §5A-6-7, §5A-6-8; amends and reenacts §5A-7-4, §5A-8-15, §5B-1-2, §5B-3-4, §5A-3-5, §5F-2-1, §5B-2-2, §10-5-2; to amend by adding a new section §10-5-5a; to amend and reenact §11-10A-6, §11-10A-7, §17-16A-3, §17-16A-10, §49-9-15
- Title: Relating to the reorganization of the executive branch of state government
- Major Provisions:
- Educational Broadcasting Authority's Advisory Committee shall advise Authority on issues related to journalistic independence and editorial integrity of public education and public broadcasting stations.
 - State Superintendent of Schools or his/her designee will serve as a member of the Clearinghouse Advisory Council formed under the Missing Children Information Act.

1 **ENROLLED**
2 **H. B. 2891**
3

4 (By Mr. Speaker, Mr. Kiss, and Delegate Trump)
5

6 [By Request of the Executive]
7

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

10 AN ACT to repeal §5-1B-1, §5-1B-2, §5-1B-3, §5-1B-4, §5-1B-5, §5-1B-6, §5-1B-
11 7 and §5-1B-8 of the Code of West Virginia, 1931, as amended; to amend
12 said code by adding thereto a new article, designated §5A-6-1, §5A-6-2,
13 §5A-6-3, §5A-6-4, §5A-6-5, §5A-6-6, §5A-6-7 and §5A-6-8; to amend and
14 reenact §5A-7-4 of said code; to amend and reenact §5A-8-15 of said code;
15 to amend and reenact §5B-1-2 of said code; to amend and reenact §5B-3-4
16 and §5B-3-5 of said code; to amend and reenact §5F-2-1 and §5F-2-2 of
17 said code; to amend and reenact §10-5-2; to amend said code by adding
18 thereto a new section, designated §10-5-5a; to amend and reenact §11-10A-
19 6 and §11-10A-7 of said code; to amend and reenact §17-16A-3 and §17-
20 16A-10 of said code; and to amend and reenact §49-9-15 of said code, all
21 relating to the reorganization of the executive branch of state government;
22 transferring the Office of Technology from the Office of the Governor to the
23 Department of Administration; providing that the Director of Information
24 Services and Communications Division shall report to the Chief Technology
25 Officer; providing that the Director of Information Services and
26 Communications Division shall develop and maintain an information systems
27 disaster recovery system; modifying membership of the Records
28 Management and Preservation Board to include a county sheriff and a
29 county assessor; limiting the time period for department secretaries to
30 transfer funds within their respective departments; requiring secretaries of
31 departments to cooperate with the Office of the Pharmaceutical Advocate in
32 purchasing prescription drugs; transferring the Bureau of Employment
33 Programs to the Department of Commerce; providing that the Governor will
34 chair the Educational Broadcasting Authority for a limited term; providing that
35 the Governor will appoint to Executive Director of the Educational
36 Broadcasting Authority to serve for a limited term; modifying the term of the
37 chief administrative law judge of the Office of Tax Appeals; providing that the
38 Governor has the authority to appoint two administrative law judges to the
39 Office of Tax Appeals; providing for Governor to chair the West Virginia
40 Parkways, Economic Development and Tourism Authority ; authorizing the
41 Governor to appoint an Executive Director of the Virginia Parkways,
42 Economic Development and Tourism Authority and set salary annually;
43 modifying membership of the Missing Children Information Clearinghouse;
44 and making technical corrections.
45

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

47 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
48 of the Code of West Virginia, 1931, as amended, be repealed; that said code
49 be amended by adding thereto a new article, designated §5A-6-1, §5A-6-2,
50 §5A-6-3, §5A-6-4, §5A-6-5, §5A-6-6, §5A-6-7 and §5A-6-8; that §5A-7-4 of
51 said code be amended and reenacted; that §5A-8-15 of said code be
52 amended and reenacted; that §5B-1-2 of said code be amended and
53 reenacted; that §5B-3-4 and §5B-3-5 of said code be amended and
54 reenacted; that §5F-2-1 and §5F-2-2 of said code be amended and
55 reenacted; that §10-5-2 of said code be amended and reenacted; that said
56 code be amended by adding thereto a new section, designated §10-5-5a;
57 that §11-10A-6 and §11-10A-7 of said code be amended and reenacted;
58 that §17-16A-3 and §17-16A-10 of said code be amended and reenacted;

1 and that §49-9-15 of said code be amended and reenacted, all to read as
2 follows:

3 **CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.**

4 **ARTICLE 6. OFFICE OF TECHNOLOGY**

5 **§5A-6-1. Findings and purposes.**

6 The Legislature finds and declares that information technology is essential to finding
7 practical solutions to the everyday problems of government, and that the management
8 goals and purposes of government are furthered by the development of compatible, linked
9 information systems across government. Therefore, it is the purpose of this article to
10 create, as an integral part of the Department of Administration, the Office of Technology
11 with the authority to advise and make recommendations to all state spending units on their
12 information systems.

13 **§5A-6-2. Definitions.**

14 As used in this article:

15 (a) "Information systems" means computer-based information equipment and related
16 services designed for the automated transmission, storage, manipulation and retrieval of
17 data by electronic or mechanical means;

18 (b) "Information technology" means data processing and telecommunications hardware,
19 software, services, supplies, personnel, maintenance and training, and includes the
20 programs and routines used to employ and control the capabilities of data processing hardware;

21 (c) "Information equipment" includes central processing units, front-end processing units,
22 miniprocessors, microprocessors and related peripheral equipment, including data storage
23 devices, networking equipment, services, routers, document scanners, data entry
24 equipment, terminal controllers, data terminal equipment, computer-based word processing
25 systems other than memory typewriters;

26 (d) "Related services" include feasibility studies, systems design, software development
27 and time-sharing services whether provided by state employees or others;

28 (e) "Telecommunications" means any transmission, emission or reception of signs, signals,
29 writings, images or sounds of intelligence of any nature by wire, radio or other
30 electromagnetic or optical systems. The term includes all facilities and equipment
31 performing those functions that are owned, leased or used by the executive agencies of
32 state government;

33 (f) "Chief Technology Officer" means the person holding the position created in section
34 three of this article and vested with authority to assist state spending units in planning and
35 coordinating information systems that serve the effectiveness and efficiency of the
36 individual state spending units, and further the overall management goals and purposes
37 of government; and

38 (g) "Experimental program to stimulate competitive research" (EPSCoR) means the West
39 Virginia component of the national EPSCoR program which is designed to improve the
40 competitive research and development position of selected states through investments in
41 academic research laboratories and laboratory equipment. The recognized West Virginia
42 EPSCoR, which is part of the Office of Technology, is the responsible organization for the
43 coordination and submission of proposals to all federal agencies participating in the
44 EPSCoR program.

45 **§5A-6-3. Office of Technology; Chief Technology Officer; appointment and **
46 **qualifications.**

47 The Office of Technology is created within the Department of Administration. A Chief
48 Technology Officer shall be appointed by and shall serve at the will and pleasure of the
49 Governor. The Chief Technology Officer shall have knowledge in the field of information
50 technology, experience in the design and management of information systems and an
51 understanding of the special demands upon government with respect to budgetary
52 constraints, the protection of privacy interests and federal and state standards of
53 accountability.

54 **§5A-6-4. Powers and duties; professional staff.**

55 (a) With respect to all state spending units the Chief Technology Officer may:

- 56 (1) Develop an organized approach to information resource management for this state;
57 (2) Provide, with the assistance of the Information Services and Communications Division
58 of the Department of Administration, technical assistance to the administrators of the
59 various state spending units in the design and management of information systems;

1 (3) Evaluate, in conjunction with the information services and communications division, the
2 economic justification, system design and suitability of information equipment and related
3 services, and review and make recommendations on the purchase, lease or acquisition of
4 information equipment and contracts for related services by the state spending units;
5 (4) Develop a mechanism for identifying those instances where systems of paper forms
6 should be replaced by direct use of information equipment and those instances where
7 applicable state or federal standards of accountability demand retention of some paper processes;
8 (5) Develop a mechanism for identifying those instances where information systems should
9 be linked and information shared, while providing for appropriate limitations on access and
10 the security of information;
11 (6) Create new technologies to be used in government, convene conferences and develop
12 incentive packages to encourage the utilization of technology;
13 (7) Engage in any other activities as directed by the Governor; and
14 (8) Charge a fee to the state spending units for evaluations performed and technical
15 assistance provided under the provisions of this section. All fees collected by the Chief
16 Technology Officer shall be deposited in a special account in the state treasury to be
17 known as the "Chief Technology Officer Administration Fund". Expenditures from the fund
18 shall be made by the Chief Technology Officer for the purposes set forth in this article and
19 are not authorized from collections but are to be made only in accordance with
20 appropriation by the Legislature and in accordance with the provisions of article three,
21 chapter twelve of this code and upon the fulfillment of the provisions set forth in article two,
22 chapter eleven-b of this code. Amounts collected which are found to exceed the funds
23 needed for purposes set forth in this article may be transferred to other accounts or funds
24 and redesignated for other purposes by appropriation of the Legislature.
25 (b) With respect to executive agencies, the Chief Technology Officer may:
26 (1) Develop a unified and integrated structure for information systems for all executive agencies;
27 (2) Establish, based on need and opportunity, priorities and time lines for addressing the
28 information technology requirements of the various executive agencies of state government;
29 (3) Exercise the authority inherent to the chief executive of the state as the Governor may,
30 by executive order, delegate, to overrule and supersede decisions made by the
31 administrators of the various executive agencies of government with respect to the design
32 and management of information systems and the purchase, lease or acquisition of
33 information equipment and contracts for related services;
34 (4) Draw upon staff of other executive agencies for advice and assistance in the
35 formulation and implementation of administrative and operational plans and policies; and
36 (5) Recommend to the Governor transfers of equipment and human resources from any
37 executive agency and the most effective and efficient uses of the fiscal resources of
38 executive agencies, to consolidate or centralize information-processing operations.
39 (c) The Chief Technology Officer may employ the personnel necessary to carry out the
40 work of the Office of Technology and may approve reimbursement of costs incurred by
41 employees to obtain education and training.
42 **§5A-6-5. Notice of request for proposals by state spending units required to**
43 **make purchases through the State Purchasing Division.**
44 Any state spending unit that is required to submit a request for proposal to the State
45 Purchasing Division prior to purchasing goods or services shall notify the Chief Technology
46 Officer, in writing, of any proposed purchase of goods or services related to its information
47 and telecommunication systems. The notice shall contain a brief description of the goods
48 and services to be purchased. The state spending unit shall provide the notice to the Chief
49 Technology Officer at the same time it submits its request for proposal to the State
50 Purchasing Division.
51 **§5A-6-6. Notice of request for proposals by state spending units exempted**
52 **from submitting purchases to the State Purchasing Division.**
53 (a) Any state spending unit that is not required to submit a request for proposal to the State
54 Purchasing Division prior to purchasing goods or services shall notify the Chief Technology
55 Officer, in writing, of any proposed purchase of goods or services related to its information
56 or telecommunication systems. The notice shall contain a detailed description of the goods
57 and services to be purchased. The state spending unit shall provide the notice to the Chief
58 Technology Officer a minimum of ten days prior to the time it requests bids on the provision
59 of the goods or services.

1 (b) If the Chief Technology Officer evaluates the suitability of the information and
2 telecommunication equipment and related services under the provisions of subdivision (3),
3 subsection (a), section four of this article and determines that the goods or services to be
4 purchased are not suitable, he or she shall, within ten days of receiving the notice from the
5 state spending unit, notify the state spending unit, in writing, of any recommendations he
6 or she has regarding the proposed purchase of the goods or services. If the state spending
7 unit receives a written notice from the Chief Technology Officer within the time period
8 required by this section, the state spending unit shall not put the goods or services out for
9 bid less than fifteen days following receipt of the notice from the Chief Technology Officer.

10 **§5A-6-7. Biannual report.**

11 The Chief Technology Officer shall report biannually to the Legislative Joint Committee on
12 Government and Finance on the activities of his or her office.

13 **§5A-6-8. Exemptions.**

14 The provisions of this article do not apply to the Legislature or the Judiciary.

15 **ARTICLE 7. INFORMATION SERVICES AND COMMUNICATIONS DIVISION.**

16 **§5A-7-4. Powers and duties of division generally; professional staff;**
17 **telephone service.**

18 (a) The dDivision is responsible for providing technical services and assistance to the
19 various state spending units with respect to developing and improving data processing and
20 telecommunications functions. The dDivision may provide training and direct data
21 processing services to the various state agencies. The dDivision shall, upon request of the
22 eChief tTechnology eOfficer within the office of the governor, provide technical assistance
23 in evaluating the economic justification, system design and suitability of equipment and
24 systems used in state government. The dDirector shall report to the secretary Chief
25 Technology Officer.

26 (b) The dDirector is responsible for the development of personnel to carry out the technical
27 work of the dDivision and may approve reimbursement of costs incurred by employees to
28 obtain education and training.

29 (c) The dDirector may assess each state spending unit for the cost of any evaluation of the
30 economic justification, system design and suitability of equipment and systems used by the
31 state spending unit or any other technical assistance that is provided or performed by the
32 eChief tTechnology eOfficer and the dDivision under the provisions of section four, article
33 one-b six of this chapter.

34 (d) The dDirector shall transfer any moneys received as a result of the assessments that
35 he or she makes under subsection(c) of this section to the Office of chief tTechnology
36 officer. The dDirector shall report quarterly to the jJoint eCommittee on gGovernment and
37 fFinance on all assessments made pursuant to subsection (c) of this section.

38 (e) The dDirector shall maintain an accounting system for all telephone service to the state.

39 (f) The provisions of this article do not apply to the Legislature or the jJudiciary.

40 (g) In consultation with the Adjutant General, Chairman of the Public Service Commission,
41 the Superintendent of the State Police and the Director of the Division of Homeland
42 Security and Emergency Management, the Director is responsible for the development and
43 maintenance of an information systems disaster recovery system for the State of West
44 Virginia with sites in one or more locations isolated from reasonably perceived threats to
45 the primary operation of state government. The Director shall develop specifications,
46 funding mechanisms and participation requirements for all executive branch agencies to
47 protect the State's essential data, information systems and critical government services in
48 times of emergency, inoperativeness, or disaster. Each executive branch agency shall
49 assist the Director in planning for its specific needs and provide to the Director any
50 information or access to information systems or equipment that may be required in carrying
51 out this purpose. No state-wide or executive branch agency procurement of disaster
52 recovery services may be initiated, let or extended without the expressed consent of the
53 Director.

54 **ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.**

55 **§5A-8-15. Records management and preservation of county records;**
56 **alternate storage of county records; Records Management and**
57 **Preservation Board; qualifications and appointment of members;**
58 **reimbursement of expenses; staffing; rule-making authority; study of**
59 **records management needs of state agencies; grants to counties.**

1 The Legislature finds that the use of electronic technology and other procedures to
2 manage and preserve public records by counties should be uniform throughout the state
3 where possible.

4 (a) The governing body and the chief elected official of a county, hereinafter referred to as
5 a county government entity, whether organized and existing under a charter or under
6 general law, shall promote the principles of efficient records management and preservation
7 of local records. A county governing entity may, as far as practical, follow the program
8 established for the uniform management and preservation of county records as set out in
9 a rules proposed for legislative approval in accordance with the provisions of article three,
10 chapter twenty-nine-a of this code as proposed by the Records Management and
11 Preservation Board.

12 (b) In the event a county government entity decides to destroy or otherwise dispose of a
13 county record, the county government entity may, prior to destruction or disposal thereof,
14 offer the record to the Director of the Section of Archives and History of the Division of
15 Culture and History for preservation of the record as a document of historical value. Unless
16 authorized by the Supreme Court of Appeals, the records of courts of record and
17 magistrate courts are not affected by the provisions of this section.

18 (c)(1) A preservation duplicate of a county government entity record may be stored in any
19 format approved by the Board in which the image of the original record is preserved in a
20 form, including CD-ROM and optical image storage media, in which the image is incapable
21 of erasure or alteration and from which a reproduction of the stored record may be
22 retrieved that truly and accurately depicts the image of the original county government record.

23 (2) Except for those formats, processes and systems used for the storage of records on
24 the effective date of this section, no alternate format for the storage of county government
25 entity records described in this section is authorized for the storage of county government
26 entity records unless the particular format has been approved pursuant to a legislative rule
27 promulgated by the Board in accordance with the provisions of chapter twenty-nine-a of
28 this code. The Board may prohibit the use of any format, process or system used for the
29 storage of records upon its determination that the same is not reasonably adequate to
30 preserve the records from destruction, alteration or decay.

31 (3) Upon creation of a preservation duplicate that stores an original county government
32 entity record in an approved format that is incapable of erasure or alteration and that may
33 be retrieved in a format that truly and accurately depicts the image of the original record,
34 the county government entity may destroy or otherwise dispose of the original in
35 accordance with the provisions of section seven-c, article one, chapter fifty-seven of this
36 code.

37 (d) A Records Management and Preservation Board for county government entities is
38 continued to be composed of nine members.

39 (1) Three members shall serve ex officio. One member shall be the Commissioner of the
40 Division of Culture and History or designee who shall be the chair of the Board. One
41 member shall be the Administrator of the Supreme Court of Appeals or designee. One
42 member shall be the Chief Technology Officer or designee.

43 (2) The Governor shall appoint eight members of the Board with the advice and consent
44 of the Senate. Not more than five appointments to the Board may be from the same
45 political party and not more than three members may be appointed from the same
46 congressional district. Of the eight members appointed by the Governor:

47 (i) Five appointments shall be county elected officials, one of whom shall be a clerk of a
48 county commission, one of whom shall be a circuit court clerk, one of whom shall be a
49 county commissioner, one of whom shall be a county sheriff, and one of whom shall be a
50 county assessor, to be selected from a list of fifteen names. The names of three clerks of
51 county commissions and three circuit court clerks shall be submitted to the Governor by
52 the West Virginia Association of Counties. The names of three county commissioners shall
53 be submitted to the Governor jointly by the West Virginia Association of Counties and the
54 West Virginia County Commissioners Association. The names of three county sheriffs shall
55 be submitted to the Governor by the West Virginia Sheriff's Association. And the names
56 of three county assessors shall be submitted to the Governor by the Association of West
57 Virginia Assessors;

58 (ii) One appointment shall be a county prosecuting attorney to be selected from a list of
59 three names submitted by the West Virginia Prosecuting Attorneys Institute;

1 (iii) One appointment shall be an attorney licensed in West Virginia and in good standing
2 as a member of the West Virginia State Bar with experience in real estate and mineral title
3 examination, to be selected from a list of three names submitted by the State Bar; and
4 (iv) One appointment shall be a representative of a local historical or genealogical society.
5 (e) The members of the Board shall serve without compensation but shall be reimbursed
6 for all reasonable and necessary expenses actually incurred in the performance of their
7 duties as members of the Board in a manner consistent with the guidelines of the Travel
8 Management Office of the Department of Administration . In the event the expenses are
9 paid, or are to be paid, by a third party, the member shall not be reimbursed by the state.
10 (f) The staff of the Board shall consist of the Director of the Archives and History Section
11 of the Division of Culture and History and any additional staff as needed.
12 (g) The Board shall propose rules for legislative approval in accordance with the provisions
13 of article three, chapter twenty- nine-a of this code, to establish a system of records
14 management and preservation for county governments: *Provided, That*, for the retention
15 and disposition of records of courts of record and magistrate courts, the implementation
16 of the rule is subject to action by the Supreme Court of Appeals of West Virginia. The
17 proposed rules shall include provisions for establishing a program of grants to county
18 governments for making records management and preservation uniform throughout the
19 state. The Board is not authorized to propose or promulgate emergency rules under the
20 provisions of this section.
21 (h) In addition to the fees charged by the clerk of the county commission under the
22 provisions of section ten, article one, chapter fifty-nine of this code, the clerk shall charge
23 and collect an additional one-dollar fee for every document containing less than ten pages
24 filed for recording and an additional one-dollar fee for each additional ten pages of
25 document filed for recording. At the end of each month, the clerk of the county commission
26 shall deposit into the Public Records and Preservation Account as established in the State
27 Treasury all fees collected: *Provided, That* the clerk may retain not more than ten percent
28 of the fees for costs associated with the collection of the fees. Clerks shall be responsible
29 for accounting for the collection and deposit in the State Treasury of all fees collected by
30 the clerk under the provisions of this section.
31 (i) There is hereby created in the State Treasury a special account entitled the "Public
32 Records and Preservation Revenue Account". The account shall consist of all fees
33 collected under the provisions of this section, legislative appropriations, interest earned
34 from fees, investments, gifts, grants or contributions received by the Board. Expenditures
35 from the account shall be for the purposes set forth in this article and are not authorized
36 from collections but are to be made only in accordance with appropriation by the
37 Legislature and in accordance with the provisions of article three, chapter twelve of this
38 code and upon the fulfillment of the provisions set forth in article two, chapter eleven-b of
39 this code.
40 (j) Subject to the above provision, the Board may expend the funds in the account to
41 implement the provisions of this article. In expending funds from the account, the Board
42 shall allocate not more than fifty percent of the funds for grants to counties for records
43 management, access and preservation purposes. The Board shall provide for applications,
44 set guidelines and establish procedures for distributing grants to counties including a
45 process for appealing an adverse decision on a grant application. Expenditures from the
46 account shall be for the purposes set forth in this section, including the cost of additional
47 staff of the Division of Archives and History.

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

49 **ARTICLE 1. DEPARTMENT OF COMMERCE.**

50 **§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the** 51 **Department of Commerce.**

52 The Department of Commerce consists of the following agencies, boards, commissions,
53 divisions and offices, including all of the allied, advisory, affiliated or related entities, which
54 are incorporated in and administered as part of the Department of Commerce:

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

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

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

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

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

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

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

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

13 (4) Division of Natural Resources and Natural Resources Commission provided in article
14 one, chapter twenty of this code;

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

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

18 (7) The Bureau of Employment Programs provided in chapter twenty-one-a of this code.

19 **ARTICLE 3. WEST VIRGINIA ECONOMIC DEVELOPMENT STRATEGY: A VISION**
20 **SHARED.**

21 **§5B-3-4. Commission review of procedural rules, interpretive rules and existing**
22 **legislative rules.**

23 (a) The Joint Commission on Economic Development may review any procedural rule,
24 interpretive rule or existing legislative rule and make recommendations concerning the
25 rules to the Legislature.

26 (b) The Development Office and the Tourism Commission established pursuant to article
27 two of this chapter, the Economic Development Authority established pursuant to article
28 fifteen, chapter thirty-one of this code, the Bureau of Employment Programs established
29 pursuant to article four, chapter twenty-one-a of this code, the Workers' Compensation
30 Commission established pursuant to article one, chapter twenty-three of this code, the
31 Workforce Investment Commission established pursuant to article two-c of this chapter,
32 West Virginia Jobs Investment Trust, regional planning and development councils, West
33 Virginia Rural Development Council, Office of Technology and West Virginia Clearinghouse
34 for Workforce Education shall each file a copy of its legislative rules with the commission
35 as provided for in this section. Each agency that proposes legislative rules in accordance
36 to the provisions of article three, three-a or three-b, chapter twenty-nine-a of this code
37 relating to economic development or workforce development shall file the rules with the
38 Joint Commission at the time the rules are filed with the Secretary of State prior to the
39 public comment period or public hearing required in said chapter.

40 **§5B-3-5. Joint Commission on Economic Development Studies.**

41 (a) The Joint Commission on Economic Development shall study the following:

42 (1) The feasibility of establishing common regional configurations for local workforce
43 investment areas, regional educational service agencies and for all other purposes the
44 commission considers feasible. The study should review the existing levels of cooperation
45 between state and local economic developers, complete an analysis of possible regional
46 configurations and outline examples of other successful regional systems or networks
47 found throughout the world. If the study determines that the common regional
48 configurations are feasible, the Commission shall recommend legislation establishing
49 common regional designations for all feasible purposes. In making the designation of
50 regional areas, the study shall take into consideration, but not be limited to, the following:

51 (A) Geographic areas served by local educational agencies and intermediate educational
52 agencies;

53 (B) Geographic areas served by post-secondary educational institutions and area
54 vocational education schools;

55 (C) The extent to which the local areas are consistent with labor market areas;

56 (D) The distance that individuals will need to travel to receive services provided in the local
57 areas; and

58 (E) The resources of the local areas that are available to effectively administer the activities
59 or programs;

1 (2) The effectiveness and fiscal impact of incentives for attracting and growing businesses,
2 especially technology-intensive companies; and
3 (3) A comprehensive review of West Virginia's existing economic and community
4 development resources and the recommendation of an organizational structure, including,
5 but not limited to, the reorganization of the Department of Commerce and the Development
6 Office that would allow the state to successfully compete in the new global economy.
7 (b) In order to effectuate in the most cost-effective and efficient manner the studies
8 required in this article, it is necessary for the Joint Commission to assemble and compile
9 a tremendous amount of information. The Development Office will assist the Joint
10 Commission in the collection and analysis of this information. The Tourism Commission
11 established pursuant to article two of this chapter, the Economic Development Authority
12 established pursuant to article fifteen, chapter thirty-one of this code, the Bureau of
13 Employment Programs established pursuant to article four, chapter twenty-one-a of this
14 code, the Workers' Compensation Commission established pursuant to article one, chapter
15 twenty- three of this code, the Workforce Investment Commission established pursuant to
16 article two-c of this chapter, West Virginia Jobs Investment Trust, regional planning and
17 development councils, West Virginia Rural Development Council, Office of Technology and
18 West Virginia Clearinghouse for Workforce Education shall provide a copy of the their
19 annual reports as submitted to the Governor in accordance with the requirements set forth
20 in section twenty, article one, chapter five of this code to the West Virginia Development
21 Office. The Development Office shall review, analyze and summarize the data contained
22 in the reports, including its own annual report, and annually submit its findings to the Joint
23 Commission on or before the thirty-first day of December.
24 (c) The Legislative Auditor shall provide to the Joint Commission a copy of any and all
25 reports on agencies listed in subsection (b) of this section, which are required under article
26 ten, chapter four of this code.
27 (d) The Joint Commission shall complete the studies set forth in this section and any other
28 studies the Joint Commission determines to undertake prior to the first day of December
29 of each year and may make recommendations, including recommended legislation for
30 introduction during the regular session of the
31 Legislature.

32 **CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH** 33 **OF STATE GOVERNMENT.**

34 **ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.**

35 **§5F-2-1. Transfer and incorporation of agencies and boards; funds.**

36 (a) The following agencies and boards, including all of the allied, advisory, affiliated or
37 related entities and funds associated with any agency or board, are incorporated in and
38 administered as a part of the Department of Administration:
39 (1) Building Commission provided in article six, chapter five of this code;
40 (2) Public Employees Insurance Agency and Public Employees Insurance Agency Advisory
41 Board provided in article sixteen, chapter five of this code;
42 (3) Governor's Mansion Advisory Committee provided for in article five, chapter five-a of
43 this code;
44 (4) Commission on Uniform State Laws provided in article one- a, chapter twenty-nine of
45 this code;
46 (5) Education and State Employees Grievance Board provided for in article twenty-nine,
47 chapter eighteen of this code and article six-a, chapter twenty-nine of this code;
48 (6) Board of Risk and Insurance Management provided for in article twelve, chapter twenty-
49 nine of this code;
50 (7) Boundary Commission provided in article twenty-three, chapter twenty-nine of this code;
51 (8) Public Defender Services provided in article twenty-one, chapter twenty-nine of this code;
52 (9) Division of Personnel provided in article six, chapter twenty-nine of this code;
53 (10) The West Virginia Ethics Commission provided in article two, chapter six-b of this
54 code; and
55 (11) Consolidated Public Retirement Board provided in article ten-d, chapter five of this code.
56 (b) The following agencies and boards, including all of the allied, advisory, affiliated or
57 related entities and funds associated with any agency or board, are incorporated in and
58 administered as a part of the Department of Commerce:
59 (1) Division of Labor provided in article one, chapter twenty- one of this code, which includes:

1 (A) Occupational Safety and Health Review Commission provided in article three-a,
2 chapter twenty-one of this code; and
3 (B) Board of Manufactured Housing Construction and Safety provided in article nine,
4 chapter twenty-one of this code;
5 (2) Office of Miners' Health, Safety and Training provided in article one, chapter twenty-
6 two-a of this code. The following boards are transferred to the Office of Miners' Health,
7 Safety and Training for purposes of administrative support and liaison with the Office of the
8 Governor:
9 (A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review
10 Committee provided in article six, chapter twenty-two-a of this code;
11 (B) Board of Miner Training, Education and Certification provided in article seven, chapter
12 twenty-two-a of this code; and
13 (C) Mine Inspectors' Examining Board provided in article nine, chapter twenty-two-a of this
14 code;
15 (3) The West Virginia Development Office, which includes the Division of Tourism and the
16 Tourism Commission provided in article two, chapter five-b of this code;
17 (4) Division of Natural Resources and Natural Resources Commission provided in article
18 one, chapter twenty of this code;
19 (5) Division of Forestry provided in article one-a, chapter nineteen of this code;
20 (6) Geological and Economic Survey provided in article two, chapter twenty-nine of this
21 code; and
22 (7) The Bureau of Employment Programs provided in chapter twenty-one-a of this code.
23 (c) The Economic Development Authority provided in article fifteen, chapter thirty-one of
24 this code is continued as an independent agency within the executive branch.
25 (d) The Water Development Authority and Board provided in article one, chapter twenty-
26 two-c of this code is continued as an independent agency within the executive branch.
27 (e) Workers' Compensation Commission provided in article one, chapter twenty-three of
28 this code is continued as an independent agency within the executive branch.
29 (f) The following agencies and boards, including all of the allied, advisory and affiliated
30 entities, are transferred to the department of environmental protection for purposes of
31 administrative support and liaison with the office of the governor:
32 (1) Air Quality Board provided in article two, chapter twenty-two-b of this code;
33 (2) Solid Waste Management Board provided in article three, chapter twenty-two-c of this
34 code;
35 (3) Environmental Quality Board, or its successor board, provided in article three, chapter
36 twenty-two-b of this code;
37 (4) Surface Mine Board provided in article four, chapter twenty-two-b of this code;
38 (5) Oil and Gas Inspectors' Examining Board provided in article seven, chapter twenty-two-
39 c of this code;
40 (6) Shallow Gas Well Review Board provided in article eight, chapter twenty-two-c of this
41 code; and
42 (7) Oil and Gas Conservation Commission provided in article nine, chapter twenty-two-c
43 of this code.
44 (g) The following agencies and boards, including all of the allied, advisory, affiliated or
45 related entities and funds associated with any agency or board, are incorporated in and
46 administered as a part of the Department of Education and the Arts:
47 (1) Library Commission provided in article one, chapter ten of this code;
48 (2) Educational Broadcasting Authority provided in article five, chapter ten of this code;
49 (3) Division of Culture and History provided in article one, chapter twenty-nine of this code;
50 (4) Division of Rehabilitation Services provided in section two, article ten-a, chapter
51 eighteen of this code.
52 (h) The following agencies and boards, including all of the allied, advisory, affiliated or
53 related entities and funds associated with any agency or board, are incorporated in and
54 administered as a part of the Department of Health and Human Resources:
55 (1) Human Rights Commission provided in article eleven, chapter five of this code;
56 (2) Division of Human Services provided in article two, chapter nine of this code;
57 (3) Bureau for Public Health provided in article one, chapter sixteen of this code;
58 (4) Office of Emergency Medical Services and Advisory Council provided in article four-c,
59 chapter sixteen of this code;

1 (5) Health Care Authority provided in article twenty-nine-b, chapter sixteen of this code;
2 (6) Commission on Mental Retardation provided in article fifteen, chapter twenty-nine of
3 this code;
4 (7) Women's Commission provided in article twenty, chapter twenty-nine of this code; and
5 (8) The Child Support Enforcement Division provided in chapter forty-eight of this code.
6 (i) The following agencies and boards, including all of the allied, advisory, affiliated or
7 related entities and funds associated with any agency or board, are incorporated in and
8 administered as a part of the Department of Military Affairs and Public Safety:
9 (1) Adjutant General's Department provided in article one-a, chapter fifteen of this code;
10 (2) Armory Board provided in article six, chapter fifteen of this code;
11 (3) Military Awards Board provided in article one-g, chapter fifteen of this code;
12 (4) West Virginia State Police provided in article two, chapter fifteen of this code;
13 (5) Division of Homeland Security and Emergency Management and Disaster Recovery
14 Board provided in article five, chapter fifteen of this code and Emergency Response
15 Commission provided in article five-a of said chapter;
16 (6) Sheriffs' Bureau provided in article eight, chapter fifteen of this code;
17 (7) Division of Corrections provided in chapter twenty-five of this code;
18 (8) Fire Commission provided in article three, chapter twenty- nine of this code;
19 (9) Regional Jail and Correctional Facility Authority provided in article twenty, chapter thirty-
20 one of this code;
21 (10) Board of Probation and Parole provided in article twelve, chapter sixty-two of this
22 code; and
23 (11) Division of Veterans' Affairs and Veterans' Council provided in article one, chapter
24 nine-a of this code.
25 (j) The following agencies and boards, including all of the allied, advisory, affiliated or
26 related entities and funds associated with any agency or board, are incorporated in and
27 administered as a part of the Department of Revenue:
28 (1) Tax Division provided in article one, chapter eleven of this code;
29 (2) Racing Commission provided in article twenty-three, chapter nineteen of this code;
30 (3) Lottery Commission and position of Lottery Director provided in article twenty-two,
31 chapter twenty-nine of this code;
32 (4) Agency of Insurance Commissioner provided in article two, chapter thirty-three of this
33 code;
34 (5) Office of Alcohol Beverage Control Commissioner provided in article sixteen, chapter
35 eleven of this code and article two, chapter sixty of this code;
36 (6) Board of Banking and Financial Institutions provided in article three, chapter thirty-one-a
37 of this code;
38 (7) Lending and Credit Rate Board provided in chapter forty- seven-a of this code;
39 (8) Division of Banking provided in article two, chapter thirty-one-a of this code;
40 (9) The State Budget Office provided in article two of this chapter;
41 (10) The Municipal Bond Commission provided in article three, chapter thirteen of this code;
42 (11) The Office of Tax Appeals provided in article ten-a, chapter eleven of this code; and
43 (12) The State Athletic Commission provided in article five-a, chapter twenty-nine of this
44 code.
45 (k) The following agencies and boards, including all of the allied, advisory, affiliated or
46 related entities and funds associated with any agency or board, are incorporated in and
47 administered as a part of the Department of Transportation:
48 (1) Division of Highways provided in article two-a, chapter seventeen of this code;
49 (2) Parkways, Economic Development and Tourism Authority provided in article sixteen-a,
50 chapter seventeen of this code;
51 (3) Division of Motor Vehicles provided in article two, chapter seventeen-a of this code;
52 (4) Driver's Licensing Advisory Board provided in article two, chapter seventeen-b of this
53 code;
54 (5) Aeronautics Commission provided in article two-a, chapter twenty-nine of this code;
55 (6) State Rail Authority provided in article eighteen, chapter twenty-nine of this code; and
56 (7) Port Authority provided in article sixteen-b, chapter seventeen of this code.
57 (l) Except for powers, authority and duties that have been delegated to the secretaries of
58 the departments by the provisions of section two of this article, the the position of
59 administrator and the powers, authority and duties of each administrator and agency are

1 not affected by the enactment of this chapter.

2 (m) Except for powers, authority and duties that have been delegated to the secretaries of
3 the departments by the provisions of section two of this article, the existence, powers,
4 authority and duties of boards and the membership, terms and qualifications of members
5 of the boards are not affected by the enactment of this chapter. All boards that are
6 appellate bodies or are independent decision makers shall not have their appellate or
7 independent decision-making status affected by the enactment of this chapter.

8 (n) Any department previously transferred to and incorporated in a department by prior
9 enactment of this section means a division of the appropriate department. Wherever
10 reference is made to any department transferred to and incorporated in a department
11 created in section two, article one of this chapter, the reference means a division of the
12 appropriate department and any reference to a division of a department so transferred and
13 incorporated means a section of the appropriate division of the department.

14 (o) When an agency, board or commission is transferred under a bureau or agency other
15 than a department headed by a secretary pursuant to this section, that transfer is solely
16 for purposes of administrative support and liaison with the Office of the Governor, a
17 department secretary or a bureau. Nothing in this section extends the powers of
18 department secretaries under section two of this article to any person other than a
19 department secretary and nothing limits or abridges the statutory powers and duties of
20 statutory commissioners or officers pursuant to this code.

21 **§5F-2-2. Power and authority of secretary of each department.**

22 (a) Notwithstanding any other provision of this code to the contrary, the secretary of each
23 department shall have plenary power and authority within and for the department to:

24 (1) Employ and discharge within the office of the secretary employees as may be
25 necessary to carry out the functions of the secretary, which employees shall serve at the
26 will and pleasure of the secretary;

27 (2) Cause the various agencies and boards to be operated effectively, efficiently and
28 economically, and develop goals, objectives, policies and plans that are necessary or
29 desirable for the effective, efficient and economical operation of the department;

30 (3) Eliminate or consolidate positions, other than positions of administrators or positions
31 of board members, and name a person to fill more than one position;

32 (4) Delegate, assign, transfer or combine responsibilities or duties to or among employees,
33 other than administrators or board members;

34 (5) Reorganize internal functions or operations;

35 (6) Formulate comprehensive budgets for consideration by the Governor, and transfer
36 within the department funds appropriated to the various agencies of the department which
37 are not expended due to cost savings resulting from the implementation of the provisions
38 of this chapter: *Provided*, That no more than twenty-five percent of the funds appropriated
39 to any one agency or board may be transferred to other agencies or boards within the
40 department: *Provided, however*, That no funds may be transferred from a special revenue
41 account, dedicated account, capital expenditure account or any other account or funds
42 specifically exempted by the Legislature from transfer, except that the use of
43 appropriations from the State Road Fund transferred to the Office of the Secretary of the
44 Department of Transportation is not a use other than the purpose for which the funds were
45 dedicated and is permitted: *Provided further*, That if the Legislature by subsequent
46 enactment consolidates agencies, boards or functions, the secretary may transfer the
47 funds formerly appropriated to the agency, board or function in order to implement
48 consolidation. The authority to transfer funds under this section shall expire on the thirtieth
49 day of June, two thousand five;

50 (7) Enter into contracts or agreements requiring the expenditure of public funds, and
51 authorize the expenditure or obligation of public funds as authorized by law: *Provided*, That
52 the powers granted to the secretary to enter into contracts or agreements and to make
53 expenditures or obligations of public funds under this provision shall not exceed or be
54 interpreted as authority to exceed the powers granted by the Legislature to the various
55 commissioners, directors or board members of the various departments, agencies or
56 boards that comprise and are incorporated into each secretary's department under this chapter;

57 (8) Acquire by lease or purchase property of whatever kind or character and convey or
58 dispose of any property of whatever kind or character as authorized by law: *Provided*, That
59 the powers granted to the secretary to lease, purchase, convey or dispose of such property

1 shall not exceed or be interpreted as authority to exceed the powers granted by the
2 Legislature to the various commissioners, directors or board members of the various
3 departments, agencies or boards that comprise and are incorporated into each secretary's
4 department under this chapter;

5 (9) Conduct internal audits;

6 (10) Supervise internal management;

7 (11) Promulgate rules, as defined in section two, article one, chapter twenty-nine-a of this
8 code, to implement and make effective the powers, authority and duties granted and
9 imposed by the provisions of this chapter in accordance with the provisions of chapter
10 twenty-nine-a of this code;

11 (12) Grant or withhold written consent to the proposal of any rule, as defined in section two,
12 article one, chapter twenty-nine-a of this code, by any administrator, agency or board within
13 the department. Without written consent, no proposal for a rule shall have any force or effect;

14 (13) Delegate to administrators the duties of the secretary as the secretary may deem
15 appropriate from time to time to facilitate execution of the powers, authority and duties
16 delegated to the secretary; and

17 (14) Take any other action involving or relating to internal management not otherwise
18 prohibited by law.

19 (b) The secretaries of the departments hereby created shall engage in a comprehensive
20 review of the practices, policies and operations of the agencies and boards within their
21 departments to determine the feasibility of cost reductions and increased efficiency which
22 may be achieved therein, including, but not limited to, the following:

23 (1) The elimination, reduction and restriction of the state's vehicle or other transportation
24 fleet;

25 (2) The elimination, reduction and restriction of state government publications, including
26 annual reports, informational materials and promotional materials;

27 (3) The termination or rectification of terms contained in lease agreements between the
28 state and private sector for offices, equipment and services;

29 (4) The adoption of appropriate systems for accounting, including consideration of an
30 accrual basis financial accounting and reporting system;

31 (5) The adoption of revised procurement practices to facilitate cost-effective purchasing
32 procedures, including consideration of means by which domestic businesses may be
33 assisted to compete for state government purchases; and

34 (6) The computerization of the functions of the state agencies and boards.

35 (c) Notwithstanding the provisions of subsections (a) and (b) of this section, none of the
36 powers granted to the secretaries herein shall be exercised by the secretary if to do so
37 would violate or be inconsistent with the provisions of any federal law or regulation, any
38 federal-state program or federally delegated program or jeopardize the approval, existence
39 or funding of any program.

40 (d) The layoff and recall rights of employees within the classified service of the state as
41 provided in subsections five and six, section ten, article six, chapter twenty-nine of this
42 code shall be limited to the organizational unit within the agency or board and within the
43 occupational group established by the classification and compensation plan for the
44 classified service of the agency or board in which the employee was employed prior to the
45 agency or board's transfer or incorporation into the department: *Provided*, That the
46 employee shall possess the qualifications established for the job class. The duration of
47 recall rights provided in this subsection shall be limited to two years or the length of tenure,
48 whichever is less. Except as provided in this subsection, nothing contained in this section
49 shall be construed to abridge the rights of employees within the classified service of the
50 state as provided in sections ten and ten-a, article six, chapter twenty-nine of this code, or
51 the right of classified employees of the Board of Regents to the procedures and protections
52 set forth in article twenty-six-b, chapter eighteen of this code. (e) Notwithstanding any other
53 provision of this code to the contrary, the secretary of each department with authority over
54 programs which are payors for prescription drugs, including but not limited to, the Public
55 Employees Insurance Agency, the Children's Health Insurance Program, the Division of
56 Corrections, the Division of Juvenile Services, the Regional Jail and Correctional Facility
57 Authority, the Workers' Compensation Fund, state colleges and universities, public
58 hospitals, state or local institutions including nursing homes and veteran's homes, the
59 Division of Rehabilitation, public health departments, the Bureau of Medical Services and

1 other programs that are payors for prescription drugs, shall cooperate with the Office of the
2 Pharmaceutical Advocate established pursuant to section four, article sixteen-d, chapter
3 five of this code for the purpose of purchasing prescription drugs for any program over
4 which they have authority.

5 **CHAPTER 10. PUBLIC LIBRARIES; PUBLIC RECREATION; ATHLETIC**
6 **ESTABLISHMENTS; MONUMENTS AND MEMORIALS; ROSTER OF**
7 **SERVICEMEN; EDUCATIONAL BROADCASTING AUTHORITY.**

8 **ARTICLE 5. EDUCATIONAL BROADCASTING AUTHORITY.**

9 **§10-5-2. West Virginia Educational Broadcasting Authority; members; organization;**
10 **officers; employees; meetings; expenses.**

11 (a) The West Virginia Educational Broadcasting Authority is hereby continued as a public
12 benefit corporation. The Authority shall consist of eleven voting members, who shall be
13 residents of the state, including the Governor or designee, the State Superintendent of
14 Schools, one member of the West Virginia Board of Education to be selected by it
15 annually, and one member of the West Virginia Higher Education Policy Commission to
16 be selected by it annually. The other seven members shall be appointed by the Governor
17 by and with the advice and consent of the Senate for overlapping terms of seven years,
18 one term expiring each year. Not less than one appointive member shall come from each
19 congressional district. Employees of noncommercial broadcasting stations in West Virginia
20 are not eligible for appointment to the Authority. Any vacancy among the appointive
21 members shall be filled by the Governor by appointment for the unexpired term.

22 (b) As of the effective date of the reenactment of this section during the Regular Session
23 of 2005, the Governor or designee serves as chair, for a term not to exceed four years
24 unless extended by act of the Legislature. Thereafter, the Authority shall select the chair.
25 The Authority shall annually select one of its public members as vice chair and shall
26 appoint a secretary who need not be a member of the Authority and who shall keep
27 records of its proceedings.

28 (c) As of the effective date of the reenactment of this section during the Regular Session
29 of 2005, the Governor shall appoint an Executive Director, at a salary fixed by the
30 Governor, to serve for a term not to exceed four years unless extended by act of the
31 Legislature. Thereafter the Authority shall appoint the Executive Director and fix his or her
32 salary. The Executive Director is responsible for managing and administering the daily
33 functions of the Authority and for performing all other functions necessary to the effective
34 operation of the Authority. 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. The time and place of the
37 meetings shall be established upon its own resolution or at the call of the chairperson of
38 the Authority. The members shall serve without compensation but may be reimbursed for
39 all reasonable and necessary expenses actually incurred in the performance of their duties
40 in a manner consistent with the guidelines of the Travel Management Office of the
41 Department of Administration.

42 **§10-5-5a. Advisory Committee on Journalistic and Editorial Integrity.**

43 (a) The Authority shall appoint an Advisory Committee on Journalistic and Editorial
44 Integrity, which shall consist of five qualified members to serve staggered terms of three
45 years. The Advisory Committee shall annually elect a chair, vice chair and secretary.

46 (b) The Advisory Committee shall advise the Authority on issues related to the journalistic
47 independence and editorial integrity of public education and public broadcasting stations,
48 which have the same constitutional protections as other journalistic enterprises in West
49 Virginia .

50 **CHAPTER 11. TAXATION.**

51 **ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.**

52 **§11-10A-6. Chief Administrative Law Judge; appointment, term and vacancy;**
53 **qualifications; compensation; conflicts of interest prohibited; removal.**

54 (a) The Governor, with the advice and consent of the Senate, shall appoint the Chief
55 Administrative Law Judge from a list of three qualified nominees submitted to the Governor
56 by the Board of Governors of the West Virginia State Bar for a four-year term. An
57 appointment to fill a vacancy in the position shall be for the unexpired term.

58 (b) Prior to appointment, the Chief Administrative Law Judge shall be a citizen of the United
59 States and a resident of this state who is admitted to the practice of law in this state and

1 who has five years of full-time or equivalent part-time experience as an attorney with
2 federal or state tax law expertise or as a judge of a court of record.

3 (c) The salary of the Chief Administrative Law Judge shall be set by the Secretary of the
4 Department of Revenue created in section two, article one, chapter five-f of this code. The
5 salary shall be within the salary range for comparable chief administrative law judges as
6 determined by the State Personnel Board created by section six, article six, chapter twenty-
7 nine of this code.

8 (d) The Chief Administrative Law Judge during his or her term shall:

9 (1) Devote his or her full time to the duties of the position;

10 (2) Not otherwise engage in the active practice of law or be associated with any group or
11 entity which is itself engaged in the active practice of law: *Provided*, That nothing in this
12 paragraph may be construed to prohibit the Chief Administrative Law Judge from being a
13 member of a national, state or local bar association or committee, or of any other similar
14 group or organization, or to prohibit the Chief Administrative Law Judge from engaging in
15 the practice of law by representing himself, herself or his or her immediate family in their
16 personal affairs in matters not subject to this article.

17 (3) Not engage directly or indirectly in any activity, occupation or business interfering or
18 inconsistent with his or her duties as Chief Administrative Law Judge;

19 (4) Not hold any other appointed public office or any elected public office or any other
20 position of public trust; and

21 (5) Not be a candidate for any elected public office, or serve on or under any committee
22 of any political party.

23 (e) The Governor may remove the Chief Administrative Law Judge only for incompetence,
24 neglect of duty, official misconduct or violation of subsection (d) of this section, and
25 removal shall be in the same manner as that specified for removal of elected state officials
26 in section six, article six, chapter six of this code.

27 **§11-10A-7. Powers and duties of Chief Administrative Law Judge; all employees,**
28 **except Chief Administrative Law Judge, members of classified service;**
29 **qualifications of administrative law judges.**

30 (a) The Chief Administrative Law Judge is the chief executive officer of the Office of Tax
31 Appeals and he or she may employ one person to serve as executive director, one staff
32 attorney and other clerical personnel as necessary for the proper administration of this
33 article. The Chief Administrative Law Judge may delegate administrative duties to other
34 employees, but the Chief Administrative Law Judge shall be responsible for all official
35 delegated acts.

36 (1) Upon the request of the Chief Administrative Law Judge, the Governor may appoint up
37 to two administrative law judges as necessary for the proper administration of this article.

38 (2) All employees of the Office of Tax Appeals, except the Chief Administrative Law Judge,
39 shall be in the classified service and shall be governed by the provisions of the statutes,
40 rules and policies of the classified service in accordance with the provisions of article six,
41 chapter twenty-nine of this code.

42 (3) Prior to employment by the Office of Tax Appeals, all administrative law judges shall
43 be admitted to the practice of law in this state and have at least two years of full-time or
44 equivalent part-time experience as an attorney with federal or state tax law expertise.

45 (4) The Chief Administrative Law Judge and all administrative law judges shall be members
46 of the public employees retirement system and do not qualify as participants in the judicial
47 retirement system during their tenure with the Office of Tax Appeals.

48 (b) The Chief Administrative Law Judge shall:

49 (1) Direct and supervise the work of the legal staff;

50 (2) Make hearing assignments;

51 (3) Maintain the records of the Office of Tax Appeals;

52 (4) Review and approve decisions of administrative law judges as to legal accuracy, clarity
53 and other requirements;

54 (5) Publish decisions in accordance with the provisions of section sixteen of this article;

55 (6) Submit to the Legislature, on or before the fifteenth day of February, an annual report
56 summarizing the Office of Tax Appeals' activities since the end of the last report period,
57 including a statement of the number and type of matters handled by the Office of Tax
58 Appeals during the preceding fiscal year and the number of matters pending at the end of

1 the year; and

2 (7) Perform the other duties necessary and proper to carry out the purposes of this article.

3 **CHAPTER 17. ROADS AND HIGHWAYS.**

4 **ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND**
5 **TOURISM AUTHORITY.**

6 **§17-16A-3. West Virginia Parkways, Economic Development and Tourism Authority**
7 **generally.**

8 (a) The West Virginia Parkways, Economic Development and Tourism Authority is
9 continued as an agency of the state, and the exercise by the Parkways Authority of the
10 powers conferred by this article in the construction, reconstruction, improvement, operation
11 and maintenance of parkway, economic development and tourism projects shall be
12 deemed an essential governmental function of the state. (b) The West Virginia Parkways,
13 Economic Development and Tourism Authority shall consist of seven members, including
14 the Governor or designee, the Transportation Secretary and five public members appointed
15 by the Governor, by and with the advice and consent of the Senate. The appointed
16 members shall be residents of the state and shall have been qualified electors for a period
17 of at least one year next preceding their appointment. Public members are appointed for
18 eight-year terms, which are staggered in accordance with the initial appointments under
19 prior enactment of this section. Any member whose term has expired shall serve until his
20 or her successor has been duly appointed and qualified. Any person appointed to fill a
21 vacancy shall serve only for the unexpired term. Any member shall be eligible for
22 reappointment. Each appointed member of the Parkways Authority before entering upon
23 his or her duties shall take an oath as provided by section five, article IV of the constitution
24 of West Virginia.

25 (c) The Governor or designee shall serve as chair and the Authority shall annually elect
26 one of the appointed members as vice chair, and shall also elect a secretary and treasurer
27 who need not be members of the Parkways Authority.

28 (d) The Governor appoints an Executive Director of the Authority with the advice and
29 consent of the Senate. The Executive Director serves at the Governor's will and pleasure.
30 The Executive Director is responsible for managing and administering the daily functions
31 of the Authority and for performing all other functions necessary to the effective operation
32 of the Authority. The compensation of the Executive Director is annually fixed by the
33 Governor. (e) Four members of the Parkways Authority shall constitute a quorum and the
34 vote of a majority of members present shall be necessary for any action taken by the
35 Parkways Authority. No vacancy in the membership of the Parkways Authority shall impair
36 the right of a quorum to exercise all the rights and perform all the duties of the Parkways
37 Authority. The Parkways Authority shall meet at least monthly and either the chair or any
38 four members shall be empowered to call special meetings for any purpose: *Provided*, That
39 notice of any meeting shall be given to all members of the Parkways Authority not less than
40 ten days prior to said special meetings.

41 (f) Before the issuance of any parkway revenue bonds or revenue refunding bonds under
42 the provisions of this article, each appointed member of the Parkways Authority shall
43 execute a surety bond in the penal sum of twenty-five thousand dollars and the secretary
44 and treasurer shall execute a surety bond in the penal sum of fifty thousand dollars, each
45 surety bond to be conditioned upon the faithful performance of the duties of his or her
46 office, to be executed by a surety company authorized to transact business in West
47 Virginia as surety and to be approved by the Governor and filed in the Office of the
48 Secretary of State.

49 (g) The members of the Parkways Authority shall not be entitled to compensation for their
50 services, but shall be reimbursed for all reasonable and necessary expenses actually
51 incurred in the performance of their duties in a manner consistent with guidelines of the
52 Travel Management Office of the Department of Administration.

53 (h) All expenses incurred in carrying out the provisions of this article shall be payable solely
54 from funds provided under the authority of this article and no liability or obligation shall be
55 incurred by the Parkways Authority beyond the extent to which moneys shall have been
56 provided under the authority of this article.

57 (i) Pursuant to the provisions of article ten, chapter four of this code, the West Virginia
58 Parkways, Economic Development and Tourism Authority shall continue to exist until the
59 first day of July, two thousand seven.

1 **§17-16A-10. Parkway revenue bonds generally.**

2 (a) The Parkways Authority is authorized to provide by resolution for the issuance of
3 parkway revenue bonds of the state for the purpose of paying all or any part of the cost of
4 one or more projects: *Provided*, That this section shall not be construed as authorizing the
5 issuance of parkway revenue bonds for the purpose of paying the cost of the West Virginia
6 Turnpike, which parkway revenue bonds may be issued only as authorized under section
7 eleven of this article. The principal of and the interest on bonds shall be payable solely
8 from the funds provided for payment.

9 (b) The bonds of each issue shall be dated, shall bear interest at a rate as may be
10 determined by the Parkways Authority in its sole discretion, shall mature at a time not
11 exceeding forty years from their date or of issue as may be determined by the Parkways
12 Authority, and may be made redeemable before maturity, at the option of the Parkways
13 Authority at a price and under the terms and conditions as may be fixed by the Parkways
14 Authority prior to the issuance of the bonds.

15 (c) The Parkways Authority shall determine the form of the bonds, including any interest
16 coupons to be attached thereto, and shall fix the denomination of the bonds and the place
17 of payment of principal and interest, which may be at any bank or trust company within or
18 without the state.

19 (d) The bonds shall be executed by manual or facsimile signature by the chair of the
20 Parkways Authority, and the official seal of the Parkways Authority shall be affixed to or
21 printed on each bond, and attested, manually or by facsimile signature, by the secretary
22 and treasurer of the Parkways Authority . Any coupons attached to any bond shall bear the
23 manual or facsimile signature of the chair of the Parkways Authority.

24 (e) In case any officer whose signature or a facsimile of whose signature appears on any
25 bonds or coupons shall cease to be an officer before the delivery of the bonds, the
26 signature or facsimile shall nevertheless be valid and sufficient for all purposes the same
27 as if he had remained in office until delivery . In case the seal of the Parkways Authority
28 has been changed after a facsimile has been imprinted on the bonds, then the facsimile
29 seal will continue to be sufficient for all purposes.

30 (f) All bonds issued under the provisions of this article shall have all the qualities and
31 incidents of negotiable instruments under the negotiable instruments law of the state. The
32 bonds may be issued in coupon or in registered form, or both, as the Parkways Authority
33 may determine, and provision may be made for the registration of any coupon bonds as
34 to principal alone and also as to both principal and interest, and for the recorders into
35 coupon bonds of any bonds registered as to both principal and interest.

36 (g) The Parkways Authority may sell the bonds at a public or private sale at a price it
37 determines to be in the best interests of the state.

38 (h) The proceeds of the bonds of each issue shall be used solely for the payment of the
39 cost of the parkway project or projects for which the bonds were issued, and shall be
40 disbursed in a manner consistent with the resolution authorizing the issuance of the bonds
41 or in the trust agreement securing the bonds.

42 (i) If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be
43 less than the cost, then additional bonds may in like manner be issued to provide the
44 amount of the deficit. Unless otherwise provided in the resolution authorizing the issuance
45 of the bonds or in the trust agreement securing the bonds, the additional bonds shall be
46 deemed to be of the same issue and shall be entitled to payment from the same fund
47 without preference or priority of the bonds first issued.

48 (j) If the proceeds of the bonds of any issue exceed the cost of the project or projects for
49 which the bonds were issued, then the surplus shall be deposited to the credit of the
50 sinking fund for the bonds.

51 (k) Prior to the preparation of definitive bonds, the Parkways Authority may, under like
52 restrictions, issue interim receipts or temporary bonds, with or without coupons,
53 exchangeable for definitive bonds when the bonds have been executed and are available
54 for delivery. The Parkways Authority may also provide for the replacement of any bonds
55 that become mutilated or are destroyed or lost.

56 (l) Bonds may be issued under the provisions of this article without obtaining the consent
57 of any department, division, commission, board, bureau or agency of the state in
58 accordance with this article.

59

CHAPTER 49. CHILD WELFARE.

1 **ARTICLE 9. MISSING CHILDREN INFORMATION ACT.**

2 **§49-9-15. Clearinghouse Advisory Council; members, appointments and expenses;**
3 **appointment, duties and compensation of director.**

4 (a) The Clearinghouse Advisory Council is continued as a body corporate and politic,
5 constituting a public corporation and government instrumentality. The Council shall consist
6 of eleven members, who are knowledgeable about and interested in issues relating to
7 missing or exploited children, as follows:

8 (1) Six members to be appointed by the Governor, with the advice and consent of the
9 Senate, with not more than four belonging to the same political party, three being from
10 different congressional districts of the state and, as nearly as possible, providing broad
11 state geographical distribution of members of the Council, and at least one representing
12 a nonprofit organization involved with preventing the abduction, runaway or exploitation of
13 children or locating missing children;

14 (2) The Secretary of the Department of Health and Human Resources or his or her designee;

15 (3) The Superintendent of the West Virginia State Police or his or her designee;

16 (4) The State Superintendent of Schools or his or her designee;

17 (5) The Director of the Criminal Justice and Highway Safety Division or his or her designee;

18 and(6) The Executive Director of the Governor's Cabinet on Children and Families.

19 (b) The Governor shall appoint the six Council members for staggered terms. The terms
20 of the members first taking office on or after the effective date of this legislation shall expire
21 as designated by the Governor. Each subsequent appointment shall be for a full three-year
22 term. Any appointed member whose term is expired shall serve until a successor has been
23 duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the
24 unexpired term. A member is eligible for only one successive reappointment. A vacancy
25 shall be filled by the Governor in the same manner as the original appointment was made.

26 (c) Members of the Council are not entitled to compensation for services performed as
27 members but are entitled to reimbursement for all reasonable and necessary expenses
28 actually incurred in the performance of their duties in a manner consistent with the
29 guidelines of the Travel Management Office of the Department of Administration.

30 (d) A majority of serving members constitutes a quorum for the purpose of conducting
31 business. The chair of the Council shall be designated by the Governor from among the
32 appointed Council members who represent nonprofit organizations involved with preventing
33 the abduction, runaway or exploitation of children or locating missing children. The term
34 of the chair shall run concurrently with his or her term of office as a member of the Council.
35 The Council shall conduct all meetings in accordance with the open governmental
36 meetings law pursuant to article nine-a, chapter six of this code.

37 (e) The employee of the West Virginia State Police who is primarily responsible for the
38 clearinghouse established by section three of this article shall serve as the Executive
39 Director of the Council. He or she shall receive no additional compensation for service as
40 the Executive Director of the Council but shall be reimbursed for any reasonable and
41 necessary expenses actually incurred in the performance of his or her duties as Executive
42 Director in a manner consistent with the guidelines of the Travel Management Office of the
43 Department of Administration .

44 (f) The expenses of Council members and the Executive Director shall be reimbursed from
45 funds provided by foundation grants, in-kind contributions or funds obtained pursuant to
46 subsection (b), section seventeen of this article.

47 (g) The Executive Director shall provide or obtain information necessary to support the
48 administrative work of the Council and, to that end, may contract with one or more nonprofit
49 organizations or state agencies for research and administrative support.

50 (h) The Executive Director of the Council shall be available to the Governor and to the
51 Speaker of the House of Delegates and the President of the Senate to analyze and
52 comment upon proposed legislation and rules which relate to or materially affect missing
53 or exploited children.

54 (i) The Council shall prepare and publish an annual report of its activities and
55 accomplishments and submit it to the Governor and to the Joint Committee on Government
56 and Finance on or before the fifteenth day of December of each year.

House Bill 3012

Effective Date: Passed April 6, 2005,; in effect from passage

Signed by Governor: April 18, 2005

Code Reference: §11-3-9

Title: Property Exempt from Taxation

Major Provisions:

- Exempts all property acquired by lease purchase agreement by the state, any county, district, city village, town or other political subdivision from property taxes during the term of the lease purchase agreement, as long as title to the leased property rests in the name of the lessee and the lessee is not in default or has not terminated the lease to the property.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59

ENROLLED
COMMITTEE SUBSTITUTE
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.]

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.

(a) All property, real and personal, described in this subsection, and to the extent herein limited, is exempt from taxation:

(1) Property belonging to the United States, other than property permitted by the United States to be taxed under state law;

(2) Property belonging exclusively to the state;

(3) Property belonging exclusively to any county, district, city, village or town in this state, and used for public purposes;

(4) Property located in this state, belonging to any city, town, village, county or any other political subdivision of another state, and used for public purposes;

(5) Property used exclusively for divine worship;

(6) Parsonages and the household goods and furniture pertaining thereto;

(7) Mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners and holders hereafter issued and sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship, or for the purpose of paying indebtedness thereon;

(8) Cemeteries;

(9) Property belonging to, or held in trust for, colleges, seminaries, academies and free schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities and furniture;

(10) Property belonging to, or held in trust for, colleges or universities located in West Virginia, or any public or private nonprofit foundation or corporation which receives contributions exclusively for such college or university, if the property or dividends, interest, rents or royalties derived therefrom are used or devoted to educational purposes of such college or university;

(11) Public and family libraries;

(12) Property used for charitable purposes, and not held or leased out for profit;

(13) Property used for the public purposes of distributing water or natural gas, or providing sewer service by a duly chartered nonprofit corporation when such property is not held, leased out or used for profit;

(14) Property used for area economic development purposes by nonprofit corporations when such property is not leased out for profit;

(15) All real estate not exceeding one acre in extent, and the buildings thereon, used exclusively by any college or university society as a literary hall, or as a dormitory or clubroom, if not used with a view to profit, including, but not limited to, property owned by a fraternity or sorority organization affiliated with a university or college, or property owned by a nonprofit housing corporation or similar entity on behalf of a fraternity or sorority organization affiliated with a university or college, when the property is used as residential accommodations, or as a dormitory for members of the organization;

(16) All property belonging to benevolent associations, not conducted for private profit;

1 (17) Property belonging to any public institution for the education of the deaf, dumb or
2 blind, or any hospital not held or leased out for profit;
3 (18) Houses of refuge and ~~lunatic~~ mental health facility or orphanage ~~asylums~~;
4 (19) Homes for children or for the aged, friendless or infirm, not conducted for private profit;
5 (20) Fire engines and implements for extinguishing fires, and property used exclusively for
6 the safekeeping thereof, and for the meeting of fire companies;
7 (21) All property on hand to be used in the subsistence of livestock on hand at the
8 commencement of the assessment year;
9 (22) Household goods to the value of two hundred dollars, whether or not held or used for
10 profit;
11 (23) Bank deposits and money;
12 (24) Household goods, which for purposes of this section means only personal property
13 and household goods commonly found within the house and items used to care for the
14 house and its surrounding property, when not held or used for profit;
15 (25) Personal effects, which for purposes of this section means only articles and items of
16 personal property commonly worn on or about the human body, or carried by a person and
17 normally thought to be associated with the person when not held or used for profit;
18 (26) Dead victuals laid away for family use; ~~and~~
19 (27) All property belonging to the state, any county, district, city, village, town or other
20 political subdivision, or any state college or university which is subject to a lease purchase
21 agreement and which provides that, during the term of the lease purchase agreement, title
22 to the leased property rests in the lessee so long as lessee is not in default or shall not
23 have terminated the lease as to the property; and
24 ~~(27)~~(28) Any other property or security exempted by any other provision of law.
25 (b) Notwithstanding the provisions of subsection (a) of this section, no property is exempt
26 from taxation which has been purchased or procured for the purpose of evading taxation,
27 whether temporarily holding the same over the first day of the assessment year or otherwise.
28 (c) Real property which is exempt from taxation by subsection (a) of this section shall be
29 entered upon the assessor's books, together with the true and actual value thereof, but no
30 taxes may be levied upon the property or extended upon the assessor's books.
31 (d) Notwithstanding any other provisions of this section, this section does not exempt from
32 taxation any property owned by, or held in trust for, educational, literary, scientific, religious
33 or other charitable corporations or organizations, including any public or private nonprofit
34 foundation or corporation existing for the support of any college or university located in
35 West Virginia, unless such property, or the dividends, interest, rents or royalties derived
36 therefrom, is used primarily and immediately for the purposes of the corporations or organizations.
37 (e) The ~~†Tax e~~Commissioner shall, by issuance of rules, provide each assessor with
38 guidelines to ensure uniform assessment practices statewide to effect the intent of this section.
39 ~~In as much~~ Inasmuch as there is litigation pending regarding application of this section
40 to property held by fraternities and sororities, amendments to this section enacted in the
41 year one thousand nine hundred ninety-eight shall apply to all cases and controversies
42 pending on the date of such enactment.
43 (g) The amendment to subdivision (27), subsection (a) of this section, passed during the
44 two thousand five regular session of the Legislature, shall apply to all applicable lease
45 purchase agreements in existence upon the effective date of the amendment .
46

House Bill 3018

Effective Date: Passed April 8, 2005; in effect ninety days from passage

Signed by Governor: May 2, 2005

Code Reference: Amends and reenacts §15-1B-24, §18-2-6

Title: Relating to cooperation of the State Board of Education with the Mountaineer Challenge Academy

Major Provisions:

- Mountaineer Challenge Academy (MCA) is designated as a special alternative education program.
- State Board of Education shall include MCA its in child nutrition program, provide names and mailing addresses of all high school dropouts in the state to director of MCA annually, and provide for MCA graduates to participate in the adult basic education program.
- If a student graduates from MCA or passes the General Equivalency Development (GED) tests within five years of beginning ninth grade, the student shall be considered graduated for purposes of calculating the high school graduation rate used for school accreditation and school system approval, subject to:
 - o the student shall be considered graduated only if this is not in conflict with any provision of federal law relating to graduation rates;
 - o if the State Board determines this is in conflict with a provision of federal law relating to graduation rates, the State Board shall request a waiver from the US Department of Education;
 - o if the waiver is granted, the student graduating or passing the GED tests within five years shall be considered graduated.
- The State Board shall promulgate a rule to support the operation of the National Guard Youth Challenge Program operated by the Adjutant General known as the Mountaineer Challenge Academy. Such policies and procedures are applicable only to MCA and provide for, but are not limited to:
 - o precedence of policies and procedures designated y the National Guard Bureau for the operation of MCA special alternative education program;
 - o consideration of a student participating in MCA at full enrollment status in the referring county for purposes of funding and calculating attendance and graduation rates;
 - o student shall be considered at full enrollment status for purposes of calculating attendance and graduation rates to the extent this is not in conflict with any provisions of federal law relating to attendance or graduation rates;
- o if State Board determines this is in conflict with federal law, it shall request a waiver from the US Department of Education;
- o if the waiver is granted, the student shall be considered at full enrollment status in the referring county for purposes of calculating attendance and graduation rates;

- consideration of student at full enrollment status in the referring county is for purposes of funding and calculating graduation rates only; for any other purpose an MCA student is considered withdrawn from the public school system.
- articulation of students' knowledge, skills, and competencies gained through alternative education so students who return to regular education may proceed toward attainment or attain standards for graduation without duplication;
- consideration of students' eligibility to take GED tests by qualifying within the extraordinary circumstances provisions established by State Board rule of MCA participation when a student does not meet any other eligibility criteria.
- Nothing in this law compels MCA to be operated as a special alternative education program or to be subject to any other laws governing public schools except by its consent.
- State Board shall report by January 1 annually to Legislative Oversight Commission on Education Accountability on its efforts to cooperate with and support the MCA.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

**ENROLLED
H. B. 3018**

(By Delegate Williams, Stemple, Beach, Poling, Stevens, Perry and Campbell)
[Passed April 8, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §15-1B-24 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-2-6 of said code, all relating to cooperation of the State Board of Education with the Mountaineer Challenge Academy; mandating a rule for the approval of alternative education programs; diplomas and certificates of proficiency; designation of Academy as special alternative education program; calculation of graduation rate for student attending an approved alternative education program or the Academy; requiring State Board rule to support the operation of the Academy; providing minimum provisions to be included in the rule; application limited to Academy consent; requiring report to Legislative Oversight Commission on Education Accountability; and technical amendments.

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

20 That §15-1B-24 of the Code of West Virginia, 1931, as amended, be amended and
21 reenacted; and that §18-2-6 of said code be amended and reenacted, all to read as
22 follows:

23 **CHAPTER 15. PUBLIC SAFETY.**

24 **ARTICLE 1B. NATIONAL GUARD.**

25 **§15-1B-24. Mountaineer Challenge Academy.**

26 The Mountaineer Challenge Academy, operated by the ~~a~~Adjutant ~~g~~General at Camp
27 Dawson, is hereby acknowledged to be a program of great value in meeting the educational
28 needs of at-risk youth throughout the state. Further, the Mountaineer Challenge Academy
29 is hereby designated as a special alternative education program as is further provided
30 pursuant to section six, article two, chapter eighteen of this code. It is, therefore, the sense
31 intent of the Legislature that the Mountaineer Challenge Academy should enjoy the full
32 cooperation of the executive agencies of state government in carrying out its program.

33 ~~To that this end, the s~~State ~~b~~Board of ~~e~~Education shall, notwithstanding any other provision
34 in this code to the contrary:

35 (1) Include the Mountaineer Challenge Academy in the child nutrition program ~~on the same~~
36 ~~bases as other public schools;~~

37 (2) Provide the names and mailing addresses of all high school dropouts in the state to the
38 director of the Mountaineer Challenge Academy ~~upon request~~ annually; and

39 (3) Provide for Mountaineer Challenge Academy graduates to participate in the adult basic
40 education program.

41 Further cooperation with the Mountaineer Challenge Academy is encouraged by the
42 Legislature for the purpose of assisting the Mountaineer Challenge Academy ~~in to~~
43 achieving its mission and help prepare young people for productive adulthood.

44 **CHAPTER 18. EDUCATION.**

45 **ARTICLE 2. STATE BOARD OF EDUCATION.**

46 **§18-2-6. Classification and standardization of schools; standards for degrees
47 and diploma; certificates of proficiency; establishment of alternative
48 education programs.**

49 (a) The ~~s~~State ~~b~~Board shall ~~make promulgate~~ rules for the accreditation, classification and
50 standardization of all schools in the state, except institutions of higher education, and shall
51 determine the minimum standards for the granting of diplomas and certificates of
52 proficiency by those schools. ~~Not later than the school year one thousand nine hundred~~
53 ~~ninety-ninety-one;~~ The certificates of proficiency shall include specific information
54 regarding the graduate's skills, competence and readiness for employment or honors and
55 advanced education and shall be granted, along with the diploma, to every eligible high
56 school graduate. The certificate of proficiency shall include the program of study major

1 completed by the student only for those students who have completed the required major
2 courses, or higher level courses, advanced placement courses, college courses or other
3 more rigorous substitutes related to the major, and the recommended electives.
4 ~~(b) No~~ An institution of less than collegiate or university status may not grant any diploma
5 or certificate of proficiency on any basis of work or merit below the minimum standards
6 prescribed by the sState bBoard.
7 ~~(c) No~~ A charter or other instrument containing the right to issue diplomas or certificates
8 of proficiency shall ~~may not~~ be granted by the sState of West Virginia to any institution or
9 other associations or organizations of less than collegiate or university status within the
10 state until the condition of granting or issuing such diplomas or other certificates of
11 proficiency has first been approved in writing by the sState bBoard.
12 ~~(d) The sState bBoard also may establish policies and procedures~~ shall promulgate a rule
13 for the approval of alternative education programs for disruptive students who are at risk
14 of not succeeding in the traditional school structure. ~~These policies and procedures~~ This
15 rule may provide for the waiver of other policies of the sState bBoard, the establishment
16 and delivery of a nontraditional curriculum, the establishment of licensure requirements for
17 alternative education program teachers, and the establishment of performance measures
18 for school accreditation.
19 (e) If a student attends an approved alternative education program or the Mountaineer
20 Challenge Academy, which is designated as a special alternative education program
21 pursuant to section twenty-four, article one-b, chapter fifteen of this code, and the student
22 graduates or passes the General Equivalency Development (GED) tests within five years
23 of beginning ninth grade, that student shall be considered graduated for the purposes of
24 calculating the high school graduation rate used for school accreditation and school system
25 approval, subject to the following:
26 (1) The student shall only be considered graduated to the extent that this is not in conflict
27 with any provision of federal law relating to graduation rates;
28 (2) If the State Board determines that this is in conflict with a provision of federal law
29 relating to graduation rates, the State Board shall request a waiver from the United States
30 Department of Education; and
31 (3) If the waiver is granted, notwithstanding the provisions of subdivision (1) of this
32 subsection, the student graduating or passing the General Educational Development
33 (GED) tests within five years shall be considered graduated.
34 (f) The State Board shall promulgate a rule to support the operation of the National Guard
35 Youth Challenge Program operated by the Adjutant General and known as the
36 "Mountaineer Challenge Academy" which is designated as a special alternative education
37 program pursuant to section twenty-four, article one-b, chapter fifteen of this code, for
38 students who are at risk of not succeeding in the traditional school structure. The rule shall
39 set forth policies and procedures applicable only to the Mountaineer Challenge Academy
40 that provide for, but are not limited to, the following:
41 (1) Implementation of provisions set forth in section twenty-four, article one-b, chapter
42 fifteen of this code;
43 (2) Precedence of the policies and procedures designated by the National Guard Bureau
44 for the operation of the Mountaineer Challenge Academy special alternative education
45 program;
46 (3) Consideration of a student participating in the Mountaineer Challenge Academy special
47 alternative education program at full enrollment status in the referring county for the
48 purposes of funding and calculating attendance and graduation rates, subject to the following:
49 (A) The student shall only be considered at full enrollment status for the purposes of
50 calculating attendance and graduation rates to the extent that this is not in conflict with any
51 provision of federal law relating to attendance or graduation rates;
52 (B) If the State Board determines that this is in conflict with a provision of federal law
53 relating to attendance or graduation rates, the State Board shall request a waiver from the
54 United States Department of Education;
55 (C) If the waiver is granted, notwithstanding the provisions of paragraph (A) of this
56 subdivision, the student shall be considered at full enrollment status in the referring county

1 for the purposes of calculating attendance and graduation rates; and
2 (D) Consideration of the student at full enrollment status in the referring county is for the
3 purposes of funding and calculating attendance and graduation rates only. For any other
4 purpose, a student participating in the Academy is considered withdrawn from the public
5 school system.
6 (4) Articulation of the knowledge, skills and competencies gained through alternative
7 education so that students who return to regular education may proceed toward attainment
8 or attain the standards for graduation without duplication; and
9 (5) Consideration of eligibility to take the General Educational Development (GED) Tests
10 by qualifying within the extraordinary circumstances provisions established by State Board
11 rule of a student participating in the Mountaineer Challenge Academy special alternative
12 education program who does not meet any other criteria for eligibility.
13 (g) Nothing in this section or the rules promulgated hereunder compels the Mountaineer
14 Challenge Academy to be operated as a special alternative education program or to be
15 subject to any other laws governing the public schools except by its consent.
16 (h) The State Board shall report to the Legislative Oversight Commission on Education
17 Accountability on or before the first day of January of each year on its efforts to cooperate
18 with and support the Mountaineer Challenge Academy pursuant to this section and section
19 twenty-four, article one-b, chapter fifteen of this code.

House Bill 3049

Effective Date: Passed April 9, 2005; in effect ninety days from passage

Signed by Governor: May 3, 2005

Code Reference: Amends Article 2, Chapter 61 to include a new section, designated §61-2-9c

Title: Relating to a new crime

Major Provisions:

- Creates a new crime of wanton endangerment involving the use of fire, a felony.
- Imposes a criminal penalty of incarceration up to five years and fine up to two thousand five hundred dollars.

House Bill 3098

Effective Date: Passed April 9, 2005; in effect ninety days from passage

Signed by Governor: May 2, 2005

Code Reference: Amends and reenacts §61-8D-1 and §61-8D-5

Title: Relating to Sexual Crimes Committed Against Children

Major Provisions:

- Expands the prohibitions for sexual exploitation or sexual abuse of a child to include offenses by persons who hold a position of trust in relation to a child.
- Defines a “person in a position of trust in relation to a child”.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48

**ENROLLED
H. B. 3098**

(By Delegates Amores, Staton, Spencer, Schadler and Hamilton)

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

AN ACT to amend and reenact §61-8D-1 and §61-8D-5 of the code of West Virginia, 1931, as amended, relating to sexual crimes committed against children; defining position of trust in relation to a child victim; expanding the existing felony offense of sexual exploitation or sexual abuse of a child under article eight-d of chapter sixty-one of the code to include offenses by persons who hold who a position of trust or authority in relation to a child; establishing related criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §61-8D-1 and 61-8D-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8D. CHILD ABUSE.

§61-8D-1. Definitions.

In this article, unless a different meaning plainly is required:

(1) "Abuse" means the infliction upon a minor of physical injury by other than accidental means.

(2) "Child" means any person under eighteen years of age not otherwise emancipated by law.

(3) "Controlled substance" means controlled substance as that term is defined in subsection (d), section one hundred one, article one, chapter sixty-a of this code.

(4) "Custodian" means a person over the age of fourteen years who has or shares actual physical possession or care and custody of a child on a full-time or temporary basis, regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceeding. "Custodian" shall also include, but not be limited to, the spouse of a parent, guardian or custodian, or a person cohabiting with a parent, guardian or custodian in the relationship of husband and wife, where such spouse or other person shares actual physical possession or care and custody of a child with the parent, guardian or custodian.

(5) "Guardian" means a person who has care and custody of a child as the result of any contract, agreement or legal proceeding.

(6) "Neglect" means the unreasonable failure by a parent, guardian, or any person voluntarily accepting a supervisory role towards a minor child to exercise a minimum degree of care to assure said minor child's physical safety or health.

(7) "Parent" means the biological father or mother of a child, or the adoptive mother or father of a child.

(8) "Sexual contact" means sexual contact as that term is defined in section one, article eight-b, chapter sixty-one of this code.

(9) "Sexual exploitation" means an act whereby:

(A) A parent, custodian, or guardian or other person in a position of trust to a child, whether for financial gain or not, persuades, induces, entices or coerces the child to engage in sexually explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this code; or

1 (B) A parent, guardian, or custodian or other person in a position of trust in relation to a
2 child persuades, induces, entices or coerces a the child to display his or her sex organs
3 for the sexual gratification of the parent, guardian, custodian, person in a position of trust
4 or a third person, or to display his or her sex organs under circumstances in which the
5 parent, guardian, custodian or other person in a position of trust knows such display is
6 likely to be observed by others who would be affronted or alarmed.

7 (10) "Sexual intercourse" means sexual intercourse as that term is defined in section one,
8 article eight-b, chapter sixty-one of this code.

9 (11) "Sexual intrusion" means sexual intrusion as that term is defined in section one, article
10 eight-b, chapter sixty-one of this code.

11 (12) A "person in a position of trust in relation to a child" refers to any person who is acting
12 in the place of a parent and charged with any of a parent's rights, duties or responsibilities
13 concerning a child or someone responsible for the general supervision of a child's welfare,
14 or any person who by virtue of their occupation or position is charged with any duty or
15 responsibility for the health, education, welfare, or supervision of the child.

16 **§61-8D-5. Sexual abuse by a parent, guardian or custodian; or person in a position**
17 **of trust to a child; parent, guardian, custodian or person in a position of trust**
18 **allowing sexual abuse to be inflicted upon a child; displaying of sex organs**
19 **by a parent, guardian, or custodian; penalties.**

20 (a) In addition to any other offenses set forth in this code, the Legislature hereby declares
21 a separate and distinct offense under this subsection, as follows: If any parent, guardian
22 or custodian of or other person in a position of trust in relation to a child under his or her
23 care, custody or control, shall engage in or attempt to engage in sexual exploitation of, or
24 in sexual intercourse, sexual intrusion or sexual contact with, a child under his or her care,
25 custody or control, notwithstanding the fact that the child may have willingly participated
26 in such conduct, or the fact that the child may have consented to such conduct or the fact
27 that the child may have suffered no apparent physical injury or mental or emotional injury
28 as a result of such conduct, then such parent, guardian or custodian or person in a
29 position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned
30 in the penitentiary not less than ten nor more than twenty years, or fined not less than five
31 hundred nor more than five thousand dollars and imprisoned in the penitentiary not less
32 than ten years nor more than twenty years.

33 (b) If any parent, guardian or custodian or other person in a position of trust in relation to
34 the child shall knowingly procure another person to engage in or attempt to engage in
35 sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child
36 under the care, custody or control of such parent, guardian or custodian or person in a
37 position of trust when such child is less than sixteen years of age, notwithstanding the fact
38 that the child may have willingly participated in such conduct or the fact that the child may
39 have suffered no apparent physical injury or mental or emotional injury as a result of such
40 conduct, such parent, guardian or custodian or person in a position of trust shall be guilty
41 of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less
42 than five years nor more than fifteen years, or fined not less than one thousand nor more
43 than ten thousand dollars and imprisoned in the penitentiary not less than five years nor
44 more than fifteen years.

45 (c) If any parent, guardian or custodian or other person in a position of trust in relation to
46 the child shall knowingly procure another person to engage in or attempt to engage in
47 sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child
48 under the care, custody or control of such parent, guardian or custodian or person in a
49 position of trust when such child is sixteen years of age or older, notwithstanding the fact
50 that the child may have consented to such conduct or the fact that the child may have
51 suffered no apparent physical injury or mental or emotional injury as a result of such
52 conduct, then such parent, guardian or custodian or person in a position of trust shall be
53 guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not
54 less than one year nor more than five years.

55 (d) The provisions of this section shall not apply to a custodian or person in a position of
56 trust whose age exceeds the age of the child by less than four years.

House Bill 3152

Effective Date: Passed April 9; in effect from passage

Signed by Governor: May 4, 2005

Code Reference: Amends and reenacts §29-12-5a

Title: State Liability Insurance

Major Provisions:

- Clarifies that the Board of Risk and Insurance Management is not required to provide insurance coverage for every property, activity, or responsibility of county boards of education.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

**ENROLLED
H. B. 3152**

(By Delegates Michael, Stalnaker, Frederick, Proudfoot,
R. M. Thompson and Ashley)

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

AN ACT to amend and reenact §29-12-5a of the Code of West Virginia, 1931, as amended, relating to liability insurance for county boards of education, their employees and members, the county superintendent of schools, and for employees and officers of the State Department of Corrections; and clarifying that the Board of Risk and Insurance Management is not required to provide insurance for every property, activity or responsibility.

Be it enacted by the Legislature of West Virginia:

That §29-12-5a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 12. STATE INSURANCE.

§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, and for employees and officers of the sState dDepartment of eCorrections.

(a) In accordance with the provisions of this article, the state bBoard of rRisk and iInsurance mManagement shall provide appropriate professional or other liability insurance for all county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools and school board members and for all employees and officers of the sState dDepartment of eCorrections: Provided, That the Board of Risk and Insurance Management is not required to provide insurance for every property, activity or responsibility of county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools and school board members and for all employees and officers of the State Department of Corrections.

(b) Said iInsurance provided by the Board of Risk and Insurance Management pursuant to the provisions of subsection (a) of this section shall cover any claims, demands, actions, suits or judgments by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person within or without any school building or correctional institution if, at the time of the alleged injury, the teacher, supervisor, administrator, service personnel employee, county superintendent, school board member, or employee or officer of the dDepartment of eCorrections was acting in the discharge of his or her duties, within the scope of his or her office, position or employment, under the direction of the bBoard of eEducation or eCommissioner of eCorrections or in an official capacity as a county superintendent or as a school board member or as eCommissioner of eCorrections.

(c) Such iInsurance coverage provided by the Board of Risk and Insurance Management pursuant to subsection (a) of this section shall be in an amount to be determined by the state bBoard of rRisk and iInsurance mManagement, but in no event less than one million dollars for each occurrence. In addition, each county board of education shall purchase, through the bBoard of rRisk and iInsurance mManagement, excess coverage of at least five million dollars for each occurrence. The cost of this excess coverage will be paid by the respective county boards of education. Any insurance purchased under this section shall be obtained from a company licensed to do business in this state.

(d) The insurance policy provided by the Board of Risk and Insurance Management pursuant to subsection (a) of this section shall include comprehensive coverage, personal injury coverage, malpractice coverage, corporal punishment coverage, legal liability coverage as well as a provision for the payment of the cost of attorney's fees in connection with any claim, demand, action, suit or judgment arising from such alleged negligence or other act resulting in bodily injury under the conditions specified in this section.

1 (e) The county superintendent and other school personnel shall be defended by the county
2 board or an insurer in the case of suit, unless the act or omission shall not have been
3 within the course or scope of employment or official responsibility or was motivated by
4 malicious or criminal intent.

Senate Bill 94

Effective Date: Passed April 9, 2005; in effect ninety days from passage

Signed by Governor: May 2, 2005

Code Reference: Amends and enacts §18-5-45

Title: School Calendar

Major Provisions:

- Deletes the specified order in which the required activities for Instructional Support and Enhancement days be scheduled, thereby providing discretion to the county boards, subject to the following provisions:
 - o Two hours shall be used for instructional activities for students;
 - o A two-hour block shall be scheduled for faculty senate meetings;
 - o The remainder of the day shall be used for professional activities for teachers.
- Changes the term “banked time” to “accrued instructional time”.
- Provides that up to three (3) days of accrued instructional time may be used for additional professional development time.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 94

(Senator Plymale, *original sponsor*)

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

AN ACT to amend and reenact §18-5-45 of the Code of West Virginia, 1931, as amended, relating to the school calendar; defining terms; correcting references; providing additional flexibility for instructional support and enhancement days; and authorizing limited use of accrued instructional time for professional development and continuing education for certain purposes.

Be it enacted by the Legislature of West Virginia:

That §18-5-45 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-45. School calendar.

(a) As used in this section, the following terms have the following meanings:

(1) "Instructional day" means a day within the instructional term which meets the following criteria:

(A) Instruction is offered to students for at least the minimum amounts of time provided by sState bBoard rule;

(B) Instructional time is used for instruction, cocurricular activities and approved extracurricular activities and, pursuant to the provisions of subdivision (12), subsection (b), section five, article five-a of this chapter, faculty senates; and

(C) Such other criteria as the sState bBoard determines appropriate.

(2) "~~Bank time~~ Accrued instructional time" means instructional time accruing during the instructional term from time added to the instructional day beyond the time required by State Board rule for an instructional day. Accrued instructional time which may be accumulated and used in larger blocks of time during the school year for instructional or noninstructional activities; as further defined by the sState bBoard.

(3) "Extracurricular activities" are activities under the supervision of the school such as athletics, noninstructional assemblies, social programs, entertainment and other similar activities; as further defined by the sState bBoard.

(4) "Cocurricular activities" are activities that are closely related to identifiable academic programs or areas of study that serve to complement academic curricula as further defined by the sState bBoard.

(b) *Findings.* --

(1) The primary purpose of the school system is to provide instruction for students.

(2) The school calendar, as defined in this section, is designed to define the school term both for employees and for instruction.

(3) The school calendar traditionally has provided for one hundred eighty actual days of instruction but numerous circumstances have combined to cause the actual number of instructional days to be less than one hundred eighty.

(4) The quality and amount of instruction offered during the instructional term is affected by the extracurricular and cocurricular activities allowed to occur during scheduled instructional time.

(5) Within reasonable guidelines, the school calendar should be designed at least to guarantee that one hundred eighty actual days of instruction are possible.

(c) The county board shall provide a school term for its schools that contains the following:

(1) An employment term for teachers of no less than two hundred days, exclusive of Saturdays and Sundays; and

(2) Within the employment term, an instructional term for students of no less than one

1 hundred eighty separate instructional days.
2 (d) The instructional term for students shall include; one instructional day in each of the
3 months of October, December, February, April and June which is an instructional support
4 and enhancement day scheduled by the board to include both instructional activities for
5 students and professional activities for teachers to improve student instruction. Instructional
6 support and enhancement days are subject to the following provisions:
7 (1) Two hours of the instructional support and enhancement day shall be used for
8 instructional activities for students. The instructional activities for students are subject to
9 the following provisions:
10 (A) The instructional activities for students require the direct supervision or involvement by
11 teachers;
12 (B) The instructional activities for students shall be limited to two hours;
13 (C) The instructional activities for students shall be determined and scheduled at the local
14 school level;
15 (D) The instructional activities for students may include, but are not limited to, both in-
16 school and outside of school activities such as student mentoring, tutoring, counseling,
17 student research and other projects or activities of an instructional nature, community
18 service, career exploration, parent and teacher conferences, visits to the homes of
19 students, college and financial aid workshops and college visits. The instructional activities
20 for students shall be determined and scheduled at the local school level. The first two
21 hours of the instructional day shall be used for instructional activities for students which
22 require the direct supervision or involvement by teachers, and such activities shall be
23 limited to two hours.;
24 (E) To ensure that the students who attend are properly supervised, the instructional
25 activities for students shall be arranged by appointment with the individual school through
26 the principal, a teacher or other professional personnel at the school.; and
27 (F) The Each school shall establish a policy relating to the use of the two-hour block
28 scheduled for instructional activities for students.;
29 (2) The instructional support and enhancement day shall include a two-hour block of time
30 for professional activities for teachers shall include a two-hour block time immediately
31 following the first two hours of instructional activities for students during which the faculty
32 senate shall have the opportunity to meet.;
33 (3) Any time not used by the faculty senate and the All time remainder of in the school
34 day after meeting the requirements of subdivisions (1) and (2) of this subsection, not
35 including the duty-free lunch period, shall be used for other professional activities for
36 teachers to improve student instruction which may include, but are not limited to,
37 professional staff development, curriculum team meetings, individualized education plan
38 meetings and other meetings between teachers, principals, aides and paraprofessionals
39 to improve student instruction as determined and scheduled at the local school level.;
40 (4) Notwithstanding any other provision of law or policy to the contrary, the presence of any
41 specific number of students in attendance at the school for any specific period of time shall
42 not be required on instructional support and enhancement days and the transportation of
43 students to the school shall not be required.;
44 (5) Instructional support and enhancement days are also a scheduled work day for all
45 service personnel and shall be used for training or other tasks related to their job
46 classification if their normal duties are not required.; and
47 (6) Nothing in this section may be construed to require that the instructional activities for
48 students, faculty senate meetings and other professional activities for teachers be
49 scheduled in any certain order.
50 (e) The instructional term shall commence no earlier than the twenty-sixth day of August
51 and terminate no later than the eighth day of June.
52 (f) Noninstructional days shall total twenty and shall be comprised of the following:
53 (1) Seven holidays as specified in section two, article five, chapter eighteen-a of this code;
54 (2) Election day as specified in section two, article five, chapter eighteen-a of this code;
55 (3) Six days to be designated by the county board to be used by the employees outside the
56 school environment; and

1 (4) Six days to be designated by the county board for any of the following purposes:
2 (A) Curriculum development;
3 (B) Preparation for opening and closing school;
4 (C) Professional development;
5 (D) Teacher-pupil-parent conferences;
6 (E) Professional meetings; and
7 (F) Making up days when instruction was scheduled but not conducted.
8 (g) Three of the days described in subdivision (4), subsection (f) of this section shall be
9 scheduled prior to the twenty-sixth day of August for the purposes of preparing for the
10 opening of school and staff development.
11 (h) At least one of the days described in subdivision (4), subsection (f) of this section shall
12 be scheduled after the eighth day of June for the purpose of preparing for the closing of
13 school. If one hundred eighty separate instruction days occur prior to the eighth day of
14 June, this day may be scheduled on or before the eighth day of June.
15 (i) At least four of the days described in subdivision (3), subsection (f) of this section shall
16 be scheduled after the first day of March.
17 (j) At least two of the days described in subdivision (4), subsection (f) of this section; will
18 be scheduled for professional development. The professional development conducted on
19 these days will be consistent with the goals established by the state board pursuant to the
20 provisions of section twenty-three-a, article two; ~~of this chapter eighteen of this code.~~
21 (k) Subject to the provisions of subsection (h) of this section, all noninstructional days will
22 be scheduled prior to the eighth day of June.
23 ~~(l) Except as otherwise provided in this subsection, tThe sState bBoard may not schedule~~
24 ~~the primary statewide assessment program prior to the fifteenth day of May of the~~
25 ~~instructional year; unless the sState bBoard determines that the nature of the test~~
26 ~~mandates an earlier testing date. For the school year beginning two thousand three only;~~
27 ~~the state board may not schedule the primary statewide assessment program prior to the~~
28 ~~fifteenth day of April of the instructional year.~~
29 (m) If, on or after the first day of March, the county board determines that it is not possible
30 to complete one hundred eighty separate days of instruction, the county board shall
31 schedule instruction on any available noninstructional day, regardless of the purpose for
32 which the day originally was scheduled, and the day will be used for instruction: ~~Provided;~~
33 ~~That, subject to the following:~~
34 (1) The noninstructional days scheduled for professional development shall be the last
35 available noninstructional days to be rescheduled as instructional days: ~~Provided, however~~
36 ~~That;~~
37 (2) On or after the first day of March, the county board also may require additional minutes
38 of instruction in the school day to make up for lost instructional days in excess of the days
39 available through rescheduling and, if in its judgment it is reasonable and necessary to
40 improve student performance, to avoid scheduling instruction on noninstructional days
41 previously scheduled for professional development; and
42 (3) The provisions of this subsection do not apply to: (1) Holidays; and (2) election day.
43 (n) The following applies to bank accrued instructional time:
44 (1) Except as provided in subsection (m) of this section, bank accrued instructional time
45 may not be used to avoid one hundred eighty separate days of instruction;
46 (2) Bank Accrued instructional time may not be used to lengthen the time provided in law
47 for faculty senates;
48 (3) The use of bank accrued instructional time for extracurricular activities will be limited
49 by the state board; and
50 (4) ~~Such other requirements or restrictions as the state board may provide in the rule~~
51 ~~required to be promulgated by this section. Accrued instructional time may be used by~~
52 ~~schools and counties to provide additional time for professional staff development and~~
53 ~~continuing education as may be needed to improve student performance and meet the~~
54 ~~requirements of the federal mandates affecting elementary and secondary education. The~~
55 ~~amount of accrued instructional time used for this purpose may not exceed three~~
56 ~~instructional days; and~~

1 (5) Other requirements or restrictions the State Board may provide in the rule required to
2 be promulgated by this section.
3 (o) The following applies to cocurricular activities:
4 (1) The sState bBoard shall determine what activities may be considered cocurricular;
5 (2) The sState bBoard shall determine the amount of instructional time that may be
6 consumed by cocurricular activities; and
7 (3) ~~Such o~~Other requirements or restrictions as the sState bBoard may provide in the rule
8 required to be promulgated by this section.
9 (p) The following applies to extracurricular activities:
10 (1) Except as provided by subdivision (3) of this subsection, extracurricular activities may
11 not be scheduled during instructional time;
12 (2) The use of bank accrued instructional time for extracurricular activities will be limited
13 by the sState bBoard; and
14 (3) The sState bBoard shall provide for the attendance by students of certain activities
15 sanctioned by the sSecondary sSchool aActivities eCommission when those activities are
16 related to statewide tournaments or playoffs or are programs required for sSecondary
17 sSchool aActivities eCommission approval.
18 (q) Noninstructional interruptions to the instructional day shall be minimized to allow the
19 classroom teacher to teach.
20 (r) Nothing in this section prohibits establishing year-round schools in accordance with
21 rules to be established by the sState bBoard.
22 (s) Prior to implementing the school calendar, the county board shall secure approval of
23 its proposed calendar from the sState bBoard or, if so designated by the sState bBoard,
24 from the sState sSuperintendent.
25 (t) The county board may contract with all or part of the personnel for a longer term.
26 (u) The minimum instructional term may be decreased by order of the state superintendent
27 in any county declared a federal disaster area and where the event causing the declaration
28 is substantially related to a reduction of instructional days.
29 (v) Where the employment term overlaps a teacher's or service personnel's participation
30 in a summer institute or institution of higher education for the purpose of advancement or
31 professional growth, the teacher or service personnel may substitute, with the approval of
32 the county superintendent, the participation for up to five of the noninstructional days of the
33 employment term.
34 (w) The sState bBoard shall promulgate a rule in accordance with the provisions of article
35 three-b, chapter twenty-nine-a of this code for the purpose of implementing the provisions
36 of this section.

Senate Bill 147

Effective Date: Passed April 9, 2005; in effect ninety days from passage.

Signed by Governor: May 2, 2005

Code Reference: Amends and reenacts §60A-1-101, §60A-2-212, §60A-3-308, §60A-4-401, §60A-4-409, 60A-9-4, and §60A-9-5 of said code. Amends and adds §60A-10-1, §60A-10-2, §60A-10-3, §60A-10-4, §60A-10-5, §60A-10-6, §60A-10-7, §60A-10-8, §60A-10-9, §60A-10-10, §60A-10-11, §60A-10-12, §60A-10-13, §60A-10-14 and §60A-10-15.

Title: Limiting the purchase of substances used in the production of methamphetamine

Major Provisions:

- Limits access to certain substances containing ephedrine, pseudoephedrine or phenylpropanolamine and their salts.
- Any person who within any thirty-day period knowingly purchases, receives or otherwise possesses more than three packages of a drug product containing as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine, or more than nine grams of these products in any form shall be guilty of a misdemeanor.
- No pharmacy shall sell, deliver or provide any drug product regulated by the provisions to any person who is under the age of eighteen.

1
2
3
4
5
6
7
8
9
10

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 147

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

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

11 AN ACT to amend and reenact §60A-1-101 of the Code of West Virginia, 1931, as
12 amended; to amend and reenact §60A-2-212 of said code; to amend and reenact
13 §60A-3-308 of said code; to amend and reenact §60A-4-401 and §60A-4-409 of
14 said code; to amend and reenact §60A-9-4 and §60A-9-5 of said code; and to
15 amend said code by adding thereto a new article, designated §60A-10-1, §60A-10-
16 2, §60A-10-3, §60A-10-4, §60A-10-5, §60A-10-6, §60A-10-7, §60A-10-8, §60A-10-
17 9, §60A-10-10, §60A-10-11, §60A-10-12, §60A-10-13, §60A-10-14 and §60A-10-15,
18 all relating to limiting the purchase of substances used in the production of
19 methamphetamine; providing that certain substances containing ephedrine,
20 pseudoephedrine or phenylpropanolamine, their salts or optical isomers, or salts of
21 optical isomers are Schedule V substances; excepting Schedule V penalties from
22 penalties of this act; providing legislative findings; defining terms; limiting access to
23 such substances; providing procedures for purchasing such substances from
24 pharmacists or pharmacy technicians; providing for the registration of every
25 wholesaler, manufacturer or distributor of certain drug products containing such
26 substances; providing for a supplemental list of drug products used in
27 methamphetamine production; authorizing promulgation of rules; adding ephedrine,
28 pseudoephedrine and phenylpropanolamine to controlled substances subject to
29 controlled substances monitoring; requiring certain persons to report
30 methamphetamine-related injuries; criminalizing exposure of children to
31 methamphetamine production; criminalizing exposure and harm to first responders;
32 creating offense of improper storage of anhydrous ammonia; allowing the State
33 Police to leverage grant funds; requiring reporting by the State Police to the
34 Legislative Oversight Commission on Health and Human Resources; and providing
35 penalties.

36
37 *Be it enacted by the Legislature of West Virginia:*

38 That §60A-1-101 of the Code of West Virginia, 1931, as amended, be amended and
39 reenacted; that §60A-2-212 of said code be amended and reenacted; that §60A-3-
40 308 of said code be amended and reenacted; that §60A-4-401 and §60A-4-409 of
41 said code be amended and reenacted; that §60A-9-4 and §60A-9-5 of said code be
42 amended and reenacted; and that said code be amended by adding thereto a new
43 article, designated §60A-10-1, §60A-10-2, §60A-10-3, §60A-10-4, §60A-10-5, §60A-
44 10-6, §60A-10-7, §60A-10-8, §60A-10-9, §60A-10-10, §60A-10-11, §60A-10-12,
45 §60A-10-13, §60A-10-14 and §60A-10-15, all to read as follows:

46 **ARTICLE 1. DEFINITIONS.**

47 **§60A-1-101. Definitions.**

48 As used in this act:

49 (a) "Administer" means the direct application of a controlled substance whether by
50 injection, inhalation, ingestion or any other means; to the body of a patient or research
51 subject by:

52 (1) A practitioner (or, in his presence, by his authorized agent); or

53 (2) The patient or research subject at the direction and in the presence of the practitioner.

54 (b) "Agent" means an authorized person who acts on behalf of or at the direction of a
55 manufacturer, distributor or dispenser. It does not include a common or contract carrier,
56 public warehouseman or employee of the carrier or warehouseman.

1 (c) "Bureau" means the "Bureau of Narcotics and Dangerous Drugs, United States
2 Department of Justice" or its successor agency.

3 (d) "Controlled substance" means a drug, substance or immediate precursor in Schedules
4 I through V of article two.

5 (e) "Counterfeit substance" means a controlled substance which, or the container or
6 labeling of which, without authorization, bears the trademark, trade name; or other
7 identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer,
8 distributor or dispenser other than the person who in fact manufactured, distributed or
9 dispensed the substance.

10 (f) "Imitation controlled substance" means: (1) ~~a~~ a controlled substance which is falsely
11 represented to be a different controlled substance; ~~or~~ (2) a drug or substance which is not
12 a controlled substance but which is falsely represented to be a controlled substance; ~~or~~
13 (3) a controlled substance or other drug or substance or a combination thereof which is
14 shaped, sized, colored, marked, imprinted, numbered, labeled, packaged, distributed or
15 priced so as to cause a reasonable person to believe that it is a controlled substance.

16 (g) "Deliver" or "delivery" means the actual, constructive or attempted transfer from one
17 person to another of: (1) ~~a~~ a controlled substance, whether or not there is an agency
18 relationship; (2) a counterfeit substance; ~~or~~ (3) an imitation controlled substance.

19 (h) "Dispense" means to deliver a controlled substance to an ultimate user or research
20 subject by or pursuant to the lawful order of a practitioner, including the prescribing,
21 administering, packaging, labeling; or compounding necessary to prepare the substance
22 for that delivery.

23 (i) "Dispenser" means a practitioner who dispenses.

24 (j) "Distribute" means to deliver, other than by administering or dispensing, a controlled
25 substance, a counterfeit substance; or an imitation controlled substance.

26 (k) "Distributor" means a person who distributes.

27 (l) "Drug" means: (1) ~~s~~ Substances recognized as drugs in the official "United States
28 Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States; or official
29 National Formulary", or any supplement to any of them; (2) substances intended for use
30 in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3)
31 substances (other than food) intended to affect the structure or any function of the body
32 of man or animals; and (4) substances intended for use as a component of any article
33 specified in clause (1), (2) or (3) of this subdivision. It does not include devices or their
34 components, parts or accessories.

35 (m) "Immediate precursor" means a substance which the "West Virginia Board of
36 Pharmacy" (hereinafter in this act referred to as the ~~s~~ State ~~b~~ Board of ~~p~~ Pharmacy) has
37 found to be and by rule designates as being the principal compound commonly used or
38 produced primarily for use; and which is an immediate chemical intermediary used or likely
39 to be used in the manufacture of a controlled substance, the control of which is necessary
40 to prevent, curtail or limit manufacture.

41 (n) "Manufacture" means the production, preparation, propagation, compounding,
42 conversion or processing of a controlled substance, either directly or indirectly or by
43 extraction from substances of natural origin, or independently by means of chemical
44 synthesis, or by a combination of extraction and chemical synthesis, and includes any
45 packaging or repackaging of the substance or labeling or relabeling of its container, except
46 that this term does not include the preparation, ~~or~~ compounding of a controlled substance
47 by an individual for his own use or preparation, compounding, packaging or labeling of a
48 controlled substance:

49 (1) By a practitioner as an incident to his administering or dispensing of a controlled
50 substance in the course of his professional practice; ~~or~~
51 (2) By a practitioner, or by his authorized agent under his supervision, for the purpose of,
52 or as an incident to, research, teaching; or chemical analysis and not for sale.

53 (o) "Marijuana" means all parts of the plant "Cannabis sativa L.", whether growing or not;
54 the seeds thereof; the resin extracted from any part of the plant; and every compound,
55 manufacture, salt, derivative, mixture; or preparation of the plant, its seeds; or resin. It does
56 not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made

1 from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or
2 preparation of the mature stalks (except the resin extracted therefrom), fiber, oil or cake,
3 or the sterilized seed of the plant which is incapable of germination.

4 (p) "Narcotic drug" means any of the following, whether produced directly or indirectly by
5 extraction from substances of vegetable origin; or independently by means of chemical
6 synthesis, or by a combination of extraction and chemical synthesis:

7 (1) Opium and opiate; and any salt, compound, derivative; or preparation of opium or opiate.
8 (2) Any salt, compound, isomer, derivative or preparation thereof which is chemically
9 equivalent or identical with any of the substances referred to in ~~clause~~ paragraph (1) of this
10 subdivision, but not including the isoquinoline alkaloids of opium.

11 (3) Opium poppy and poppy straw.

12 (4) Coca leaves and any salt, compound, derivative or preparation of coca leaves; and any
13 salt, compound, isomer, derivative; or preparation thereof which is chemically equivalent
14 or identical with any of these substances, but not including decocainized coca leaves or
15 extractions of coca leaves which do not contain cocaine or ecgonine.

16 (q) "Opiate" means any substance having an addiction-forming or addiction-sustaining
17 liability similar to morphine or being capable of conversion into a drug having addiction-
18 forming or addiction-sustaining liability. It does not include, unless specifically designated
19 as controlled under section ~~204~~ two hundred one, article two of this chapter, the
20 dextrorotatory isomer of 3- methoxy-n-methylmorphinan and its salts (dextromethorphan).
21 It does not include its racemic and levorotatory forms.

22 (r) "Opium poppy" means the plant of the species "Papaver somniferum L.", except its seeds.

23 (s) "Person" means individual, corporation, government or governmental subdivision or
24 agency, business trust, estate, trust, partnership or association, or any other legal entity.

25 (t) "Placebo" means an inert medicament or preparation administered or dispensed for its
26 psychological effect, to satisfy a patient or research subject or to act as a control in
27 experimental series.

28 (u) "Poppy straw" means all parts, except the seeds, of the opium poppy; after mowing.

29 (v) "Practitioner" means:

30 (1) A physician, dentist, veterinarian, scientific investigator; or other person licensed,
31 registered; or otherwise permitted to distribute, dispense, conduct research with respect
32 to, or to administer a controlled substance in the course of professional practice or
33 research in this state.

34 (2) A pharmacy, hospital; or other institution licensed, registered; or otherwise permitted
35 to distribute, dispense, conduct research with respect to, or to administer a controlled
36 substance in the course of professional practice or research in this state.

37 (w) "Production" includes the manufacture, planting, cultivation, growing or harvesting of
38 a controlled substance.

39 (x) "State;"₁ when applied to a part of the United States, includes any state, district,
40 commonwealth, territory, insular possession thereof; and any area subject to the legal
41 authority of the United States of America.

42 (y) "Ultimate user" means a person who lawfully possesses a controlled substance for his
43 own use or for the use of a member of his household or for administering to an animal
44 owned by him or by a member of his household.

45 **ARTICLE 2. STANDARDS AND SCHEDULES.**

46 **§60A-2-212. Schedule V.**

47 (a) Schedule V shall consist of the drugs and other substances, by whatever official name,
48 common or usual name, chemical name, or brand name designated, listed in this section.

49 (b) *Narcotic drugs.* -- Unless specifically excepted or unless listed in another schedule, any
50 material, compound, mixture or preparation containing any of the following narcotic drugs
51 and their salts, as set forth below:

52 (1) Buprenorphine.

53 (c) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound,
54 mixture or preparation containing any of the following narcotic drugs or their salts
55 calculated as the free anhydrous base or alkaloid in limited quantities as set forth below,
56 which shall include one or more nonnarcotic active medicinal ingredients in sufficient

1 proportion to confer upon the compound, mixture or preparation valuable medicinal
2 qualities other than those possessed by the narcotic drug alone:
3 (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
4 (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
5 (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
6 (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of
7 atropine sulfate per dosage unit;
8 (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
9 (6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine
10 sulfate per dosage unit.

11 (d) *Stimulants.* -- Unless specifically exempted or excluded or unless listed in another
12 schedule, any material, compound, mixture; or preparation which contains any quantity of
13 the following substances having a stimulant effect on the central nervous system, including
14 its salts, isomers and salts of isomers:

15 (1) Pyrovalerone.

16 (e) Any compound, mixture or preparation containing as its single active ingredient
17 ephedrine, pseudoephedrine or phenylpropanolamine, their salts or optical isomers, or
18 salts of optical isomers except products which are for pediatric use primarily intended for
19 administration to children under the age of twelve.

20 **ARTICLE 3. REGULATION OF MANUFACTURE, DISTRIBUTION AND** 21 **DISPENSING OF CONTROLLED SUBSTANCES.**

22 **§60A-3-308. Prescriptions.**

23 (a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate
24 user, no controlled substance in Schedule II may be dispensed without the written
25 prescription of a practitioner.

26 (b) In emergency situations, as defined by rule of the said appropriate department, board
27 or agency, Schedule II drugs may be dispensed upon oral prescription of a practitioner,
28 reduced promptly to writing and filed by the pharmacy. Prescription shall be retained in
29 conformity with the requirements of section ~~306~~ three hundred six of this article. No
30 prescription for a Schedule II substance may be refilled.

31 (c) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate
32 user, a controlled substance included in Schedule III or IV, which is a prescription drug as
33 determined under appropriate state or federal statute, shall not be dispensed without a
34 written or oral prescription of a practitioner. The prescription shall not be filled or refilled
35 more than six months after the date thereof or be refilled more than five times, unless
36 renewed by the practitioner.

37 (d) (1) A controlled substance included in Schedule V shall not be distributed or dispensed
38 other than for a medicinal purpose: *Provided*, That buprenorphine shall be dispensed only
39 by prescription pursuant to subsections (a), (b) and (c) of this section: *Provided, however*,
40 That the controlled substances included in subsection (e), section two hundred twelve,
41 article two of this chapter shall be dispensed, sold or distributed only by a physician, in a
42 pharmacy by a pharmacist or pharmacy technician, or health care professional.

43 (2) If the substance described in subsection (e), section two hundred twelve, article two of
44 this chapter is dispensed, sold or distributed in a pharmacy:

45 (A) The substance shall be dispensed, sold or distributed only by a pharmacist or a
46 pharmacy technician; and

47 (B) Any person purchasing, receiving or otherwise acquiring any such substance shall
48 produce a photographic identification issued by a state or federal governmental entity
49 reflecting his or her date of birth.

50 **ARTICLE 4. OFFENSES AND PENALTIES.**

51 **§60A-4-401. Prohibited acts A; penalties.**

52 (a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver,
53 or possess with intent to manufacture or deliver, a controlled substance.

54 Any person who violates this subsection with respect to:

55 (i) A controlled substance classified in Schedule I or II; which is a narcotic drug, is guilty
56 of a felony; and, upon conviction, may be imprisoned in the penitentiary state correctional

1 facility for not less than one year nor more than fifteen years, or fined not more than
2 twenty-five thousand dollars, or both;

3 (ii) Any other controlled substance classified in Schedule I, II or III; is guilty of a felony; and,
4 upon conviction, may be imprisoned in the penitentiary state correctional facility for not less
5 than one year nor more than five years, or fined not more than fifteen thousand dollars, or
6 both;

7 (iii) A substance classified in Schedule IV; is guilty of a felony; and, upon conviction, may
8 be imprisoned in the penitentiary state correctional facility for not less than one year nor
9 more than three years, or fined not more than ten thousand dollars, or both;

10 (iv) A substance classified in Schedule V; is guilty of a misdemeanor; and, upon conviction,
11 may be confined in ~~the county~~ jail for not less than six months nor more than one year, or
12 fined not more than five thousand dollars, or both; Provided, That for offenses relating to
13 any substance classified as Schedule V in article ten of this chapter, the penalties
14 established in said article apply.

15 (b) Except as authorized by this act, it is unlawful for any person to create, deliver, or
16 possess with intent to deliver, a counterfeit substance.

17 Any person who violates this subsection with respect to:

18 (i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, is guilty
19 of a felony; and, upon conviction, may be imprisoned in the penitentiary state correctional
20 facility for not less than one year nor more than fifteen years, or fined not more than
21 twenty-five thousand dollars, or both;

22 (ii) Any other counterfeit substance classified in Schedule I, II; or III; is guilty of a felony;
23 and, upon conviction, may be imprisoned in the penitentiary state correctional facility for
24 not less than one year nor more than five years, or fined not more than fifteen thousand
25 dollars, or both;

26 (iii) A counterfeit substance classified in Schedule IV; is guilty of a felony; and, upon
27 conviction, may be imprisoned in the penitentiary state correctional facility for not less than
28 one year nor more than three years, or fined not more than ten thousand dollars, or both;

29 (iv) A counterfeit substance classified in Schedule V; is guilty of a misdemeanor; and, upon
30 conviction, may be confined in ~~the county~~ jail for not less than six months nor more than
31 one year, or fined not more than five thousand dollars, or both; Provided, That for offenses
32 relating to any substance classified as Schedule V in article ten of this chapter, the
33 penalties established in said article apply.

34 (c) It is unlawful for any person knowingly or intentionally to possess a controlled substance
35 unless the substance was obtained directly from, or pursuant to, a valid prescription or
36 order of a practitioner while acting in the course of his professional practice, or except as
37 otherwise authorized by this act. Any person who violates this subsection is guilty of a
38 misdemeanor, and disposition may be made under section ~~407~~ four hundred seven of this
39 article, subject to the limitations specified in said section ~~407~~, or upon conviction, such
40 person may be confined in ~~the county~~ jail not less than ninety days nor more than six
41 months, or fined not more than one thousand dollars, or both; Provided, That
42 notwithstanding any other provision of this act to the contrary, any first offense for
43 possession of less than 15 grams of marijuana shall be disposed of under said section
44 ~~407~~.

45 (d) It is unlawful for any person knowingly or intentionally:

46 (1) To create, distribute or deliver, or possess with intent to distribute or deliver, an
47 imitation controlled substance; or

48 (2) To create, possess or sell or otherwise transfer any equipment with the intent that such
49 equipment shall be used to apply a trademark, trade name, or other identifying mark,
50 imprint, number or device, or any likeness thereof, upon a counterfeit substance, an
51 imitation controlled substance, or the container or label of a counterfeit substance or an
52 imitation controlled substance.

53 (3) Any person who violates this subsection is guilty of a misdemeanor; and, upon
54 conviction, may be imprisoned in ~~the county~~ jail for not less than six months nor more than
55 one year, or fined not more than five thousand dollars, or both. Any person being eighteen
56 years old or more; who violates subdivision (1) of this subsection; and, in so doing,

1 distributes or delivers an imitation controlled substance to a minor child who is at least
2 three years younger than such person; is guilty of a felony; and, upon conviction, may be
3 imprisoned in the penitentiary state correctional facility for not less than one year nor more
4 than three years, or fined not more than ten thousand dollars, or both.

5 (4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who
6 administers or dispenses a placebo.

7 **§60A-4-409. Prohibited acts -- Transportation of controlled substances into**
8 **state; penalties.**

9 (a) Except as otherwise authorized by the provisions of this code, it shall be unlawful for
10 any person to transport into this state a controlled substance with the intent to deliver the
11 same or with the intent to manufacture a controlled substance.

12 (b) Any person who violates this section with respect to:

13 (1) A controlled substance classified in Schedule I or II, which is a narcotic drug, shall be
14 guilty of a felony; and, upon conviction, may be imprisoned in the penitentiary state
15 correctional facility for not less than one year nor more than fifteen years, or fined not more
16 than twenty-five thousand dollars, or both;

17 (2) Any other controlled substance classified in Schedule I, II or III; shall be guilty of a
18 felony; and, upon conviction, may be imprisoned in the penitentiary state correctional
19 facility for not less than one year nor more than five years, or fined not more than fifteen
20 thousand dollars, or both;

21 (3) A substance classified in Schedule IV; shall be guilty of a felony; and, upon conviction,
22 may be imprisoned in the penitentiary state correctional facility for not less than one year
23 nor more than three years, or fined not more than ten thousand dollars, or both;

24 (4) A substance classified in Schedule V; shall be guilty of a misdemeanor; and, upon
25 conviction, may be confined in ~~the county~~ jail for not less than six months nor more than
26 one year, or fined not more than five thousand dollars, or both: Provided, That for offenses
27 relating to any substance classified as Schedule V in article ten of this chapter, the
28 penalties established in said article apply.

29 (c) The offense established by this section shall be in addition to and a separate and
30 distinct offense from any other offense set forth in this code.

31 **ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.**

32 **§60A-9-4. Required information.**

33 (a) Whenever a medical services provider dispenses a controlled substance listed in the
34 provisions of section two hundred six, article two of this chapter; or whenever a prescription
35 for the controlled substance is filled by: (i) A pharmacist or pharmacy in this state; (ii) a
36 hospital, or other health care facility, for out-patient use; or (iii) a pharmacy or pharmacist;
37 licensed by the ~~b~~Board of ~~p~~Pharmacy, but situated outside this state for delivery to a
38 person residing in this state, the medical services provider, health care facility, pharmacist
39 or pharmacy shall, in a manner prescribed by rules promulgated by the ~~b~~Board of
40 ~~p~~Pharmacy under this article, report the following information, as applicable:

41 (1) The name, address, pharmacy prescription number and ~~DEA~~ Drug Enforcement
42 Administration controlled substance registration number of the dispensing pharmacy;

43 (2) The name, address and birth date of the person for whom the prescription is written;

44 (3) The name, address and ~~d~~Drug ~~e~~Enforcement ~~a~~Administration controlled substances
45 registration number of the practitioner writing the prescription;

46 (4) The name and national drug code number of the Schedule II, III and IV controlled
47 substance dispensed;

48 (5) The quantity and dosage of the Schedule II, III and IV controlled substance dispensed;

49 (6) The date the prescription was filled; and

50 (7) The number of refills, if any, authorized by the prescription.

51 (b) The ~~b~~Board of ~~p~~Pharmacy may prescribe by rule promulgated under this article the
52 form to be used in prescribing a Schedule II, III and IV substance if, in the determination
53 of the ~~b~~Board, the administration of the requirements of this section would be facilitated.

54 (c) Products regulated by the provisions of article ten of this chapter shall be subject to
55 reporting pursuant to the provisions of this article to the extent set forth in article ten of this
56 chapter.

1 (e)(d) Reporting required by this section is not required for a drug administered directly to
2 a patient or a drug dispensed by a practitioner at a facility licensed by the state: *Provided*,
3 That the quantity dispensed is limited to an amount adequate to treat the patient for a
4 maximum of seventy-two hours with no greater than two ~~seventy-two~~ 72-hour cycles in any
5 fifteen-day period of time.

6 **§60A-9-5. Confidentiality; limited access to records; period of retention; no**
7 **civil liability for required reporting.**

8 The information required by this article to be kept by the sState bBoard of pPharmacy is
9 confidential and is open to inspection only by inspectors and agents of the sState bBoard
10 of pPharmacy, members of the West Virginia sState pPolice expressly authorized by the
11 sSuperintendent of the West Virginia sState pPolice to have access to the information,
12 authorized agents of local law-enforcement agencies as a member of a drug task force,
13 authorized agents of the federal dDrug eEnforcement aAdministration, duly authorized
14 agents of the Bureau for Medical Services and the Workers' Compensation Commission,
15 duly authorized agents of licensing boards of practitioners in this state and other states
16 authorized to prescribe Schedules II, III and IV controlled substances, prescribing
17 practitioners and pharmacists and persons with an enforceable court order or regulatory
18 agency administrative subpoena: *Provided*, That all information released by the sState
19 bBoard of pPharmacy must be related to a specific patient or a specific individual or entity
20 under investigation by any of the above parties except that practitioners who prescribe
21 controlled substances may request specific data related to their dDrug eEnforcement
22 aAdministration controlled substance registration number or for the purpose of providing
23 treatment to a patient. The bBoard shall maintain the information required by this article
24 for a period of not less than five years. Notwithstanding any other provisions of this code
25 to the contrary, data obtained under the provisions of this article may be used for
26 compilation of educational, scholarly or statistical purposes as long as the identities of
27 persons or entities remain confidential. No individual or entity required to report under
28 section four of this article may be subject to a claim for civil damages or other civil relief for
29 the reporting of information to the bBoard of pPharmacy as required under and in
30 accordance with the provisions of this article.

31 **ARTICLE 10. METHAMPHETAMINE LABORATORY ERADICATION ACT.**

32 **§60A-10-1. Short title.**

33 The provisions of this article shall be known and referred to as the Methamphetamine
34 Laboratory Eradication Act.

35 **§60A-10-2. Purpose; findings.**

36 The Legislature finds:

37 (a) That the illegal production and distribution of methamphetamine is an increasing
38 problem nationwide and particularly prevalent in rural states such as West Virginia.

39 (b) That methamphetamine is a highly addictive drug that can be manufactured in small
40 and portable laboratories. These laboratories are operated by individuals who manufacture
41 the drug in a clandestine and unsafe manner, often resulting in explosions and fires that
42 can injure not only the individuals involved, but their families, neighbors, law-enforcement
43 officers and firemen.

44 (c) That use of methamphetamine can result in fatal kidney and lung disorders, brain
45 damage, liver damage, blood clots, chronic depression, hallucinations, violent and
46 aggressive behavior, malnutrition, disturbed personality development, deficient immune
47 system and psychosis. Children born to mothers who are abusers of methamphetamine
48 can be born addicted and suffer birth defects, low birth weight, tremors, excessive crying,
49 attention deficit disorder and behavior disorders.

50 (d) That in addition to the physical consequences to an individual who uses
51 methamphetamine, usage of the drug also produces an increase in automobile accidents,
52 explosions and fires, increased criminal activity, increased medical costs due to emergency
53 room visits, increases in domestic violence, increased spread of infectious diseases and
54 a loss in worker productivity.

55 (e) That environmental damage is another consequence of the methamphetamine
56 epidemic. Each pound of methamphetamine produced leaves behind five to six pounds of

1 toxic waste. Chemicals and byproducts that result from the manufacture of
2 methamphetamine are often poured into plumbing systems, storm drains or directly onto
3 the ground. Clean up of methamphetamine laboratories is extremely resource-intensive,
4 with an average remediation cost of five thousand dollars.

5 (f) That it is in the best interest of every West Virginian to develop a viable solution to
6 address the growing methamphetamine problem in the State of West Virginia. The
7 Legislature finds that restricting access to over-the-counter drugs used to facilitate
8 production of methamphetamine is necessary to protect the public safety of all West Virginians.

9 (g) That it is further in the best interests of every West Virginian to create impediments to
10 the manufacture of methamphetamine by requiring persons purchasing chemicals
11 necessary to the process to provide identification.

12 **§60A-10-3. Definitions.**

13 In this article:

14 (a) "Board of Pharmacy" or "Board" means the West Virginia Board of Pharmacy
15 established by the provisions of article five, chapter thirty of this code.

16 (b) "Designated precursor" means any drug product made subject to the requirements of
17 this article by the provisions of section seven of this article.

18 (c) "Distributor" means any person within this state or another state, other than a
19 manufacturer or wholesaler, who sells, delivers, transfers or in any manner furnishes a
20 drug product to any person who is not the ultimate user or consumer of the product;

21 (d) "Drug product" means a pharmaceutical product that contains as its single active
22 ingredient ephedrine, pseudoephedrine or phenylpropanolamine or a substance identified
23 on the supplemental list provided for in section seven of this article which may be sold
24 without a prescription and which is labeled for use by a consumer in accordance with the
25 requirements of the laws and rules of this state and the federal government.

26 (e) "Ephedrine " means ephedrine, its salts or optical isomers or salts of optical isomers.

27 (f) "Manufacturer" means any person within this state who produces, compounds,
28 packages or in any manner initially prepares for sale or use any drug product or any such
29 person in another state if they cause the products to be compounded, packaged or
30 transported into this state.

31 (g) "Phenylpropanolamine" means phenylpropanolamine, its salts, optical isomers and
32 salts of optical isomers.

33 (h) "Pseudoephedrine" means pseudoephedrine, its salts, optical isomers and salts of
34 optical isomers.

35 (i) "Precursor" means any substance which may be used along with other substances as
36 a component in the production and distribution of illegal methamphetamine.

37 (j) "Pharmacist" means an individual currently licensed by this state to engage in the
38 practice of pharmacy and pharmaceutical care as defined in subsection (t), section one-b,
39 article fifty, chapter thirty of this code.

40 (k) "Pharmacy" means any drugstore, apothecary or place within this state where drugs are
41 dispensed and sold at retail or display for sale at retail and pharmaceutical care is provided
42 outside of this state where drugs are dispensed and pharmaceutical care is provided to
43 residents of this state.

44 (l) "Pharmacy counter" means an area in the pharmacy restricted to the public where
45 controlled substances are stored and housed and where controlled substances may only
46 be sold, transferred or dispensed by a pharmacist or pharmacy technician.

47 (m) "Pharmacy technician" means a registered technician who meets the requirements for
48 registration as set forth in article five, chapter thirty of this code.

49 (n) "Retail establishment" means any entity or person within this state who sells, transfers
50 or distributes goods, including over-the-counter drug products, to an ultimate consumer.

51 (o) "Schedule V" means the schedule of controlled substances set out in section two
52 hundred twelve, section two of this chapter.

53 (p) "Single active ingredient" means those ingredients listed on a drug product package as
54 the only active ingredient in over- the-counter medication or identified on the Schedule
55 maintained by the Board of Pharmacy as being primarily used in the illegal production and
56 distribution of methamphetamine.

1 (q) "Superintendent of the State Police" or "Superintendent" means the Superintendent of
2 the West Virginia State Police as set forth in section five, article two, chapter fifteen of this
3 code.

4 (r) "Wholesaler" means any person within this state or another state, other than a
5 manufacturer, who sells, transfers or in any manner furnishes a drug product to any other
6 person in this state for the purpose of being resold.

7 **§60A-10-4. Purchase, receipt, acquisition and possession of substances to be**
8 **used as precursor to manufacture of methamphetamine or another**
9 **controlled substance; offenses; exceptions; penalties.**

10 (a) Any person who within any thirty-day period knowingly purchases, receives or otherwise
11 possesses more than three packages of a drug product containing as its single active
12 ingredient ephedrine, pseudoephedrine or phenylpropanolamine or more than nine grams
13 of ephedrine, pseudoephedrine or phenylpropanolamine in any form shall be guilty of a
14 misdemeanor and, upon conviction, shall be confined in a jail for not more than one year,
15 fined not more than one thousand dollars, or both.

16 (b) Notwithstanding the provisions of subsection (a) of this section, any person convicted
17 of a second or subsequent violation of the provisions of said subsection or a statute or
18 ordinance of the United States or another state which contains the same essential
19 elements shall be guilty of a felony and, upon conviction, shall be confined in a state
20 correctional facility for not less than one nor more than five years, fined not more than
21 twenty-five thousand dollars, or both.

22 (c) The provisions of subsection (a) of this section shall not apply to:

23 (1) Drug products which are for pediatric use primarily intended for administration to
24 children under the age of twelve;

25 (2) Drug products which have been determined by the Board of Pharmacy to be in a form
26 which is unamenable to being used for the manufacture of methamphetamine;

27 (3) Persons lawfully possessing drug products in their capacities as distributors,
28 wholesalers, manufacturers, pharmacists, pharmacy technicians, health care professionals
29 or persons possessing such drug products pursuant to a valid prescription.

30 (d) Notwithstanding any provision of this code to the contrary, any person who knowingly
31 possesses any amount of ephedrine, pseudoephedrine, phenylpropanolamine or other
32 designated precursor with the intent to use it in the manufacture of methamphetamine or
33 who knowingly possesses a substance containing ephedrine, pseudoephedrine or
34 phenylpropanolamine or their salts, optical isomers or salts of optical isomers in a state or
35 form which is, or has been altered or converted from the state or form in which these
36 chemicals are, or were, commercially distributed shall be guilty of a felony and, upon
37 conviction, shall be confined in a state correctional facility for not less than two nor more
38 than ten years, fined not more than twenty-five thousand dollars, or both.

39 (e) (1) Any pharmacy, wholesaler, manufacturer or distributor of drug products containing
40 as their single active ingredient ephedrine, pseudoephedrine, phenylpropanolamine, their
41 salts or optical isomers or salts of optical isomers or other designated precursor shall
42 obtain a registration annually from the State Board of Pharmacy as described in section
43 six of this article. Any such pharmacy, wholesaler, manufacturer or distributor shall keep
44 complete records of all sales and transactions as provided in section eight of this article.
45 The records shall be gathered and maintained pursuant to legislative rule promulgated by
46 the Board of Pharmacy.

47 (2) Any drug products possessed without a registration as provided in this section are
48 subject to forfeiture upon conviction for a violation of this section.

49 (3) In addition to any administrative penalties provided by law, any violation of this
50 subsection is a misdemeanor, punishable upon conviction by a fine in an amount not more
51 than ten thousand dollars.

52 **§60A-10-5. Restrictions on the sale, transfer or delivery of certain drug products ;**
53 **penalties.**

54 (a) No pharmacy or individual may display, offer for sale or place a drug product containing
55 as its single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine or
56 other designated precursor where the public may freely access the drug product. All such

1 drug products or designated precursors shall be placed behind a pharmacy counter where
2 access is restricted to a pharmacist, a pharmacy technician or other pharmacy employee.
3 (b) All storage of drug products regulated by the provisions of this section shall be in a
4 controlled and locked access location that is not accessible by the general public and shall
5 maintain strict inventory control standards and complete records of quantity of the product
6 maintained in bulk form.

7 (c) No pharmacy shall sell, deliver or provide any drug product regulated by the provisions
8 of this section to any person who is under the age of eighteen.

9 (d) If a drug product regulated by the provisions of this section is transferred, sold or
10 delivered, the individual, pharmacy or retail establishment transferring, selling or delivering
11 the drug product shall require the person purchasing, receiving or otherwise acquiring the
12 drug product to:

13 (1) Produce a government-issued photo identification showing his or her date of birth; and

14 (2) Sign a form containing the information set forth in subsection (b), section eight of this
15 article and attesting to the validity of such information. Any person who knowingly makes
16 a false representation or statement pursuant to the requirements of this section shall be
17 guilty of a misdemeanor and, upon conviction, be confined in a jail for not more than six
18 months, fined not more than five thousand dollars, or both.

19 (e) This section does not apply to drug products that are dispensed pursuant to a
20 prescription, are pediatric products primarily intended for administration, according to label
21 instructions, to children under twelve years of age.

22 (f) Any violation of this section is a misdemeanor, punishable upon conviction by a fine in
23 an amount not more than ten thousand dollars.

24 **§60A-10-6. Registration to sell, manufacture or distribute products; rule-**
25 **making authority.**

26 The State Board of Pharmacy shall propose rules for legislative approval in accordance
27 with the provisions of article three, chapter twenty-nine-a of this code to require that every
28 wholesaler, manufacturer or distributor of any drug product containing as their single active
29 ingredient ephedrine or pseudoephedrine or a substance identified on the supplemental
30 list provided for in section seven of this article shall obtain a registration and permit issued
31 by the State Board of Pharmacy to sell, distribute or transfer the product containing as their
32 single active ingredient ephedrine, pseudoephedrine or phenylpropanolamine .

33 **§60A-10-7. Restricted products; rule-making authority.**

34 (a) On or before the first day of July, two thousand five, the Board of Pharmacy shall
35 promulgate emergency and legislative rules pursuant to the provision of article three,
36 chapter twenty-nine-a of this code to implement a program wherein the Board of Pharmacy
37 shall consult with the Superintendent of the State Police in identifying drug products which
38 are a designated precursor, in addition to those that contain as their single active ingredient
39 ephedrine, pseudoephedrine or phenylpropanolamine, that are commonly being used in
40 the production and distribution of methamphetamine. Those drug products which the
41 Superintendent of the State Police have demonstrated by empirical evidence are
42 commonly used in the manufacture of methamphetamine shall be added to a supplemental
43 list of controlled substances listed in subsection (e), section two hundred twelve, article two
44 of this chapter and shall be subject to all of the restrictions of this article. These rules
45 established pursuant to this section shall include:

46 (1) A process whereby pharmacies are made aware of all drug products that contain as
47 their single active ingredient ephedrine, pseudoephedrine and phenylpropanolamine that
48 will be listed as a Schedule V substance and must be sold, transferred or dispensed from
49 behind a pharmacy counter;

50 (2) A process whereby pharmacies and retail establishments are made aware additional
51 drug products added to Schedule V that are required to be placed behind the pharmacy
52 counter for sale, transfer or distribution can be periodically reviewed and updated.

53 (b) At any time after the first day of July, two thousand five, the Board of Pharmacy, upon
54 the recommendation of the Superintendent of the State Police, shall promulgate
55 emergency and legislative rules pursuant to the provision of article three, chapter twenty-
56 nine-a of this code to implement an updated supplemental list of products containing the

1 controlled substances ephedrine, pseudoephedrine or phenylpropanolamine as an active
2 ingredient or any other drug used as a precursor in the manufacture of methamphetamine,
3 which the Superintendent of the State Police has demonstrated by empirical evidence is
4 being used in the manufacture of methamphetamine. This listing process shall comport
5 with the requirements of subsection (a) of this section.

6 **§60A-10-8. Reporting requirements; confidentiality.**

7 (a) Whenever there is a sale, retail, transfer or distribution of any drug product referred to
8 in subsection (e), section two hundred twelve, article two of this chapter or another
9 designated precursor, the pharmacist or pharmacy technician making the sale, transfer
10 or distribution shall report the following information for inclusion in the central repository
11 established pursuant to article nine of this chapter:

12 (1) The date of the transaction;

13 (2) The name, address and driver's license or state-issued identification number of the
14 person; and

15 (3) The name, the quantity of packages and total gram weight of the product or products
16 purchased, received or otherwise acquired.

17 (b) The information required by this section shall be the property of the state and a
18 pharmacy shall have no duty to retain a copy of the information in any format once the
19 information has been reported to the Board of Pharmacy as required by this section.

20 **§60A-10-9. Persons mandated to report suspected injuries related to
21 methamphetamine production; failure to report; penalty.**

22 (a) When any medical, dental or mental health professional, Christian Science practitioner,
23 religious healer or emergency medical services personnel has reason to believe that an
24 injury is the direct result of exposure to the production of methamphetamine such person
25 shall immediately, and not more than forty-eight hours after such suspicion arises, report
26 the circumstances or cause a report to be made to a state, county or local law-enforcement
27 agency.

28 (b) Any person required by this section to report a suspected methamphetamine-related
29 injury who knowingly and intentionally fails to do so or knowingly and intentionally prevents
30 another person acting reasonably from doing so shall be guilty of a misdemeanor and,
31 upon conviction thereof, shall be fined not more than one hundred dollars or imprisoned
32 in jail not more than ten days, or both fined and imprisoned.

33 **§60A-10-10. Authority of the Superintendent of the State Police to leverage
34 grant funds.**

35 The Superintendent of the State Police is encouraged to leverage available grant funds
36 from individuals, foundations, corporations, the federal government, governmental
37 agencies and other organizations or institutions, make and sign any agreement to and
38 perform any act that may be necessary to effectuate these grants. The grant funds shall
39 be dedicated toward a drug court, to provide training programs to state and local
40 prosecutors and law-enforcement agents for the investigation and prosecution of
41 methamphetamine offenses and to enhance funding available to jails.

42 **§60A-10-11. Reporting to the Legislative Oversight Commission on Health and
43 Human Resources Accountability.**

44 On or before the first day of December, two thousand five, the Superintendent of the West
45 Virginia State Police shall submit a report including findings, conclusions and
46 recommendations, together with drafts of any legislation necessary, to improve the
47 effectiveness of a reduction in illegal methamphetamine production and distribution to the
48 Legislative Oversight Commission on Health and Human Resources Accountability for
49 consideration.

50 **§60A-10-12. Exposure of children to methamphetamine manufacturing;
51 penalties.**

52 (a) Any person eighteen years of age or older who knowingly causes or permits a minor
53 to be present in a location where methamphetamine is manufactured or attempted to be
54 manufactured is guilty of a felony and, upon conviction, shall be confined in a state
55 correctional facility for not less than one nor more than five years, fined not more than ten
56 thousand dollars, or both.

1 (b) Notwithstanding the provisions of subsection (a) of this section, the penalty for a
2 violation of said subsection when the child suffers serious bodily injury as such is defined
3 in the provisions of section one, chapter eight-b of this code shall be confined in a state
4 correctional facility for not less than three nor more than fifteen years, fined not more than
5 twenty-five thousand dollars, or both.

6 **§60A-10-13 . Exposure of first responders to manufacture methamphetamine;
7 penalties.**

8 Any person who, as a result of or in the course of unlawfully and intentionally
9 manufacturing methamphetamine, causes a police officer, probation officer, humane
10 officer, emergency medical service personnel, firefighter, state fire marshal or employee,
11 division of forestry employee, county correctional employee or state correctional employee
12 acting in his or her official capacity to ingest, inhale or be dermally exposed to a chemical,
13 product, by-product, residue or substance involved in the manufacture or attempted
14 manufacture of such controlled substance, without prior knowledge of such, and thereby
15 causes bodily injury to such persons, shall be guilty of a felony and, upon conviction
16 thereof, shall be fined not less than five hundred nor more than five thousand dollars and
17 confined in a correctional facility for not less than one year nor more than five years. A
18 violation of this section shall constitute a separate offense from the manufacture or attempt
19 to manufacture methamphetamine.

20 **§60A-10-14. Illegal storage of anhydrous ammonia; exceptions.**

21 (a) Any person who stores or conveys anhydrous ammonia in a container that:

22 (1) Is not approved by the United States Department of Transportation to hold anhydrous
23 ammonia; or

24 (2) Was not constructed to meet state and federal industrial health and safety standards
25 for holding anhydrous ammonia is guilty of a felony and, upon conviction, shall be confined
26 in a state correctional facility for a determinate period not to exceed five years, fined not
27 more than ten thousand dollars, or both.

28 (b) The provisions of this section shall not apply to persons authorized by federal or state
29 law, rule or regulation to handle and dispose of hazardous waste or toxic substances while
30 engaged in such conduct.

31 (c) Any damages arising out of the unlawful possession of, storage of or tampering with
32 anhydrous ammonia equipment shall be the sole responsibility of the person or persons
33 unlawfully possessing, storing or tampering with anhydrous ammonia. In no case shall
34 liability for damages arising out of the unlawful possession of, storage of or tampering with
35 anhydrous ammonia or anhydrous ammonia equipment extend to the lawful owner,
36 installer, maintainer, designer, manufacturer, possessor or seller of the anhydrous
37 ammonia or anhydrous ammonia equipment, unless such damages arise out of the acts
38 or omissions of the owner, installer, maintainer, designer, manufacturer, possessor or
39 seller that constitute negligent misconduct to abide by the laws regarding anhydrous
40 ammonia possession and storage.

41 **§60A-10-15. Iodine solution greater than 1.5 percent; prescription or permit
42 required; offenses; penalties.**

43 (a) A person may offer to sell, sell or distribute an iodine matrix only:

44 (1) As a prescription drug, pursuant to a prescription issued by a veterinarian or physician
45 licensed within the state; or

46 (2) To a person who is actively engaged in the legal practice of animal husbandry of
47 livestock, as defined in section eight, article one, chapter four of this code.

48 (b) Prescriptions issued under this section:

49 (1) Shall provide for a specified number of refills;

50 (2) May be issued by any means authorized by the Board of Pharmacy; and

51 (3) May be filled by a person other than the veterinarian or physician issuing the prescription.

52 (c) A person offering iodine matrix for sale:

53 (1) Shall store the iodine matrix so that the public does not have access to the iodine matrix
54 without the direct assistance or intervention of a retail employee;

55 (2) Shall keep a record, which may consist of sales receipts of each person purchasing
56 iodine matrix; and

1 (3) Shall, if necessary to ascertain the identity of the purchaser, ask for proof of
2 identification from the purchaser.
3 (d) A person engaging in a regulated transaction pursuant to the provisions of subsection
4 (a) of this section is guilty of a misdemeanor if he or she offers to sell, sells or distributes
5 an iodine matrix to a person who:
6 (1) Does not present a prescription or is not engaged in animal husbandry, as required
7 under subsection (a) of this section; or
8 (2) Is not excepted under subsection (g) of this section.
9 (e) A person is guilty of a misdemeanor who:
10 (1) Possesses an iodine matrix without proof of obtaining the solution in compliance with
11 subsection (a) of this section; or
12 (2) Offers to sell, sells or distributes an iodine matrix in violation of said subsection.
13 (f) The provisions of subdivision (1), subsection (e) of this section do not apply to:
14 (1) A chemistry or chemistry-related laboratory maintained by:
15 (A) A public or private regularly established secondary school; or
16 (B) A public or private institution of higher education that is accredited by a regional or
17 national accrediting agency recognized by the United States Department of Education;
18 (2) A veterinarian licensed to practice pursuant to the provisions of article ten, chapter thirty
19 of this code;
20 (3) A health care facility; or
21 (4) A veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer,
22 warehouseman or common carrier, or an agent of any of these persons who possesses
23 an iodine matrix in the regular course of lawful business activities.
24 (g) As used in this section, "iodine matrix" means iodine at a concentration greater than 1.5
25 percent, by weight, in a matrix or solution.

Senate Bill 153

Effective Date: Passed March 22, 2005; to take effect July 1, 2005

Signed by Governor: April 6, 2005

Code Reference: Amends and reenacts §§6B-1-6, 6B-2-4, 6B-2-10, 6B-3-3a, and 6B-3-3c

Title: Relating Generally to Ethical Standards of Public Officers and Employees

Major Provisions:

- Prohibits a political party or officer, employee or agent of a political party from filing an ethics complaint.
- Deletes language referring to the investigative panel and refers all matters to the Review Board.
- Clarifies the confidentiality provisions apply to current and former member or employee of the Commission and Review Board, subject to certain exceptions, and provides penalties for violation.
- Prohibits the disclosure of records utilized in the probable cause hearing until after the respondent is served with the Review Board's order and the statement of charges.
- Requires decisions of the Review Board to be unanimous rather than by majority.
- Provides that Commission hearings must be held within ninety days after the date of the order, de novo.
- Increases fines from a maximum of \$1,000.00 to \$5,000.00 and allows cost recovery for Commission expenses.
- Provides civil immunity for good faith filings of complaints.
- Provides sanctions for false complaints and complaints made in reckless disregard for the truth or falsity of the allegations following a finding by clear and convincing evidence by the Commission.
- Extends the statute of limitations from one to two years for violations occurring on or after July 1, 2005.
- Increases lobbyist registration fees from sixty dollars to one hundred dollars per employer.
- Requires the Commission to provide training to lobbyists and permits the collection of reasonable fees.

1
2
3
4
5
6
7
8

ENROLLED
Senate Bill No. 153

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

[Passed March 22, 2005; to take effect July 1, 2005.]

9 AN ACT to amend and reenact §§6B-1-6 of the Code of West Virginia, 1931, as amended,
10 as contained in chapter 1, Acts of the Legislature, first extraordinary session, two thousand
11 five; to amend and reenact §§6B-2-4 and §§6B-2-10 of said code, as contained in said
12 acts; and to amend and reenact §§6B-3-3a and §§6B-3-3c of said code, as contained in
13 said acts, all relating generally to the administration of ethical standards of public officers
14 and employees; revising confidentiality requirements for Ethics Commission members and
15 staff, the Review Board, complainants and informants; revising provisions prohibiting willful
16 disclosure of confidential information; prohibiting the submission of false or misleading
17 information to the Commission; providing for the deposit of funds into the general revenue
18 fund of the state; establishing fees in legislative rules; and providing for penalties.

19
20 Be it enacted by the Legislature of West Virginia:

21 That §§6B-1-6 of the Code of West Virginia, 1931, as amended, as contained in chapter
22 1, Acts of the Legislature, first extraordinary session, two thousand five, be
23 amended and reenacted; that §§6B-2-4 and §§6B-2-10 of said code, as contained
24 in said acts, be amended and reenacted; and that §§6B-3-3a and §§6B-3-3c of said
25 code, as contained in said acts, be amended and reenacted, all to read as follows:

26 **ARTICLE 1. SHORT TITLE; LEGISLATIVE FINDINGS, PURPOSES AND INTENT;**
27 **CONSTRUCTION AND APPLICATION OF CHAPTER; SEVERABILITY.**

28 **§§6B-1-6. Deposit of funds.**

29 All moneys collected pursuant to this chapter except fines imposed pursuant to paragraph
30 (D), subdivision (1), subsection (r), section four, article two of this chapter shall be
31 deposited in the general revenue fund in the state treasury pursuant to the provisions of
32 section two, article two, chapter twelve of this code.

33 **ARTICLE 2. WEST VIRGINIA ETHICS COMMISSION; POWERS AND DUTIES;**
34 **DISCLOSURE OF FINANCIAL INTEREST BY PUBLIC OFFICIALS AND**
35 **EMPLOYEES; APPEARANCE BEFORE PUBLIC AGENCIES.**

36 **§§6B-2-4. Processing complaints; dismissals; hearings; disposition; judicial**
37 **review.**

38 ~~(a) Upon the filing by any person with the commission of a complaint which is duly verified~~
39 ~~by oath or affirmation, the eExecutive dDirector of the eCommission or his or her designee~~
40 ~~shall, within three working days, acknowledge the receipt of the complaint by first-class~~
41 ~~mail; unless the complaint was initiated by the Commission or the complainant or his or her~~
42 ~~representative personally filed the complaint with the eCommission and was given a receipt~~
43 ~~or other acknowledgment evidencing the filing of the complaint. No political party or officer,~~
44 ~~employee or agent of a political party acting in his or her official capacity may file a~~
45 ~~complaint for a violation of this chapter with the Commission. Nothing in this section~~
46 ~~prohibits a private citizen, acting in that capacity, from filing a verified complaint with the~~
47 ~~Commission under this section. Within fourteen days after the receipt of a complaint, an~~
48 ~~investigative panel shall be appointed to investigate the substance of the allegations in the~~
49 ~~complaint and to determine whether there is probable cause to believe that a violation of~~
50 ~~this chapter has occurred. The commission shall establish by legislative rule promulgated~~
51 ~~in accordance with chapter twenty-nine-a of this code a rotation system for the selection~~
52 ~~of commission members to sit on investigative panels whereby the caseload of commission~~
53 ~~investigations is distributed among commission members as evenly and randomly as~~
54 ~~possible the Executive Director shall refer the complaint to the Review Board created~~
55 ~~pursuant to section two-a of this article.~~

56 ~~(b) In Upon the case referral of a filed complaint; the first inquiry of the investigative panel~~

1 ~~shall be a question as to~~ by the Executive Director pursuant to subsection (a) of this
2 section, the Review Board shall determine whether ~~or not~~ the allegations of the complaint,
3 if taken as true, would constitute a violation of law upon which the ~~e~~Commission could
4 properly act under the provisions of this chapter. If the complaint is determined by a
5 majority vote of the ~~investigative panel~~ Review Board to be insufficient in this regard, the
6 ~~investigative panel~~ Review Board shall dismiss the complaint.

7 (c) ~~After the commission receives a complaint found~~ Upon a finding by the investigative
8 ~~panel~~ Review Board to be that the complaint is sufficient, the ~~e~~Executive ~~d~~Director shall
9 give notice of a pending investigation ~~by the investigative panel~~ to the complainant, if any,
10 and ~~to the respondent~~. The notice of investigation shall be mailed ~~to the parties;~~ and, in the
11 ~~case of the respondent,~~ shall be mailed as certified mail, return receipt requested, marked
12 "Addressee only, personal and confidential". The notice shall describe the conduct of the
13 respondent which is ~~the basis for an alleged to violation~~ violate of the law; and if a copy of
14 ~~the complaint has been filed,~~ a copy of the complaint shall be appended to the notice
15 mailed to the respondent. Each notice of investigation shall inform the respondent that the
16 purpose of the investigation is to determine whether probable cause exists to believe that
17 a violation of law has occurred which may subject the respondent to administrative
18 sanctions by the ~~e~~Commission, criminal prosecution by the state, or civil liability. The notice
19 shall further inform the respondent that he or she has a right to appear before the
20 ~~investigative panel~~ Review Board; and that he or she may respond in writing to the
21 ~~e~~Commission within thirty days after the receipt of the notice, but that no fact or allegation
22 shall be taken as admitted by a failure or refusal to timely respond.

23 (d) Within the 45-day period following the mailing of a notice of investigation, the
24 ~~investigative panel~~ Review Board shall proceed to consider: (1) ~~†~~The allegations raised in
25 the complaint; (2) any timely received written response of the respondent; and (3) any
26 other competent evidence gathered by or submitted to the ~~e~~Commission which has a
27 proper bearing on the issue of probable cause. A respondent ~~shall be afforded the~~
28 ~~opportunity to~~ may appear before the ~~investigative panel~~ Review Board and make an oral
29 response to the complaint. The ~~e~~Commission shall, in promulgating ~~promulgate~~ legislative
30 rules pursuant to the provisions of subsection (a), section two of this article, prescribe the
31 manner in which a respondent may present his or her oral response to the ~~investigative~~
32 ~~panel~~. The ~~e~~Commission may ~~request~~ ask a respondent to disclose specific amounts
33 received from a source; and ~~request~~ other detailed information not otherwise required to
34 be set forth in a statement or report filed under the provisions of this chapter; if the
35 information sought is ~~deemed~~ considered to be probative as to the issues raised by a
36 complaint or an investigation initiated by the ~~e~~Commission. Any information thus received
37 shall be confidential except as provided by subsection (f ~~e~~) of this section. If a person ~~so~~
38 ~~requested~~ asked to provide information fails or refuses to furnish the information to the
39 ~~e~~Commission, the ~~e~~Commission may exercise its subpoena power as provided ~~for~~
40 ~~elsewhere~~ in this chapter; and any subpoena issued ~~thereunder~~ by the Commission shall
41 have the same force and effect as a subpoena issued by a circuit court of this state; and,
42 ~~e~~Enforcement of any such subpoena may be had upon application to a circuit court of the
43 county in which the ~~investigative panel~~ Review Board is conducting an investigation;
44 through the issuance of a rule or an attachment against the respondent as in cases of
45 contempt.

46 (e) (1) All investigations, complaints, reports, records, proceedings and other information
47 received by the ~~e~~Commission and related to complaints made to the ~~e~~Commission or
48 investigations conducted by the ~~e~~Commission pursuant to this section, including the
49 identity of the complainant or respondent, ~~shall be~~ are confidential and ~~shall~~ may not be
50 knowingly and improperly disclosed by any ~~current or former member or employee~~ of the
51 ~~e~~Commission or its staff, the Review Board except as follows:

52 (A) ~~Upon~~ Once there has been a finding that probable cause exists to believe that a
53 respondent has violated the provisions of this chapter, and the respondent has been
54 served by the Commission with a copy of the Review Board's order and the statement of
55 charges prepared pursuant to the provisions of subsection (g) of this section, the complaint
56 and all reports, records, non-privileged and nondeliberative material introduced at any

1 probable cause hearing held pursuant to the complaint ~~are thereafter not cease to be~~
2 confidential: ~~Provided, That confidentiality of such information shall remain in full force and~~
3 ~~effect until the respondent has been served by the commission with a copy of the~~
4 ~~investigative panel's order finding probable cause and with the statement of charges~~
5 ~~prepared pursuant to the provisions of subsection (g) of this section.~~
6 (B) After a finding of probable cause ~~as aforesaid,~~ any subsequent hearing held in the
7 matter for the purpose of receiving evidence or the arguments of the parties or their
8 representatives shall be open to the public and all reports, records and nondeliberative
9 materials introduced into evidence at ~~such subsequent~~ the hearing, as well as the
10 eCommission's orders, are not confidential.
11 (C) The eCommission may release any information relating to an investigation at any time
12 if the release has been agreed to in writing by the respondent.
13 (D) The complaint ~~as well as~~ and the identity of the complainant shall be disclosed to a
14 person named as respondent ~~in any such complaint filed with the commission~~ immediately
15 upon the respondent's request.
16 (E) Where the eCommission is otherwise required by the provisions of this chapter to
17 disclose ~~such~~ information or to proceed in such a manner that disclosure is necessary and
18 required to fulfill ~~such those~~ requirements.
19 (2) If, in a specific case, the eCommission finds that there is a reasonable likelihood that
20 the dissemination of information or opinion in connection with a pending or imminent
21 proceeding will interfere with a fair hearing or otherwise prejudice the due administration
22 of justice, the eCommission shall order that all or a portion of the information
23 communicated to the eCommission to cause an investigation and all allegations of ethical
24 misconduct or criminal acts contained in a complaint shall be confidential; and the person
25 providing ~~such the~~ information or filing a complaint shall be bound to confidentiality until
26 further order of the eCommission.
27 (f) If ~~a majority of the members of the investigative panel~~ Review Board fails to find
28 probable cause, the proceedings shall be dismissed by the eCommission in an order
29 signed by the ~~majority members of the panel~~ Review Board, and ~~e~~Copies of the order of
30 dismissal shall be sent to the complainant and served upon the respondent forthwith. If the
31 ~~investigative panel~~ Review Board decides by a ~~majority~~ unanimous vote that there is
32 probable cause to believe that a violation under this chapter has occurred, the ~~majority~~
33 members of the ~~investigative panel~~ Review Board shall sign an order directing the
34 eCommission staff to prepare a statement of charges; ~~to~~ and assign the matter for hearing
35 to the eCommission or a hearing examiner as the eCommission may subsequently direct;
36 ~~and to: The Commission shall then schedule a hearing, to be held within ninety days after~~
37 ~~the date of the order, to determine the truth or falsity of the charges, such hearing to be~~
38 ~~held within ninety days after the date of the order. The Commission's review of the~~
39 ~~evidence presented shall be de novo.~~ For the purpose of this section, service of process
40 upon the respondent is obtained at the time the respondent or the respondent's agent
41 physically receives the process, regardless of whether the service of process is in person
42 or by certified mail.
43 (g) At least eighty days prior to the date of the hearing, the ~~respondent~~ Commission shall
44 ~~be served the respondent~~ by certified mail, return receipt requested, with the statement of
45 charges and a notice of hearing setting forth the date, time and place for the hearing. The
46 scheduled hearing may be continued only upon a showing of good cause by the
47 respondent or under ~~such~~ other circumstances as the eCommission shall, by legislative
48 rule, directs.
49 (h) The eCommission ~~members who have not served as members of an investigative panel~~
50 ~~in a particular case~~ may sit as a hearing board to adjudicate the case or may permit an
51 assigned hearing examiner employed by the eCommission to preside at the taking of
52 evidence. The eCommission shall, by legislative rule, establish the general qualifications
53 for hearing examiners. ~~Such~~ The legislative rule shall also contain provisions which ~~seek~~
54 ~~to ensure that the functions of a hearing examiner will be conducted in an impartial~~
55 ~~manner; and shall describe the circumstances and procedures for disqualification of~~
56 hearing examiners.

1 (i) A member of the eCommission or a hearing examiner presiding at a hearing may:
2 (1) Administer oaths and affirmations, compel the attendance of witnesses and the
3 production of documents, examine witnesses and parties; and otherwise take testimony
4 and establish a record;
5 (2) Rule on offers of proof and receive relevant evidence;
6 (3) Take depositions or have depositions taken when the ends of justice ~~may~~ will be
7 served;
8 (4) Regulate the course of the hearing;
9 (5) Hold conferences for the settlement or simplification of issues by consent of the parties;
10 (6) Dispose of procedural requests or similar matters;
11 (7) Accept stipulated agreements;
12 (8) Take other action authorized by the eEthics eCommission consistent with the provisions
13 of this chapter.

14 (j) With respect to allegations of a violation under this chapter, the complainant has the
15 burden of proof. The West Virginia ~~r~~Rules of eEvidence ~~as used to govern~~ governing
16 proceedings in the courts of this state shall be given like effect in hearings held before the
17 eCommission or a hearing examiner. The eCommission shall, by ~~legislative~~ rule, regulate
18 the conduct of hearings so as to provide full procedural due process to a respondent.
19 Hearings before a hearing examiner shall be recorded electronically. When requested by
20 either of the parties, the presiding officer shall ~~make~~ order a transcript, verified by oath or
21 affirmation, of each hearing held and so recorded. In the discretion of the eCommission,
22 a record of the proceedings may be made by a certified court reporter. Unless otherwise
23 ordered by the eCommission, the cost of preparing a transcript shall be paid by the party
24 requesting the transcript. Upon a showing of indigency, the eCommission may provide a
25 transcript without charge. Within fifteen days following the hearing, either party may submit
26 to the hearing examiner that party's proposed findings of fact. The hearing examiner shall
27 thereafter prepare his or her own proposed findings of fact and make copies of the findings
28 available to the parties. The hearing examiner shall then submit the entire record to the
29 eCommission for final decision.

30 (k) The recording of the hearing or the transcript of testimony, as the case may be, and the
31 exhibits, together with all papers and requests filed in the proceeding, and the proposed
32 findings of fact of the hearing examiner and the parties, constitute the exclusive record for
33 decision by the eCommission ~~members who have not served as members of the~~
34 ~~investigative panel~~, unless by leave of the eCommission a party is permitted to submit
35 additional documentary evidence or take and file depositions or otherwise exercise discovery.

36 (l) The eCommission shall set a time and place for the hearing of arguments by the
37 complainant and respondent, or their respective representatives, and shall notify the
38 parties thereof; ~~and~~ bBriefs may be filed by the parties in accordance with procedural rules
39 promulgated by the eCommission. ~~The final decision of the eCommission shall be made~~
40 ~~by the commission members who have not served as members of the investigative panel~~
41 issue a final decision in writing within forty-five days of the receipt of the entire record of
42 a hearing held before a hearing examiner or, in the case of an evidentiary hearing held by
43 the Commission acting as a hearing board in lieu of a hearing examiner, within twenty-one
44 days following the close of the evidence.

45 (m) A decision on the truth or falsity of the charges against the respondent and a decision
46 to impose sanctions must be approved by at least seven members of the eCommission
47 ~~who have not served as members of the investigative panel~~.

48 (n) Members of the eCommission shall recuse themselves from a particular case upon their
49 own motion with the approval of the eCommission or for good cause shown upon motion
50 of a party. The remaining members of the eCommission shall, by majority vote, select a
51 temporary member of the eCommission to replace a recused member: *Provided*, That the
52 temporary member selected to replace a recused member shall be a person of the same
53 status or category, provided by subsection (b), section one of this article, as the recused
54 member.

55 (o) Except for statements made in the course of official duties to explain Commission
56 procedures, no member or employee or former member or employee of the Commission

1 may make any public or nonpublic comment about any proceeding previously or currently
2 before the Commission. Any member or employee or former member or employee of the
3 Commission who violates this subsection is subject to the penalties contained in
4 subsection (e), section ten of this article. In addition, violation of this subsection by a
5 current member or employee of the Commission is grounds for immediate removal from
6 office or termination of employment.
7 ~~(op)~~ A complainant may be assisted by a member of the eCommission staff assigned by
8 the eCommission after a determination of probable cause.
9 ~~(pq)~~ No member employee of the eCommission staff assigned to prosecute a complaint
10 may participate in the eCommission deliberations or communicate with eCommission
11 members or the public concerning the merits of a complaint after being assigned to
12 prosecute the complaint.
13 ~~(qr)~~ (1) If the eCommission finds by evidence beyond a reasonable doubt that the facts
14 alleged in the complaint are true and constitute a material violation of this article, it may
15 impose one or more of the following sanctions:
16 (4A) Public reprimand;
17 (2B) Cease and desist orders;
18 (3C) Orders of restitution for money, things of value, or services taken or received in
19 violation of this chapter; or
20 (4D) Fines not to exceed ~~one~~ five thousand dollars per violation; or
21 (E) Reimbursement to the Commission for the actual costs of investigating and prosecuting
22 a violation. Any reimbursement ordered by the Commission for its costs under this
23 paragraph shall be collected by the Commission and deposited pursuant to section six,
24 article one of this chapter.
25 (2) In addition to imposing such the above-specified sanctions, the eCommission may
26 recommend to the appropriate governmental body that a respondent be terminated from
27 employment or removed from office.
28 (3) The eCommission may institute civil proceedings in the circuit court of the county
29 wherein in which a violation occurred for the enforcement of sanctions.
30 ~~(r s)~~ At any stage of the proceedings under this section, the eCommission may enter into
31 a conciliation agreement with a respondent if ~~such the~~ agreement is deemed by a majority
32 of the members of the eCommission to be in the best interest of the state and the
33 respondent. Any conciliation agreement must be disclosed to the public: *Provided*, That
34 negotiations leading to a conciliation agreement, as well as information obtained by the
35 eCommission during ~~such the~~ negotiations, shall remain confidential except as may be
36 otherwise set forth in the agreement.
37 ~~(s t)~~ Decisions of the eCommission involving the issuance of sanctions may be appealed
38 to the circuit court of Kanawha County, ~~West Virginia~~; or to the circuit court of the county
39 where the violation is alleged to have occurred, only by the respondent; and only upon the
40 grounds set forth in section four, article five, chapter twenty- nine-a of this code.
41 ~~(t u)~~ (1) ~~In the event the commission finds in favor of the person complained against, the~~
42 ~~commission shall order reimbursement of all actual costs incurred, including, but not limited~~
43 ~~to, attorney fees to be paid to the person complained against by the complainant, if the~~
44 ~~commission finds that the complaint was brought or made in bad faith. In addition, the~~
45 ~~aggrieved party shall have a cause of action and be entitled to compensatory damages,~~
46 ~~punitive damages, costs and attorney fees for a complaint made or brought in bad faith.~~
47 Any person who in good faith files a verified complaint or any person, official or agency
48 who gives credible information resulting in a formal complaint filed by Commission staff is
49 immune from any civil liability that otherwise might result by reason of such actions.
50 ~~(u)~~ If at any stage in the proceedings under this section, it appears to an investigative
51 panel, a hearing examiner or the commission that a criminal violation may have been
52 committed by a respondent, such situation shall be brought before the full commission for
53 its consideration. If, by a vote of two thirds of the full commission, it is determined that
54 probable cause exists to believe a criminal violation has occurred, it may recommend to
55 the appropriate county prosecuting attorney having jurisdiction over the case that a criminal

1 investigation be commenced. Deliberations of the commission with regard to a
2 recommendation for criminal investigation by a prosecuting attorney shall be private and
3 confidential. Notwithstanding any other provision of this article, once a referral for criminal
4 investigation is made under the provisions of this subsection, the ethics proceedings shall
5 be held in abeyance until action on the referred matter is concluded. If the commission
6 determines that a criminal violation has not occurred, the commission shall remand the
7 matter to the investigative panel, the hearing examiner or the commission itself as a
8 hearing board, as the case may be, for further proceedings under this article.

9 (v) The provisions of this section shall apply to violations of this chapter occurring after the
10 thirtieth day of September, one thousand nine hundred eighty-nine, and within one year
11 before the filing of a complaint under subsection (a) of this section or the appointment of
12 an investigative panel by the commission under subsection (b) of this section.

13 (2) If the Commission determines, by clear and convincing evidence, that a person filed a
14 complaint or provided information which resulted in an investigation knowing that the
15 material statements in the complaint or the investigation request or the information
16 provided were not true; filed an unsubstantiated complaint or request for an investigation
17 in reckless disregard of the truth or falsity of the statements contained therein; or filed one
18 or more unsubstantiated complaints which constituted abuse of process, the Commission
19 shall:

20 (A) Order the complainant or informant to reimburse the respondent for his or her
21 reasonable costs;

22 (B) Order the complainant or informant to reimburse the respondent for his or her
23 reasonable attorney fees; and

24 (C) Order the complainant or informant to reimburse the Commission for the actual costs
25 of its investigation.

26 In addition, the Commission may decline to process any further complaints brought by the
27 complainant, the initiator of the investigation or the informant.

28 (3) The sanctions authorized in this subsection are not exclusive and do not preclude any
29 other remedies or rights of action the respondent may have against the complainant or
30 informant under the law.

31 (v) (1) If at any stage in the proceedings under this section it appears to a Review Board,
32 a hearing examiner or the Commission that there is credible information or evidence that
33 the respondent may have committed a criminal violation, the matter shall be referred to the
34 full Commission for its consideration. If, by a vote of two thirds of the members of the full
35 Commission, it is determined that probable cause exists to believe a criminal violation has
36 occurred, the Commission shall refer the matter to the appropriate county prosecuting
37 attorney having jurisdiction for a criminal investigation and possible prosecution.
38 Deliberations of the Commission with regard to referring a matter for criminal investigation
39 by a prosecuting attorney shall be private and confidential. Notwithstanding any other
40 provision of this article, once a referral for criminal investigation is made under the
41 provisions of this subsection, the ethics proceedings shall be held in abeyance until action
42 on the referred matter is concluded. If the referral of the matter to the prosecuting attorney
43 results in a criminal conviction of the respondent, the Commission may resume its
44 investigation or prosecution of the ethics violation, but may not impose a fine as a sanction
45 if a violation is found to have occurred.

46 (2) If fewer than two thirds of the full Commission determine that a criminal violation has
47 occurred, the Commission shall remand the matter to the Review Board, the hearing
48 examiner or the Commission itself as a hearing board, as the case may be, for further
49 proceedings under this article.

50 (w) The provisions of this section shall apply to violations of this chapter occurring after the
51 thirtieth day of September, one thousand nine hundred eighty-nine, and within one year
52 before the filing of a complaint: *Provided*, That the applicable statute of limitations for
53 violations which occur on or after the first day of July, two thousand five, is two years after
54 the date on which the alleged violation occurred.

55 **§§6B-2-10. Violations and penalties.**

56 (a) If a Any person who violates the provisions of subsection (e), (f) or (g), section five of

1 this article; or violates the provisions of subdivision (1), subsection (e), section four of this
2 article; ~~such person, upon conviction thereof, shall be~~ is guilty of a misdemeanor; and,
3 upon conviction, shall be punished by confinement confined in the county jail for a period
4 not to exceed six months or shall be fined not more than one thousand dollars, or both
5 such confinement and fine. If any person violating the provisions of subdivision (1);
6 subsection (e), section four of this article shall be a A member or employee of the
7 eCommission and an employee thereof, he or she shall, upon conviction, the Review Board
8 convicted of violating said subdivision be is subject to immediate removal from office or
9 discharge from employment.

10 (b) If Any person who violates the provisions of subsection (f), section six of this article by
11 willfully and knowingly filing a false financial statement, such person shall or knowingly and
12 willfully concealing a material fact in filing the statement is guilty of a misdemeanor and,
13 upon conviction thereof, shall be deemed guilty of false swearing and shall be punished
14 as provided in section three, article five, chapter sixty-one of this code fined not more than
15 one thousand dollars, or confined in jail not more than one year, or both.

16 (c) If Any person who knowingly fails or refuses to file a financial statement required by
17 section six of this article, such person is guilty of a misdemeanor and, upon conviction
18 thereof, shall be guilty of a misdemeanor, and shall be fined not less than one hundred
19 dollars nor more than one thousand dollars.

20 (d) If any complainant Commission member or staff knowingly the provisions of subdivision
21 (2); violates subsection (f o), section four; of this article two of this chapter by knowingly
22 and willfully disclosing any information made confidential by an order of the commission;
23 he or she shall be subject to administrative sanction by the commission as provided for in
24 subsection (4), section four of this article, such person, upon conviction thereof, shall be
25 guilty of a misdemeanor and shall be fined not less than one hundred dollars nor more than
26 one thousand dollars.

27 (e) Any person who violates the provisions of subdivision (2), subsection (e), section four
28 of this article by knowingly and willfully disclosing any information made confidential by an
29 order of the Commission is subject to administrative sanction by the Commission as
30 provided in subsection (r) of said section.

31 (f) Any person who knowingly gives false or misleading material information to the
32 Commission or who induces or procures another person to give false or misleading
33 material information to the Commission is subject to administrative sanction by the
34 Commission as provided in subsection (r), section four of this article.

35 **ARTICLE 3. LOBBYISTS.**

36 **§§6B-3-3a. Registration fees.**

37 (a) Each lobbyist shall, at the time he or she registers, pay the eCommission a base
38 registration fee of sixty one hundred dollars, plus one hundred dollars for each employer
39 represented, to be filed with the initial registration statement and with each new registration
40 statement filed by the lobbyist in subsequent odd numbered years: ~~Provided, That if a~~
41 lobbyist filed his or her initial registration after the first day of January during an even-
42 numbered year, he or she shall only be required to pay a reduced registration fee of thirty
43 dollars for the balance of that year. Whenever a lobbyist modifies his or her registration to
44 add additional employers, an additional registration fee of one hundred dollars for each
45 additional employer represented shall be paid to the Commission.

46 (b) The commission shall collect the registration fees authorized by this section and pay
47 them into the state treasury to the credit of the state general fund. All fees authorized and
48 collected pursuant to this article shall be paid to the Ethics Commission and thereafter
49 deposited pursuant to section six, article one of this chapter.

50 **§§6B-3-3c. Lobbyist training course.**

51 The Commission shall provide a training course for registered lobbyists and prospective
52 lobbyists at least twice each year regarding the provisions of the ethics code relevant to
53 lobbyists. One such course shall be conducted during the month of January. In addition to
54 the registration fees authorized in section three-a of this article, the Commission may
55 collect a reasonable fee established by legislative rule authorized pursuant to article three,
56 chapter twenty-nine-a of this code from those attending lobbyist training, which is to be

1 collected by the Ethics Commission and deposited pursuant to section six, article one of
2 this chapter. To maintain registration and engage in lobbying activities, a lobbyist must
3 complete one such training course per year.

Senate Bill 213

Effective Date: Passed April 8, 2005; to take effect July 1, 2005

Signed by Governor: April 21, 2005

Code Reference: Amends and reenacts §16-41-7

Title: Oral Health Program Continued

Major Revisions:

- Provides for the continuation of the Oral Health program at least through July 1, 2007.

Senate Bill 222

Effective Date: Passed March 28, 2005; in effect ninety days from passage

Signed by Governor: April 19, 2005

Code Reference: Amends and reenacts §5B-2B-3

Title: West Virginia Workforce Investment Act

Major Provisions:

- Redefines the membership, meetings and quorum requirements of the West Virginia Workforce Investment Council.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

ENROLLED
Senate Bill No. 222

(By Senators Unger, Kessler, McCabe, Sprouse, Minard, Sharpe and Foster)

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

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 wWorkforce iInvestment cCouncil; membership of bBoard; meetings; quorum requirements.

(a) The West Virginia wWorkforce iInvestment cCouncil is hereby created and shall serve as the state's wWorkforce iInvestment bBoard, as required by the federal Workforce Investment Act, 29 U. S. C. §2801, *et seq.* The cCouncil shall make general recommendations regarding workforce investment in the state to the gGovernor and the Legislature.

(b) The cCouncil may consist of no more than thirty-nine members, including ex officio members.

(c) The gGovernor shall appoint, with the advice and consent of the Senate, members to the cCouncil according to the following criteria:

(1) Representatives of business in the state, including at least one representing the tourism industry, who are:

(A) Owners of businesses, chief executive officers, chief operating officers of business and other business executives or employers with optimum policy-making or hiring authority, including members of regional workforce investment boards;

(B) Representatives of businesses having employment opportunities that reflect the employment opportunities of the state; and

(C) Individuals nominated by state business organizations and business trade associations;

(2) No more than two members who are members of the cCouncil for cCommunity and tTechnical eEducation;

(3) Two members who are members of the West Virginia cCouncil for cCommunity and eEconomic dDevelopment;

(4) Two members who are chief elected officials representing cities and counties;

(5) Two members who represent individuals and organizations having experience and expertise in the delivery of workforce investment programs, including one chief executive officer of a community and technical college and one chief executive officer of a community-based organization operating in the state;

(6) Two members who represent individuals and organizations having experience in youth activities, including at least one youth from a post-secondary education institution; and

(7) Two members who represent labor organizations in the state who have been nominated by state labor federations.

(d) The following shall serve on the cCouncil as ex officio members:

(1) The gGovernor, or his or her designee;

(2) The sSuperintendent of the dDepartment of eEducation, or his or her designee;

(3) The dDirector of the dDivision of rRehabilitation sServices, or his or her designee: *Provided*, That the designee has policy-making authority over a workforce investment program within the dDivision of rRehabilitation sServices;

(4) The cCommissioner of the bBureau of sSenior sServices, or his or her designee: *Provided*, That the designee has policy-making authority over a workforce investment program within the bBureau of sSenior sServices;

(5) The cCommissioner of the bBureau of eEmployment pPrograms, or his or her

1 designee: *Provided*, That the designee has policy-making authority over a workforce
2 investment program within the bBureau of eEmployment pPrograms;
3 (6) The dDirector of the dDivision of vVeterans' aAffairs, or his or her designee: *Provided*,
4 That the designee has policy-making authority over a workforce investment program within
5 the dDivision of vVeterans' aAffairs;
6 (7) The eExecutive eDirector of the West Virginia dDevelopment oOffice; and
7 (8) The Secretary of the dDepartment of hHealth and hHuman rResources, or his or her
8 designee: *Provided*, That the designee has policy-making authority over a workforce
9 investment program within the dDepartment of hHealth and hHuman rResources-;
10 (9) The Chancellor of the West Virginia Council for Community and Technical College
11 Education; and
12 (10) The Chancellor for Higher Education.
13 (e) The sSpeaker of the House of Delegates shall appoint two members of the House of
14 Delegates to serve on the eCouncil, as nonvoting members.
15 (f) The pPresident of the Senate shall appoint two members of the Senate to serve on the
16 eCouncil, as nonvoting members.
17 (g) The gGovernor shall appoint a eChair and vVice- eChair for the eCouncil from among
18 the members appointed pursuant to subdivision (1), subsection (c) of this section.
19 (h) Initial terms for appointed members of the eCouncil are for up to three years as
20 determined by the gGovernor. All subsequent terms are for three years.
21 (i) The eCouncil shall meet at least quarterly and appointed members of the eCouncil may
22 be reimbursed for reasonable expenses incurred within the scope of their service on the
23 eCouncil.
24 (j) A majority of the members of the eCouncil constitute a quorum: *Provided*, That a
25 majority of the members making the quorum are members appointed pursuant to
26 subdivision (1), subsection (c) of this section.
27 (k) The eCouncil may create subcommittees to carry out any of its duties. Quorum
28 requirements required by subsection (j) of this section also apply to subcommittees.
29 (l) No member of the eCouncil may:
30 (1) Vote on a matter under consideration by the eCouncil:
31 (A) Regarding the provision of services by the member or by an entity that the member
32 represents; or
33 (B) That would provide direct financial benefit to the member or the immediate family of the
34 member; or
35 (2) Engage in any other activity determined by the gGovernor to constitute a conflict of
36 interest as specified in the strategic five-year state wWorkforce iInvestment pPlan.

Senate Bill 240

Effective Date: Passed April 7, 2005; to take effect July 1, 2005

Signed by Governor: April 21, 2005

Code Reference: Adds a new section, designated §18-2E-3F

Title: Granting State Employees Paid Leave for Organ Donation

Major Provisions:

- Grants a full-time state employee up to 120 hours of paid leave in a calendar year to use for the employee's donation of any portion of an adult liver or adult kidney.
- Grants a full-time state employee up to 56 hours of paid leave to use for the employee's donation of adult bone marrow.
- Encourages political subdivisions, such as county boards of education, to provide the same benefit.

1
2
3
4
5
6
7
8

ENROLLED
Senate Bill No. 240

9 (By Senators Foster, Sharpe, Prezioso, Fanning, Jenkins, Unger, Sprouse, Hunter,
10 Minear, Barnes and Yoder)

11 [Passed April 7, 2005; to take effect July 1, 2005.]

12 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a
13 new section, designated §29-6-28, relating to granting state employees thirty days
14 of paid leave time for kidney or liver donation and seven days of paid leave time
15 for bone marrow donation.

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

17 That the Code of West Virginia, 1931, as amended, be amended, by adding thereto
18 a new section, designated §29-6-28, to read as follows:

19 **ARTICLE 6. CIVIL SERVICE COMMISSION.**

20 **§29-6-28. Leave time for organ donation.**

21 (a) A full-time state employee shall receive up to one hundred twenty hours of leave with
22 pay during each calendar year to use during those hours when the employee is absent
23 from work because of the employee's donation of any portion of an adult liver or because
24 of the employee's donation of an adult kidney.

25 (b) A full-time state employee shall receive up to fifty-six hours of leave with pay during
26 each calendar year to use during those hours when the employee is absent from work
27 because of the employee's donation of adult bone marrow.

28 (c) An appointing authority shall compensate a full-time state employee who uses leave
29 granted under this section at the employee's regular rate of pay for those regular work
30 hours during which the employee is absent from work.

31 (d) The Director of Personnel shall provide information about this section to full-time
32 employees.

33 (e) The Legislature hereby encourages political subdivisions and private employers in this
state to grant their full-time employees paid leave similar to the paid leave granted to full-
time state employees under this section.

Senate Bill 248

Effective Date: Passed April 9, 2005; in effect from passage

Signed by Governor: May 3, 2005

Code Reference: Amends and reenacts §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5, §18-2J-6 and §18-2J-7

Title: Relating to public and higher education technology strategic plan.

Major Provisions:

- The Legislature finds that technology may be used in the public schools and the system of higher education for many purposes including, but not limited to, instructional and administrative uses.
- The Legislature finds that areas exist wherein cooperation and collaboration between the public schools, the institutions of higher education and respective governing bodies will enable them to combine and share resources and improve efficiency.
- The intent is to establish a unified approach to planning, procurement and implementation of technology that will guide the administration and allocation of educational technology funds.
- There is established under the Governor's office of Technology, the Governor's Advisory Council for Educational Technology.
- The Council shall develop a unified educational technology strategic plan and submit the plan to LOCEA for approval on or before October 1, 2005.
- The plan will address allocating resources and developing capacity.
- State appropriations for technology shall be expended in accordance with the unified plan.
- The State Board and the Higher Education Policy Commission shall report to LOCEA annually regarding the plan, allocation of funds and expenditures.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18

ENROLLED
Senate Bill No. 248

(By Senators Plymale, Edgell, Dempsey, Minard and Jenkins)

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

8 AN ACT to amend and reenact §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5,
9 §18-2J-6 and §18-2J-7 of the Code of West Virginia, 1931, as amended, all
10 relating to public and higher education technology strategic plan; making findings
11 and stating intent and purpose; providing for Advisory Council for Educational
12 Technology; providing powers and duties; providing for goals and strategies for
13 technology strategic plan; requiring approval of the plan by the Legislative
14 Oversight Commission on Education Accountability; requiring allocation and
15 expenditure of technology appropriations in accordance with the plan with certain
16 exceptions; and report to Legislative Oversight Commission on Education
17 Accountability.

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

20 That §18-2J-1, §18-2J-2, §18-2J-3, §18-2J-4, §18-2J-5, §18-2J-6 and §18-2J-7 of the
21 Code of West Virginia, 1931, as amended, be amended and reenacted, all to read
22 as follows:

23 **ARTICLE 2J. PUBLIC AND HIGHER EDUCATION UNIFIED EDUCATIONAL**
24 **TECHNOLOGY STRATEGIC PLAN.**

25 **§18-2J-1. Findings; intent and purpose of article.**

26 (a) The Legislature finds that: technology may be used in the public school system for
27 many purposes including, but not limited to, the following:

28 ~~(1) Technology is being used in public schools a~~As an instructional tool that enables
29 teachers to meet the individual instructional needs of students who differ in learning styles,
30 learning rates and the motivation to learn;

31 ~~(2) Technology is being used in public schools a~~As an effective resource for providing
32 corrective, remedial and enrichment activities to help students achieve proficiency at grade
33 level or above in the basic skills of reading, composition and arithmetic that are essential
34 for advancement to more rigorous curriculum and success in higher education,
35 occupational and avocational pursuits;

36 ~~(3) Technology is being used in public schools t~~To ensure that all students have a basic
37 level of computer literacy that will enable them to participate fully in a society in which
38 computers are an ever more prevalent medium for social, economic; and informational
39 interaction;

40 ~~(4) Technology is being used in public schools t~~To provide greater access for students to
41 advanced curricular offerings, virtual field trips, problem-solving, ~~and~~ team-building
42 exercises, reference information and source knowledge than could be provided efficiently
43 through traditional on-site delivery formats;

44 ~~(5) Technology is being used in public schools t~~To help students obtain information on
45 post-secondary educational opportunities, financial aid; and the ~~credentials and skills and~~
46 credentials required in various occupations that will help them better prepare for a
47 successful transition following high school;

48 ~~(6) Technology is being used in public schools t~~To help students learn to think critically,
49 apply academic knowledge in real-life situations, make decisions; and gain an
50 understanding of the modern workplace environment through simulated workplace
51 programs;

52 ~~(7) Technology is being used in public schools a~~As a resource for teachers by providing
53 them with access to sample lesson plans, curriculum resources, on-line staff development,
54 continuing education and college course-work; and

55 ~~(8) Technology is being used in public schools a~~As a tool for managing information,

1 reporting on measures of accountability, analyzing student learning and helping to improve
2 student, school and school system performance;

3 9) Technology is being used in state institutions of higher education for teaching, learning
4 and research for all students across all disciplines and programs;

5 (10) Technology is being used in state institutions of higher education by students, staff
6 and faculty to discover, create, communicate and collaborate, as well as to enhance
7 research and economic development activities;

8 (11) Technology is being used in state institutions of higher education for digital age
9 literacy, problem solving, creativity, effective communication, collaboration and high
10 productivity skills essential for West Virginia citizens in a rapidly changing global economy;

11 (12) Technology is being used by libraries in higher education to offer reference services
12 in a virtual environment online;

13 (13) Technology is being used by libraries in higher education to create and share
14 cataloging records. It is possible to create a seamless resource for sharing these resources
15 between public and higher education; and

16 (14) Technology is being used in libraries in higher education to offer electronic document
17 delivery services to distance education students and to a multitude of professionals
18 throughout the state.

19 (b) Each use of technology set forth in this section shall apply to public education, higher
20 education or both, as appropriate. The determination of whether the use of technology
21 applies to public education, higher education or both shall be made by the education
22 technology strategic plan advisory committee, the state board and the higher education
23 policy commission.

24 (b) The Legislature finds that technology may be used in the system of higher education
25 for many purposes including, but not limited to, the following:

26 (1) For teaching, learning and research for all students across all disciplines and programs;

27 (2) By students, staff and faculty to discover, create, communicate and collaborate, as well
28 as to enhance research and economic development activities;

29 (3) For digital age literacy, problemsolving, creativity, effective communication,
30 collaboration and high productivity skills essential for West Virginia citizens in a rapidly
31 changing global economy;

32 (4) By libraries in higher education to offer reference services in a virtual environment online;

33 (5) By libraries in higher education to create and share cataloging records and that it is
34 possible to create a seamless resource for sharing these resources between public and
35 higher education; and

36 (6) To offer electronic document delivery services to distance education students and to
37 a multitude of professionals throughout the state.

38 (c) The Legislature further finds that all of the uses of technology in the public school and
39 higher education systems are not necessarily exclusive and, therefore, that areas exist
40 wherein cooperation and collaboration between the public schools, the institutions of higher
41 education and their respective governing bodies will enable them to combine and share
42 resources, improve efficiency and better serve their students.

43 (d) The intent and purpose of this article is to establish a unified approach to the planning,
44 procurement and implementation of technology and technology services in the public
45 schools, the institutions of higher education and their respective governing bodies that will
46 guide the administration and allocation of educational technology funds.

47 **§18-2J-2. Intent and purpose; goals Governor's Advisory Council for Educational**
48 **Technology.**

49 (a) The intent and purpose of this article is to establish a unified approach to the
50 administration and allocation of funds for technology that is used for public education and
51 higher education purposes in this state which meets the following goals: There is
52 established, under the Governor's Office of Technology, the Governor's Advisory Council
53 for Educational Technology composed of fifteen members as follows:

54 (1) Maintaining a reasonable balance in the resources allocated among the customary
55 diverse uses of technology in the public schools and the state institutions of higher
56 education, while allowing flexibility to address unanticipated priority needs and unusual

1 ~~local circumstances; The Governor's educational technology advisor, ex officio, who shall~~
2 ~~chair the council;~~
3 ~~(2) Providing for uniformity in technological hardware and software standards and~~
4 ~~procedures to achieve interoperability between public schools and higher education to the~~
5 ~~extent that the uniformity is considered prudent for reducing acquisition cost, avoiding~~
6 ~~duplication, promoting expeditious repair and maintenance and facilitating user training;~~
7 ~~while allowing flexibility for local innovations and options when the objectives relating to~~
8 ~~uniformity are reasonably met; The Governor's Chief Technology Officer, ex officio;~~
9 ~~(3) Preserving the integrity of governance, administration, standards and accountability for~~
10 ~~technology in the public schools and institutions of higher education under the jurisdiction~~
11 ~~of the state board and the higher education policy commission, while encouraging~~
12 ~~collaborative service delivery and infrastructure investments with other entities that will~~
13 ~~reduce cost, avoid duplication or improve services, particularly with respect to other entities~~
14 ~~such as the educational broadcasting system, public libraries and other governmental~~
15 ~~agencies with compatible technology interests; One public school technology coordinator;~~
16 ~~(4) Improving the long-term ability of the state board and the higher education policy~~
17 ~~commission to efficiently manage and direct the resources available for technology in the~~
18 ~~public schools and the institutions of higher education concurrent with evolving~~
19 ~~technological capabilities and applications; One public elementary, middle or junior high~~
20 ~~school teacher;~~
21 ~~(5) Fostering closer communication between faculty, students and administrators; One~~
22 ~~public secondary school teacher;~~
23 ~~(6) Providing for individualized instruction, accommodating a variety of learning styles of~~
24 ~~students or faculty members; A technology representative from Marshall University;~~
25 ~~(7) Advancing new and traditional ways of learning through alternative approaches in~~
26 ~~curriculum to integrate education, research and technology into life-long learning strategies;~~
27 ~~A technology representative from West Virginia University;~~
28 ~~(8) Offering new approaches to administration and accountability within the education~~
29 ~~system through technology application; One member of the Center for Professional~~
30 ~~Development Board;~~
31 ~~(9) Promoting the collaboration of schools, libraries, researchers, community members,~~
32 ~~state agencies, organizations, business and industry, post-secondary institutions and~~
33 ~~public virtual learning environments to meet the needs of all learners; Three individuals~~
34 ~~from the private sector with expertise in education technology;~~
35 ~~(10) Recognizing that information literacy is a fundamental competency for life-long~~
36 ~~learning and information literacy is incorporated into the curricula of higher education and~~
37 ~~the workplace; One public secondary or higher education student;~~
38 ~~(11) Creating the appropriate infrastructure to ensure, as required, a sustainable, cost~~
39 ~~effective and transparent migration to new technology platforms; One representative of the~~
40 ~~Office of Business Development;~~
41 ~~(12) Creating and maintaining compatible and secure technology systems that enhance~~
42 ~~the efficient operation of all educational systems; One member of the Higher Education~~
43 ~~Policy Commission, or his or her designee; and~~
44 ~~(13) Assessing, evaluating and publicizing the effects of technology use by educators and~~
45 ~~students toward student learning and achievement; and One member of the State Board,~~
46 ~~or his or her designee.~~
47 ~~(14) Increasing student access to high quality blended distance learning curriculum using~~
48 ~~real time interactive and online distance education tools.~~
49 ~~(b) Each goal set forth in this section shall apply to public education, higher education or~~
50 ~~both, as appropriate. The determination of whether a goal applies to public education,~~
51 ~~higher education or both shall be made by the education technology strategic plan advisory~~
52 ~~committee, the state board and the higher education policy commission. The Advisory~~
53 ~~Council shall meet as necessary, but shall hold no less than four meetings annually. Eight~~
54 ~~members constitute a quorum for conducting the business of the advisory council. All~~
55 ~~members of the Advisory Council are entitled to vote.~~
56 ~~(c) The thirteen members of the Council who are not members ex officio shall be appointed~~

1 by the Governor with the advice and consent of the Senate for terms of three years, except
2 that of the original appointments, four members shall be appointed for one year; four
3 members shall be appointed for two years; and five members shall be appointed for three
4 years. No member may serve more than two consecutive full terms, nor may a member be
5 appointed to a term which results in the member serving more than seven consecutive years.
6 (d) Members of the Advisory Council shall serve without compensation, but shall be
7 reimbursed by the Governor for all reasonable and necessary expenses actually incurred
8 in the performance of their official duties under this article upon presentation of an itemized
9 sworn statement of their expenses, except that any member of the Advisory Council who
10 is an employee of the state shall be reimbursed by the employing agency.

11 **§18-2J-3. Education technology strategic plan advisory committee Powers**
12 **and duties of Governor's Advisory Council for Educational**
13 **Technology.**

14 (a) ~~On or before the first day of July, two thousand four, there is established an~~
15 ~~education technology strategic plan advisory committee to be composed of sixteen~~
16 ~~members. The governor shall appoint, by and with the advice and consent of the~~
17 ~~Senate, the following eleven voting members to the advisory committee:~~

18 ~~In addition to any other powers and duties assigned to it by this article and in this~~
19 ~~code, the Governor's Advisory Council for Educational Technology shall:~~

20 (1) ~~Five voting members representing public education some or all of which may be~~
21 ~~from a list of five recommended appointees which shall be submitted by the state~~
22 ~~board; Assess the broad spectrum of technology needs present within the state's~~
23 ~~education systems as the basis for constructing a unified educational technology~~
24 ~~strategic plan that will guide the administration and allocation of educational~~
25 ~~technology funds;~~

26 (2) ~~Five voting members representing higher education some or all of which may be~~
27 ~~from a list of five recommended appointees which shall be submitted by the higher~~
28 ~~education policy commission; and Assemble and integrate into the planning process~~
29 ~~the perspectives of students, teachers, faculty and administrators regarding~~
30 ~~educational technology programs;~~

31 (3) ~~One voting member who is a business representative with knowledge of~~
32 ~~technology management practices of large corporations and has contributed and~~
33 ~~advanced technology in education in West Virginia. Assess, evaluate and publicize~~
34 ~~the effects of technology use by educators and students toward student learning~~
35 ~~and achievement;~~

36 (b) ~~The chief technology officer of Marshall university, or a designee, and the chief~~
37 ~~technology officer of West Virginia university, or a designee, shall be ex officio~~
38 ~~nonvoting members of the advisory committee. The state superintendent shall~~
39 ~~designate two positions within the department of education, and the persons~~
40 ~~employed in those positions shall be ex officio nonvoting members of the advisory~~
41 ~~committee. Additionally, the West Virginia library commissioner shall be an ex officio~~
42 ~~nonvoting member.~~

43 (c) ~~The business representative shall serve as chair of the advisory committee. The~~
44 ~~advisory committee shall meet as necessary, but shall hold no less than four~~
45 ~~meetings annually. A majority of the voting members constitutes a quorum for~~
46 ~~conducting the business of the advisory committee.~~

47 (d) ~~Voting members of the advisory committee shall serve for terms of three years,~~
48 ~~except that of the original appointments, three members shall be appointed for one~~
49 ~~year; four members shall be appointed for two years; and four members shall be~~
50 ~~appointed for three years. No member may serve more than two consecutive full~~
51 ~~terms nor may any member be appointed to a term which results in the member~~
52 ~~serving more than six consecutive years.~~

53 (e) ~~Members of the advisory committee shall serve without compensation, but shall~~
54 ~~be reimbursed by the governor for all reasonable and necessary expenses actually~~
55 ~~incurred in the performance of their official duties under this article upon~~

1 presentation of an itemized sworn statement of their expenses, except that any
2 member of the advisory committee who is an employee of the state shall be
3 reimbursed by the employing agency.

4 (4) Explore new approaches to improve administration, accountability and student
5 achievement within the education systems through technology application;

6 (5) Develop a unified educational technology strategic plan as required in section
7 five of this article;

8 (6) Monitor the technology programs of the agencies and education systems
9 affected by the educational technology strategic plan to assess its implementation
10 and effectiveness; and

11 (7) Advise the Governor and the Legislature on any matters the Council considers
12 important inform to the Governor and the Legislature on the state of education
13 technology in the public schools and the institutions of higher education and on any
14 matters requested by the Governor and the Legislature.

15 **§18-2J-4. Educational technology strategic plan goals and strategies.**

16 (a) The education technology strategic plan advisory committee shall develop an
17 education technology strategic plan that achieves the intent and purpose of this
18 article. The plan shall be a continuing plan that covers a period of not less than
19 three and not more than five years and is updated annually. In addition to other
20 strategies considered necessary for achieving the intent and purpose of this section,
21 the education technology strategic plan shall address the following: The following
22 are goals that the Governor's Advisory Council for Educational Technology should
23 consider when constructing the educational technology strategic plan. Each goal
24 shall apply to public education, higher education or both, as appropriate:

25 (1) The strategy for using technology in the public schools and in the institutions of
26 higher education of the state consistent with the intent and purpose of this article
27 for each of the purposes for which the Legislature finds that technology is used in
28 public schools and institutions of higher education as described in section one of
29 this article and for any other purposes considered necessary by the state board and
30 the higher education policy commission for using technology in the public schools
31 and institutions of higher education to improve performance and progress;
32 Maintaining a reasonable balance in the resources allocated among the customary
33 diverse uses of technology in the public school and higher education systems, while
34 allowing flexibility to address unanticipated priority needs and unusual local
35 circumstances and ensuring efficient and equitable use of technology at all levels
36 from primary school through higher education, including vocational and adult
37 education;

38 (2) The strategy for allocating the resources available and developing the capacity
39 necessary to achieve the purposes addressed in the plan. The strategy shall allow
40 for reasonable flexibility for: Providing for uniformity in technological hardware and
41 software standards and procedures to achieve interoperability between the public
42 school and higher education systems to the extent that the uniformity is considered
43 prudent for reducing acquisition cost, avoiding duplication, promoting expeditious
44 repair and maintenance and facilitating user training, while allowing flexibility for
45 local innovations and options when the objectives relating to uniformity are
46 reasonably met;

47 (A) County boards and regional education service agencies to receive assistance
48 with the development and implementation of technological solutions designed to
49 improve performance, enrich the curriculum and increase student access to high
50 level courses;

51 (B) County boards, regional education service agencies and institutional boards of
52 governors to implement technological solutions that address local priorities
53 consistent with achieving the major objectives set forth in the education technology
54 strategic plan; and

55 (C) Using the most cost effective alternative allowable pursuant to section six of this

- 1 article for expending funds for technology acquisition and implementation consistent
2 with the goals of the plan;
- 3 (3) For public education, the strategy for using technology to maintain equity in the
4 array and quality of educational offerings and professional qualifications among the
5 counties notwithstanding circumstances of geography and population density;
6 Preserving the integrity of governance, administration, standards and accountability
7 for technology within the public school and higher education systems, respectively,
8 while encouraging collaborative service delivery and infrastructure investments with
9 other entities that will reduce cost, avoid duplication or improve services, particularly
10 with respect to other entities such as the educational broadcasting system, public
11 libraries and other governmental agencies with compatible technology interests;
- 12 (4) For public education, the strategy for developing and using the capacity of the
13 public school system to implement, support and maintain technology in the public
14 schools through the allocation of funds either directly or through contractual
15 agreements with county boards and regional education service agencies for labor,
16 materials and other costs associated with the installation, set-up, internet hook-up,
17 wiring, repair and maintenance of technology in the public schools and state
18 institutions of higher education; Improving the long-term ability of the state to
19 efficiently manage and direct the resources available for technology in the public
20 school and higher education systems to establish appropriate infrastructure that
21 ensures, to the extent practicable, a sustainable, cost-effective and transparent
22 migration to new technology platforms;
- 23 (5) The strategy for ensuring that the capabilities and capacities of the technology
24 infrastructure within the state and its various regions is adequate for acceptable
25 performance of the technology being implemented in the public schools and the
26 state institutions of higher education, for developing the necessary capabilities and
27 capacities, or for pursuing alternative solutions; Fostering closer communication
28 between faculty, students and administrators and promoting the collaboration of
29 schools, libraries, researchers, community members, state agencies, organizations,
30 business and industry, post-secondary institutions and public virtual learning
31 environments to meet the needs of all learners; and
- 32 (6) The strategy for maximizing student access to learning tools and resources at
33 all times including before and after school or class, in the evenings, on weekends
34 and holidays, and for public education, noninstructional days, and during vacations
35 for student use for homework, remedial work, independent learning, career planning
36 and adult basic education; Creating and maintaining compatible and secure
37 technology systems that enhance the efficient operation of the education systems.
- 38 (7) The strategy for providing access to individualized instruction through computer-
39 based technology, video and other technology-based instruction;
- 40 (8) The strategy for improving teaching and learning and the ability to meet
41 individual students' needs to increase student achievement;
- 42 (9) The strategy for improving curriculum delivery to help meet the needs for
43 educational equity across the state;
- 44 (10) The strategy for improving delivery of professional development;
- 45 (11) The strategy for improving the efficiency and productivity of administrators;
- 46 (12) The strategy for encouraging development by the private sector and acquisition
47 by districts of technologies and applications appropriate for education;
- 48 (13) The strategy for ensuring efficient and equitable use of technology at all levels
49 from primary school through higher education, including vocational and adult
50 education;
- 51 (14) The strategy for taking advantage of bulk purchasing abilities to the maximum
52 extent feasible. This may include, but is not limited to:
- 53 (A) A method of recording all technology purchases across both the public
54 education system and the higher education system;

1 (B) Combining the purchasing power of the public education system and the higher
2 education system with the purchasing power of other state entities or all state
3 entities; or
4 (C) A method of allowing public education and higher education to purchase from
5 competitively bid contracts initiated through the southern regional education board
6 educational technology cooperative and the American TelEdCommunications
7 Alliance;
8 (15) A strategy for seeking funding through grants, gifts, donations or any other
9 source for uses related to education technology; and
10 (16) A strategy for allowing any other flexibility that is determined to be needed for
11 the effective use of technology in public education and higher education.
12 (b) Each strategy to be included in the education technology strategic plan pursuant
13 to this section shall apply to public education, higher education or both, as
14 appropriate. The determination of whether the strategy applies to public education,
15 higher education or both shall be made by the education technology strategic plan
16 advisory committee, the state board and the higher education policy commission.
17 (c) Nothing in this section may be construed to conflict with a state higher education
18 institution's mission as set forth in its compact.
19 (b) The following are strategies that the Governor's Advisory Council for Educational
20 Technology must address in the educational technology strategic plan. Unless
21 specifically identified otherwise, each strategy shall apply to public education, higher
22 education or both, as appropriate:
23 (1) The strategy for using technology in the public school and higher education
24 systems consistent with the findings, intent and purpose of this article and other
25 uses considered necessary to improve student performance and progress. In
26 addition, these uses may include:
27 (A) Providing for individualized instruction and accommodating a variety of learning
28 styles of students through computer-based technology, video and other technology-
29 based instruction;
30 (B) Advancing learning through alternative approaches in curriculum to integrate
31 education, research and technology into lifelong learning strategies;
32 (C) Increasing student access to high quality blended distance learning curriculum
33 using real time interactive and online distance education tools;
34 (D) Recognizing that information literacy is a fundamental competency for lifelong
35 learning and information literacy is incorporated into the curricula of higher
36 education and the workplace; and
37 (E) Improving teaching and learning and the ability to increase student achievement
38 by meeting individual student needs;
39 (2) The strategy for allocating the resources available and developing the capacity
40 necessary to achieve the purposes addressed in the plan. The strategy shall:
41 (A) Allow for reasonable flexibility for county boards and regional education service
42 agencies to receive assistance with the development and implementation of
43 technological solutions designed to improve performance, enrich the curriculum and
44 increase student access to high-level courses;
45 (B) Allow for reasonable flexibility for county boards, regional education service
46 agencies and institutional boards of governors to implement technological solutions
47 that address local priorities consistent with achieving the major objectives set forth
48 in the education technology strategic plan; and
49 (C) Use the most cost-effective alternative allowable pursuant to section six of this
50 article for expending funds for technology acquisition and implementation consistent
51 with the goals of the plan;
52 (D) Encourage development by the private sector of technologies and applications
53 appropriate for education; and
54 (E) Encourage the pursuit of funding through grants, gifts, donations or any other
55 source for uses related to education technology;

- 1 (3) For public education, the strategy for using technology to increase and maintain
2 equity in the array and quality of educational offerings, expand the curriculum,
3 deliver high-quality professional development and strengthen professional
4 qualifications among the counties notwithstanding circumstances of geography,
5 population density and proximity to traditional teacher preparation;
6 (4) For public education, the strategy for developing and using the capacity of the
7 public school system to implement, support and maintain technology in the public
8 schools through the allocation of funds either directly or through contractual
9 agreements with county boards and regional education service agencies for labor,
10 materials and other costs associated with the installation, set-up, internet hook-up,
11 wiring, repair and maintenance of technology in the public schools and state
12 institutions of higher education;
13 (5) The strategy for ensuring that the capabilities and capacities of the technology
14 infrastructure within the state and its various regions is adequate for acceptable
15 performance of the technology being implemented in the public schools and the
16 state institutions of higher education, for developing the necessary capabilities and
17 capacities or for pursuing alternative solutions;
18 (6) The strategy for maximizing student access to learning tools and resources at
19 all times including before and after school or class, in the evenings, on weekends
20 and holidays, and for public education, noninstructional days and during vacations
21 for student use for homework, remedial work, independent learning, career planning
22 and adult basic education;
23 (7) The strategy for improving the efficiency and productivity of administrators;
24 (8) The strategy for taking advantage of bulk purchasing abilities to the maximum
25 extent feasible. This may include, but is not limited to:
26 (A) A method of recording all technology purchases across both the public
27 education system and the higher education system;
28 (B) Combining the purchasing power of the public education system and the higher
29 education system with the purchasing power of other state entities or all state
30 entities; and
31 (C) A method of allowing public education and higher education to purchase from
32 competitively bid contracts initiated through the southern regional education board
33 educational technology cooperative and the American TelEdCommunications
34 Alliance; and
35 (9) A strategy for allowing any other flexibility that is determined to be needed for
36 the effective use of technology in public education and higher education.
37 (c) Nothing in this section may be construed to conflict with a state higher education
38 institution's mission as set forth in its compact.

39 **§18-2J-5. State board and higher education policy commission approval and**
40 **adoption Unified educational technology strategic plan.**

- 41 (a) The Governor's Advisory Council for Educational Technology shall develop a
42 unified educational technology strategic plan and submit the plan to the Legislative
43 Oversight Commission on Education Accountability for approval on or before the
44 first day of October, two thousand five. On or before the first day of October in each
45 year thereafter, the Council shall update the plan and submit the plan to the
46 Commission for approval. The time line for updating and revising the rule and plan
47 also shall be in accordance with the federal E-rate discount program. The plan is not
48 effective until approved by the Commission.
49 (b) On or before the first fifteenth day of November June, two thousand four five,
50 and each year thereafter, each education technology strategic plan advisory
51 committee state institution of higher education shall submit the a education
52 technology strategic plan to the state board and the higher education policy
53 commission for approval and adoption for the next fiscal year to the Higher
54 Education Policy Commission. This time line also shall be in accordance with the

1 federal E-rate discount program. If the state board, the higher education policy
2 commission or both do not approve and adopt the plan, the state board, the higher
3 education policy commission and the education technology strategic plan advisory
4 committee shall collaborate in addressing any objection, agree to a plan and then
5 formally approve and adopt the plan agreed to. The procedure for collaboration
6 shall be determined through agreement of the state board, the higher education
7 policy commission and the education technology strategic plan advisory committee.
8 The plan shall become effective the school year following the time of approval and
9 adoption by both the state board and the higher education policy commission. The
10 plan shall be in a form and contain the information determined by the Governor's
11 Advisory Council for Educational Technology. On or before the thirtieth day of June,
12 two thousand five, and each year thereafter, the Higher Education Policy
13 Commission shall submit the plans to the Governor's Advisory Council for
14 Educational Technology for its consideration in constructing the unified educational
15 technology strategic plan.

16 **§18-2J-6. Allocation and expenditure of appropriations.**

17 (a) After the thirtieth day of June, two thousand five, notwithstanding any other
18 provision of this code to the contrary, and specifically section seven, article two-e
19 of this chapter, ~~the sState bBoard, regional education service agencies, the~~
20 ~~hHigher eEducation pPolicy cCommission~~ and the state institutions of higher
21 education shall allocate and expend state appropriations for technology in the public
22 schools or the state institutions of higher education, as appropriate, in accordance
23 with the unified educational technology strategic plan ~~except that~~ subject to the
24 following:

25 (1) ~~eExpenditures from grants which can only be used for certain purposes are not~~
26 subject required to this requirement: be made in accordance with the plan;

27 (2) If the plan is not approved by the Legislative Oversight Commission on
28 Education Accountability, the plan has no effect;

29 (3) For public education, the expenditures shall be made directly, or through lease-
30 purchase arrangements pursuant to the provisions of article three, chapter five-a of
31 this code, or through contractual agreements or grants to county boards and
32 regional education service agencies or any combination of the foregoing options as
33 shall best implement the strategic plan in the most cost effective manner-;

34 (4) ~~(b) Nothing in this section nor in the prior enactment of this section requires any~~
35 specific level of appropriation by the Legislature: restricts the expenditure of
36 educational technology funds appropriated for the fiscal year, two thousand five, for
37 the purposes for which they were allocated; and

38 (5) Except as provided in subdivision (2) of this subsection, no more than fifty
39 percent of the state appropriations for the fiscal year, two thousand six, to the
40 Department of Education for educational technology in kindergarten through the
41 twelfth grade may be expended or encumbered except in accordance with the
42 Unified educational technology strategic plan.

43 (b) Nothing in this section requires any specific level of appropriation by the
44 Legislature.

45 **§18-2J-7. Report to the fLegislative oOversight cCommission on cEducation**
46 **aAccountability.**

47 The sState bBoard and the hHigher eEducation pPolicy cCommission shall report
48 to the fLegislative oOversight cCommission on cEducation aAccountability annually
49 as soon as practical following the ~~annual adoption and approval, annual update or~~
50 revision of the unified educational technology strategic plan. Additionally, as soon
51 as practical following the annual adoption and approval of the education technology
52 strategic plan, the state board and the higher education policy commission shall
53 submit copies of the report to the joint committee on government and finance. The
54 report shall summarize include the proposed allocations of funds or planned the
55 expenditures and other related activities undertaken to achieve the objectives of the
56 plan for educational technology within the respective public school and higher

1 education systems during the past next fiscal year, all modifications made in the
2 updated education technology strategic plan and any other matters considered
3 important by the state board and the higher education policy commission to inform
4 the Legislature on the state of education technology in the public schools and the
5 institutions of higher education in accordance with the plan compared with the
6 previous year's allocations and expenditures.

Senate Bill 261

Effective Date: Passed February 25, 2005; in effect from passage.

Signed by Governor: March 8, 2005

Code Reference: Section Affected: Art. 14, §2 of State Constitution

Title: Special Election on Proposed Constitutional Amendment

Major Provisions:

- Calls for a special election to be held on June 25, 2005 for the purpose of amending the State Constitution to permit the issuance and sale of additional general obligation bonds, not to exceed \$5.5 billion, to help provide for the fiscal soundness of the State Teachers' Retirement System, the Judges' Retirement System, and the Public Safety Death, Disability and Retirement System.

1 compliance with the provisions of section three, article eleven, chapter three of the Code
2 of West Virginia; one thousand nine hundred, thirty-one, as amended.

3 **§3. Publication of notice of special election; form.**

4 The Secretary of State shall cause notice of the special election herein provided to be
5 published as a legal advertisement one time at least three months before the special
6 election in some newspaper in every county of the state in which a newspaper is printed.
7 The form of the notice shall be as follows:

8 "NOTICE OF SPECIAL ELECTION FOR RATIFICATION OR REJECTION OF
9 PROPOSED AMENDMENT TO THE CONSTITUTION OF THE STATE

10 A special election shall be held on the twenty-fifth day of June, two thousand five, for the
11 ratification or rejection of the proposed amendment to the Constitution of the state.

12 Signed:

13 _____
14 Secretary of State of the State of
15 West Virginia."

16 **§4. Conduct of and procedures for the special election; official ballot;**
17 **application of chapter three of the code; payment of costs.**

18 No question or issue other than the ratification of the proposed amendment shall be voted
19 upon at the special election herein provided for. The proposed official ballots shall be paper
20 ballots. Such official ballot shall have the same form as the ballot on constitutional
21 amendments provided in section four, article eleven, chapter three of the code. There shall
22 be but one board of election officers in each precinct consisting of three commissioners
23 and two poll clerks. Any person voting in the special election may demand a recount of the
24 results thereof in the county wherein he or she voted. Every such person who demands
25 such recount shall be required to furnish bond in a reasonable amount with good and
26 sufficient surety to guarantee costs and expenses of such recount in the event the results
27 of the special election be not changed by such recount, but the amount of the bond shall
28 in no case exceed three hundred dollars. If the result of the special election in such county
29 be not changed by such recount, the costs and expenses of such recount shall be paid by
30 the person or persons at whose insistence the same was made. The Secretary of State
31 shall declare by proclamation the result of the special election in the manner provided in
32 section six, article eleven, chapter three of the code. The costs and expenses of the
33 special election throughout the state shall be paid out of the state Treasury from funds
34 appropriated therefor.

35 Except to the extent this act expressly provides otherwise, the special election shall be
36 superintended, conducted and returned and the result thereof ascertained and certified by
37 the same officers and in the same manner as provided in chapter three of the code for a
38 general election. In any matter in which no specific provision of this act applies for the
39 conduct of any phase of the special election, those pertinent provisions of said chapter
40 three which may furnish guidance and may be made controlling shall be applied.

Senate Bill 282

Effective Date: July 1, 2005

Signed by Governor: April 28, 2005

Code Reference: Amends and reenacts §18-9D-18 of the Code of West Virginia

Title: Continuation of the School Building Authority

Major Provisions:

- The School Building Authority shall continue to exist until the first day of July, 2007, unless sooner terminated, continued or reestablished.

1 **ENROLLED**

2 **Senate Bill No. 282**

3 (By Senators Bowman, Bailey, Chafin, Jenkins, Kessler, McCabe,
4 Minard, Boley and Minear)

5
6 [Passed April 9, 2005; to take effect July 1, 2005.]
7

8 AN ACT to amend and reenact §18-9D-18 of the Code of West Virginia, 1931, as
9 amended, relating to continuation of the School Building Authority.

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

11 That §18-9D-18 of the Code of West Virginia, 1931, as amended, be amended and
12 reenacted to read as follows:

13 **ARTICLE 9D. SCHOOL BUILDING AUTHORITY.**

14 **§18-9D-18. Continuation of the School Building Authority.**

15 Pursuant to the provisions of article ten, chapter four of this code, the sSchool bBuilding
16 aAuthority shall continue to exist until the first day of July, two thousand ~~three~~ seven,
17 unless sooner terminated, continued or reestablished.

Senate Bill 347

Effective Date: Passed April 7, 2005; in effect from passage

Signed by Governor: April 21, 2005

Code Reference: Amends and reenacts §18B-17-2 and §18B-17-3

Title: Authorizing Rules to the Higher Education Policy Commission

Major Provisions:

- Authorizes the rules for the Higher Education Policy Commission and Council for Community and Technical College Education.

1
2
3
4
5
6
7
8

ENROLLED

Senate Bill No. 347

(By Senator Plymale)

[Passed April 7, 2005; in effect from passage.]

9 AN ACT to amend and reenact §18B-17-2 and §18B-17-3 of the Code of West Virginia,
10 1931, as amended, all relating to authorizing rules; Higher Education Policy
11 Commission; Council for Community and Technical College Education; Underwood-
12 Smith Teacher Scholarship Program; West Virginia Engineering, Science and
13 Technology Scholarship Program; Medical Education Fee and Medical Student
14 Loan Program; and performance indicators.

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

16 That §18B-17-2 and §18B-17-3 of the Code of West Virginia, 1931, as amended, be
17 amended and reenacted , all to read as follows:

18 **ARTICLE 17. LEGISLATIVE RULES.**

19 **§18B-17-2. Board of trustees Authorizing rules of higher education policy**
20 **commission.**

21 (a) The legislative rules filed in the state register on the ~~third~~ thirteenth day of ~~December~~
22 ~~October~~, ~~one thousand nine hundred ninety-one two thousand four~~, modified by the board
23 of trustees to meet the objections of the legislative oversight commission on education
24 accountability and refiled in the state register on the twenty-first day of January, one
25 thousand nine hundred ninety-two, relating to the board of trustees Higher Education Policy
26 Commission (report card Underwood-Smith Teacher Scholarship Program rule); are is
27 authorized.

28 (b) The legislative rules filed in the ~~s~~State ~~r~~Register on the ~~thirteenth~~ fifteenth day of ~~July~~
29 ~~October~~, ~~one thousand nine hundred ninety-one two thousand four~~, relating to the board
30 of trustees Higher Education Policy Commission (equal opportunity and affirmative action
31 West Virginia Engineering, Science and Technology Scholarship Program rule); are is
32 authorized.

33 (c) The legislative rules filed in the ~~s~~State ~~r~~Register on the ~~eighth~~ fifteenth day of ~~September~~
34 ~~October~~, ~~one thousand nine hundred ninety-two two thousand four~~, relating to the board of
35 trustees Higher Education Policy Commission (holidays Medical Education Fee and
36 Medical Student Loan Program rule); are is authorized.

37 (d) The legislative rules filed in the state register on the third day of April, one thousand nine
38 hundred ninety-two, relating to the board of trustees (alcoholic beverages on campuses);
39 are authorized.

40 (e) The legislative rules filed in the state register on the fifteenth day of November, one
41 thousand nine hundred ninety-three, relating to the board of trustees (acceptance of
42 advanced placement credit), are authorized.

43 (f) The legislative rules filed in the state register on the thirteenth day of December, one
44 thousand nine hundred ninety-three, modified by the board of trustees to meet the
45 objections of the legislative oversight commission on education accountability and refiled
46 in the state register on the twenty-first day of January, one thousand nine hundred ninety-
47 four, relating to the board of trustees (assessment, payment and refund of fees), are
48 authorized.

49 (g) The legislative rules filed in the state register on the first day of November, one thousand
50 nine hundred ninety-three, modified by the board of trustees to meet the objections of the
51 legislative oversight commission on education accountability and refiled in the state register
52 on the twenty-first day of December, one thousand nine hundred ninety-three, relating to
53 the board of trustees (personnel administration), are authorized.

1 (h) The legislative rules filed in the state register on the twenty-seventh day of January, one
2 thousand nine hundred ninety-four, relating to the board of trustees (resource allocation
3 policy), are authorized.

4 (i) The legislative rules filed in the state register on the fourth day of December, one
5 thousand nine hundred ninety-five, modified by the board of trustees to meet the objections
6 of the legislative oversight commission on education accountability and refiled in the state
7 register on the fifteenth day of February, one thousand nine hundred ninety-six, relating to
8 the board of trustees (higher education report card), are authorized.

9 (j) The legislative rules filed in the state register on the nineteenth day of December, one
10 thousand nine hundred ninety-seven, relating to the board of trustees (Underwood-Smith
11 teacher scholarship program), are authorized.

12 (k) The legislative rules filed in the state register on the third day of September, one
13 thousand nine hundred ninety-nine, modified by the board of trustees to meet the objections
14 of the legislative oversight commission on education accountability and refiled in the state
15 register on the fourth day of November, one thousand nine hundred ninety-nine, relating to
16 the board of trustees (higher education adult part-time student grant program), are
17 authorized.

18 (l) The legislative rules filed in the state register on the fourth day of November, one
19 thousand nine hundred ninety-nine, modified by the board of trustees to meet the objections
20 of the legislative oversight commission on education accountability and refiled in the state
21 register on the twenty-eighth day of January, two thousand, relating to the board of trustees
22 (engineering, science and technology scholarship program), are authorized.

23 (m) The legislative rules filed in the state register on the eleventh day of August, two
24 thousand, relating to the board of trustees (reduced tuition and fee program for state
25 residents who are at least sixty-five years of age), are authorized.

26 **§18B-17-3. Board of Directors Authorizing rule of the council for community and**
27 **technical college education.**

28 (a) The legislative rules filed in the state register on the sixteenth twenty-ninth day of
29 December September, one thousand nine hundred ninety-one two thousand four, modified
30 by the board of directors to meet the objections of the legislative oversight commission on
31 education accountability and refiled in the state register on the twenty-first day of January,
32 one thousand nine hundred ninety-two, relating to the board of directors Council for
33 Community and Technical College Education (report card performance indicators rule), are
34 is authorized.

35 (b) The legislative rules filed in the state register on the twenty-seventh day of September,
36 one thousand nine hundred ninety-one, relating to the board of directors (equal opportunity
37 and affirmative action), are authorized.

38 (c) The legislative rules filed in the state register on the fourth day of December, one
39 thousand nine hundred ninety-one, relating to the board of directors (holiday policy), are
40 authorized.

41 (d) The legislative rules filed in the state register on the nineteenth day of March, one
42 thousand nine hundred ninety-two, as modified and refiled in the state register on the tenth
43 day of July, one thousand nine hundred ninety-two, relating to the board of directors
44 (presidential appointments, responsibilities and evaluations), are authorized.

45 (e) The legislative rules filed in the state register on the twentieth day of September, one
46 thousand nine hundred ninety-three, relating to the board of directors (acceptance of
47 advanced placement credit), are authorized.

48 (f) The legislative rules filed in the state register on the tenth day of December, one
49 thousand nine hundred ninety-three, relating to the board of directors (resource allocation
50 policy), are authorized.

51 (g) The legislative rules filed in the state register on the eighth day of December, one
52 thousand nine hundred ninety-three, modified by the board of directors to meet the
53 objections of the legislative oversight commission on education accountability and refiled
54 in the state register on the eleventh day of January, one thousand nine hundred ninety-

1 four, relating to the board of directors (assessment, payment and refund of fees), are authorized.
2 (h) The legislative rules filed in the state register on the first day of November, one
3 thousand nine hundred ninety-three, modified by the board of directors to meet the
4 objections of the legislative oversight commission on education accountability and refiled
5 in the state register on the twenty-first day of December, one thousand nine hundred
6 ninety-three, relating to the board of directors (personnel administration), are authorized.
7 (i) The legislative rules filed in the state register on the twenty-seventh day of October, one
8 thousand nine hundred ninety-four, modified by the board of directors to meet the
9 objections of the legislative oversight commission on education accountability and refiled
10 in the state register on the nineteenth day of December, one thousand nine hundred
11 ninety-four, relating to the board of directors (proprietary, correspondence, business,
12 occupational and trade schools), are authorized.
13 (j) The legislative rules filed in the state register on the eighteenth day of April, one
14 thousand nine hundred ninety-five, relating to the board of directors (contracts and
15 consortium agreements with public schools, private schools or private industry), are
16 authorized.
17 (k) The legislative rules filed in the state register on the seventeenth day of November, one
18 thousand nine hundred ninety-five, modified by the board of directors to meet the
19 objections of the legislative oversight commission on education accountability and refiled
20 in the state register on the fourth day of January, one thousand nine hundred ninety-six,
21 relating to the board of directors (higher education report cards), are authorized.
22 (l) The legislative rules filed in the state register on the nineteenth day of December, one
23 thousand nine hundred ninety-seven, relating to the board of directors (Underwood-Smith
24 teacher scholarship program), are authorized.
25 (m) The legislative rules filed in the state register on the ninth day of December, one
26 thousand nine hundred ninety-nine, relating to the board of directors (increased flexibility
27 for freestanding community and technical colleges), are authorized.
28 (n) The legislative rules filed in the state register on the third day of September, one
29 thousand nine hundred ninety-nine, modified by the board of directors to meet the
30 objections of the legislative oversight commission on education accountability and refiled
31 in the state register on the fourth day of November, one thousand nine hundred ninety-
32 nine, relating to the board of directors (higher education adult part-time student grant
33 program), are authorized.
34 (o) The legislative rules filed in the state register on the fourth day of November, one
35 thousand nine hundred ninety-nine, modified by the board of directors to meet the
36 objections of the legislative oversight commission on education accountability and refiled
37 in the state register on the twenty-eighth day of January, two thousand, relating to the
38 board of directors (engineering, science and technology scholarship program), are
39 authorized.
40 (p) The legislative rules filed in the state register on the twelfth day of June, two thousand,
41 relating to the board of directors (reduced tuition and fee program for state residents who
42 are at least sixty-five years of age), are authorized.

Senate Bill 419

Effective Date: Passed April 9, 2005; to take effect July 1, 2005

Signed by Governor: April 21, 2005

Code Reference: Adds a new article, designated §7-23-1, §7-23-2, and §7-23-3

Title: Creating Local Government Flexibility Act

Major Provisions:

- Allows county commissions, municipalities, and county boards of education to apply to the Governor for a waiver of a policy, rule or regulation that the body believes is preventing it from carrying out its duties and responsibilities in the most cost efficient, effective and timely manner.
- The chief executive officer of the body (county superintendent) may file the waiver application with the Secretary of Commerce, who shall evaluate the application and make a recommendation to the Governor.
- The Governor shall take only action he/she believes to be appropriate and that is within his/her authority and, if he/she believes that a statutory change is needed, shall bring the matter to the attention of the Speaker of the House and President of the Senate.

1 ENROLLED
2 COMMITTEE SUBSTITUTE
3 FOR
4 Senate Bill No. 419

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

7
8 [Passed April 9, 2005; to take effect July 1, 2005.]
9

10 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new
11 article, designated §7-23-1, §7-23-2 and §7-23-3, all providing that counties,
12 municipalities and county boards of education be allowed relief from certain policies,
13 rules and regulations.

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

15 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
16 article, designated §7-23-1, §7-23-2 and §7-23-3, all to read as follows:

17 **ARTICLE 23. LOCAL GOVERNMENT FLEXIBILITY ACT.**

18 **§7-23-1. Short title.**

19 This article may be cited as the Local Government Flexibility Act of 2005. No inference,
20 implication or presumption of legislative construction shall be drawn or made by reason of
21 the location or grouping of any particular section, provision or portion of this article. No
22 legal effect shall be given to any descriptive matter or heading relating to any part, section,
23 subdivision or paragraph of this article.

24 **§7-23-2. Legislative intent and findings.**

25 (a) Legislative intent. -- It is the intent of the Legislature in enacting this article to provide
26 a framework within which new ideas can be explored to see if they can or should be
27 implemented on a statewide basis.

28 (b) Legislative findings. -- The Legislature finds and declares that:

29 (1) County commissions, municipalities and county boards of education today face
30 numerous challenges managing their budgets and other resources and delivering services
31 required by federal or state law or demanded by their constituents.

32 (2) Local units of government are sometimes restricted by policies, rules and regulations
33 that prevent them from carrying out their duties and responsibilities in a cost effective,
34 efficient and timely manner. To address this concern, this pilot program includes a waiver
35 program whereby county commissions, municipalities and county boards of education may
36 apply to the Governor for waiver of a specific policy, rule or regulation.

37 **§7-23-3. Flexibility for county commissions, municipalities and county boards of**
38 **education.**

39 (a) Application for waiver of policies, rules and regulations.

40 (1) The purpose of this section is to provide a procedure by which county commissions,
41 municipalities and county boards of education may apply for waiver of a policy, rule or
42 regulation the commission, municipality or board believes is preventing it from carrying out
43 its duties and responsibilities in the most cost efficient, effective and timely manner.

44 (2) The chief executive officer of a county commission, municipality or county board of
45 education may file with the Secretary of Commerce an application for waiver of a policy,
46 rule or regulation he or she believes is preventing the commission, municipality or board
47 from carrying out its duties in the most cost efficient, effective and timely manner.

48 (3) The application shall be made in writing and be in the form prescribed by the Secretary
49 of Commerce for that purpose. The application shall, at a minimum, require the applicant

1 to provide the official citation of the policy, rule or regulation for which waiver is sought. If
2 there is no official citation, a copy of the policy or letter from which a waiver is sought shall
3 be attached to the application. The applicant shall describe in sufficient detail the problem
4 created by the policy, rule or regulation for which waiver is sought and describe in sufficient
5 detail how the waiver will allow the applicant to carry out the applicant's duties in the most
6 cost efficient, effective and timely manner.

7 *(b) Review by Secretary of Commerce.* -- Upon receipt of an application as provided in
8 subsection (a) of this section, the Secretary of Commerce may conduct an investigation
9 or inquiry to gather any additional information necessary to evaluate the application. The
10 Secretary of Commerce shall periodically submit to the Governor a written report
11 summarizing the applications and any recommendations for applications the Secretary of
12 Commerce determines in his or her discretion to forward to the Governor for disposition in
13 accordance with this section. The Secretary of Commerce is granted no authority under
14 this section to issue any waiver.

15 *(c) Review by Governor.* -- Upon receipt of the summary and recommendations of the
16 Secretary of Commerce, the Governor may take any action he or she considers
17 appropriate under the circumstances that is within the authority granted to the Governor
18 by the laws of this state. Whenever the Governor believes a statutory change is needed,
19 the Governor shall bring the matter to the attention of the Speaker of the House of
20 Delegates and the President of the Senate.

Senate Bill 521

Effective Date: 90 days from passage (April 9, 2005)

Signed by Governor: April 21, 2005

Code Reference: A new section, designated §18-2-37

Title: State Board study on Flood Insurance and General Property Insurance.

Major Provisions:

- The State Board of Education shall conduct a study on the feasibility of requiring flood insurance, general property insurance or both on all buildings owned by the Board and the contents of those buildings.
- The State Board of Education shall report to LOCEA before December 1, 2005 and make recommendations regarding any appropriate legislation.

Senate Bill 585

Effective Date: Passed April 9, 2005; in effect ninety days from passage

Signed by Governor: April 21, 2005

Code Reference: Amends and reenacts §49-5-17

Title: Allowing Disclosure of Juvenile Records in Certain Cases

Major Provisions:

- Authorizes the disclosure of juvenile records, pursuant to court order, to certain courts, including out of state.
- Authorizes the disclosure of juvenile records to a probation officer with approval from the supervising judge.
- Authorizes the disclosure of juvenile case information to a probation officer, without a court order, from any electronic database maintained by or for the Supreme Court of Appeals.
- Authorizes the disclosure of juvenile records in response to any lawfully issued subpoena from a federal court or federal agency.

1 **ENROLLED**

2 **Senate Bill No. 585**

3 (By Senators Kessler, Dempsey, Foster, Hunter, Jenkins, Minard, Oliverio, White,
4 Barnes, Caruth, Deem, Harrison, Lanham, McKenzie and Weeks)

5
6 [Passed April 9, 2005; in effect ninety days from passage.]
7

8 AN ACT to amend and reenact §49-5-17 of the Code of West Virginia, 1931, as amended,
9 relating to juvenile proceedings and confidentiality of juvenile records; and
10 permitting disclosure of same under specified circumstances.

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

12 That §49-5-17 of the Code of West Virginia, 1931, as amended, be amended and
13 reenacted to read as follows:

14 **ARTICLE 5. JUVENILE PROCEEDINGS.**

15 **§49-5-17. Confidentiality of juvenile records.**

16 (a) Records of a juvenile proceeding conducted under this chapter are not public records
17 and shall not be disclosed to anyone unless disclosure is otherwise authorized by this section.

18 (b) Notwithstanding the provisions of subsection (a) of this section, a copy of a juvenile's
19 records shall automatically be disclosed to certain school officials, subject to the following
20 terms and conditions:

21 (1) Only the records of certain juveniles shall be disclosed. These include, and are limited
22 to, cases in which:

23 (A) The juvenile has been charged with an offense which:

24 (i) Involves violence against another person;

25 (ii) Involves possession of a dangerous or deadly weapon; or

26 (iii) Involves possession or delivery of a controlled substance as that term is defined in
27 section one hundred one, article one, chapter sixty-a of this code; and

28 (B) The juvenile's case has proceeded to a point where one or more of the following has
29 occurred:

30 (i) A judge, magistrate or referee has determined that there is probable cause to believe
31 that the juvenile committed the offense as charged;

32 (ii) A judge, magistrate or referee has placed the juvenile on probation for the offense;

33 (iii) A judge, magistrate or referee has placed the juvenile into an improvement period in
34 accordance with section nine of this article; or

35 (iv) Some other type of disposition has been made of the case other than dismissal.

36 (2) The circuit court for each judicial circuit in West Virginia shall designate one person to
37 supervise the disclosure of juvenile records to certain school officials.

38 (3) If the juvenile attends a West Virginia public school, the person designated by the
39 circuit court shall automatically disclose all records of the juvenile's case to the county
40 superintendent of schools in the county in which the juvenile attends school and to the
41 principal of the school which the juvenile attends, subject to the following:

42 (A) At a minimum, the records shall disclose the following information:

43 (i) Copies of the arrest report;

44 (ii) Copies of all investigations;

45 (iii) Copies of any psychological test results and any mental health records;

46 (iv) Copies of any evaluation reports for probation or facility placement; and

47 (v) Any other material that would alert the school to potential danger that the juvenile may
48 pose to himself, herself or others;

49 (B) The disclosure of the juvenile's psychological test results and any mental health records
50 shall only be made in accordance with subdivision (14) of this subsection;

51 (C) If the disclosure of any record to be automatically disclosed under this section is

1 restricted in its disclosure by the Health Insurance Portability and Accountability Act of
2 1996 and any amendments and regulations under the Act, the person designated by the
3 circuit court shall provide the superintendent and principal any notice of the existence of
4 the record that is permissible under the Act and, if applicable, any action that is required
5 to obtain the record; and
6 (D) When multiple disclosures are required by this subsection, the person designated by
7 the circuit court is required to disclose only material in the juvenile record that had not
8 previously been disclosed to the county superintendent and the principal of the school
9 which the juvenile attends.

10 (4) If the juvenile attends a private school in West Virginia, the person designated by the
11 circuit court shall determine the identity of the highest ranking person at that school; and
12 shall automatically disclose all records of a juvenile's case to that person.

13 (5) If the juvenile does not attend school at the time the juvenile's case is pending, the
14 person designated by the circuit court shall not transmit the juvenile's records to any
15 school. However, the person designated by the circuit court shall transmit the juvenile's
16 records to any school in West Virginia which the juvenile subsequently attends.

17 (6) The person designated by the circuit court shall not automatically transmit juvenile
18 records to a school which is not located in West Virginia. Instead, the person designated
19 by the circuit court shall contact the out-of-state school, inform it that juvenile records exist;
20 and make an inquiry regarding whether the laws of that state permit the disclosure of
21 juvenile records. If so, the person designated by the circuit court shall consult with the
22 circuit judge who presided over the case to determine whether the juvenile records should
23 be disclosed to the out-of-state school. The circuit judge shall have discretion in
24 determining whether to disclose the juvenile records; and shall consider whether the other
25 state's law regarding disclosure provides for sufficient confidentiality of juvenile records,
26 using this section as a guide. If the circuit judge orders the juvenile records to be disclosed,
27 they shall be disclosed in accordance with the provisions of subdivision (7) of this subsection.

28 (7) The person designated by the circuit court shall transmit the juvenile's records to the
29 appropriate school official under cover of a letter emphasizing the confidentiality of such
30 records and directing the official to consult this section of the code. A copy of this section
31 of the code shall be transmitted with the juvenile's records and cover letter.

32 (8) Juvenile records must be treated as absolutely confidential by the school official to
33 whom they are transmitted, and nothing contained within the juvenile's records shall be
34 noted on the juvenile's permanent educational record. The juvenile records are to be
35 maintained in a secure location and are not to be copied under any circumstances.
36 However, the principal of a school to whom the records are transmitted shall have the duty
37 to disclose the contents of those records to any teacher who teaches a class in which the
38 subject juvenile is enrolled and to the regular driver of a school bus in which the subject
39 juvenile is regularly transported to or from school, except that the disclosure of the
40 juvenile's psychological test results and any mental health records shall only be made in
41 accordance with subdivision (14) of this subsection. Furthermore, any school official to
42 whom the juvenile's records are transmitted may disclose the contents of such records to
43 any adult within the school system who, in the discretion of the school official, has the need
44 to be aware of the contents of those records.

45 (9) If for any reason a juvenile ceases to attend a school which possesses that juvenile's
46 records, the appropriate official at that school shall seal the records and return them to the
47 circuit court which sent them to that school. If the juvenile has changed schools for any
48 reason, the former school shall inform the circuit court of the name and location of the new
49 school which the juvenile attends or will be attending. If the new school is located within
50 West Virginia, the person designated by the circuit court shall forward the juvenile's records
51 to the juvenile's new school in the same manner as provided in subdivision (7) of this
52 subsection. If the new school is not located within West Virginia, the person designated by
53 the circuit court shall handle the juvenile records in accordance with subdivision (6) of this
54 subsection.

55 If the juvenile has been found not guilty of an offense for which records were previously

1 forwarded to the juvenile's school on the basis of a finding of probable cause, the circuit
2 court shall not forward those records to the juvenile's new school. However, this shall not
3 affect records related to other prior or future offenses. If the juvenile has graduated or quit
4 school; or will otherwise not be attending another school, the circuit court shall retain the
5 juvenile's records and handle them as otherwise provided in this article.

6 (10) Under no circumstances shall one school transmit a juvenile's records to another school.

7 (11) Under no circumstances shall juvenile records be automatically transmitted to a
8 college, university or other post-secondary school.

9 (12) No one shall suffer any penalty, civil or criminal, for accidentally or negligently
10 attributing certain juvenile records to the wrong person. However, such person shall have
11 the affirmative duty to promptly correct any mistake that he or she has made in disclosing
12 juvenile records when the mistake is brought to his or her attention. A person who
13 intentionally attributes false information to a certain person shall be subjected to both
14 criminal and civil penalties; in accordance with subsection (e) of this section.

15 (13) If a judge, magistrate or referee has determined that there is probable cause to
16 believe that a juvenile has committed an offense but there has been no final adjudication
17 of the charge, the records which are transmitted by the circuit court shall be accompanied
18 by a notice which clearly states in bold print that there has been no determination of
19 delinquency and that our legal system requires a presumption of innocence.

20 (14) The county superintendent shall designate the school psychologist or psychologists
21 to receive the juvenile's psychological test results and any mental health records. The
22 psychologist designated shall review the juvenile's psychological test results and any
23 mental health records; and, in the psychologist's professional judgment, may disclose to
24 the principal of the school that the juvenile attends and other school employees who would
25 have a need to know the psychological test results, mental health records and any
26 behavior that may trigger violence or other disruptive behavior by the juvenile. Other school
27 employees include, but are not limited to, any teacher who teaches a class in which the
28 subject juvenile is enrolled and the regular driver of a school bus in which the subject
29 juvenile is regularly transported to or from school.

30 (c) Notwithstanding the provisions of subsection (a) of this section, juvenile records may
31 be disclosed, subject to the following terms and conditions:

32 (1) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant
33 to the provisions of subsection (c) or (d), section ten of this article, the juvenile records
34 shall be open to public inspection.

35 (2) If a juvenile case is transferred to the criminal jurisdiction of the circuit court pursuant
36 to the provisions of subsection (e), (f) or (g), section ten of this article, the juvenile records
37 shall be open to public inspection only if the juvenile fails to file a timely appeal of the
38 transfer order, or the Supreme Court of Appeals refuses to hear or denies an appeal which
39 has been timely filed.

40 (3) If a juvenile is fourteen years of age or older and a court has determined there is a
41 probable cause to believe the juvenile committed an offense set forth in subsection (g),
42 section ten of this article, but the case is not transferred to criminal jurisdiction, the juvenile
43 records shall be open to public inspection pending trial only if the juvenile is released on
44 bond and no longer detained or adjudicated delinquent of the offense.

45 (4) If a juvenile is younger than fourteen years of age and a court has determined there is
46 probable cause to believe that the juvenile committed the crime of murder under section
47 one, two or three, article two, chapter sixty-one of this code, or the crime of sexual assault
48 in the first degree under section three, article eight-b of said chapter, but the case is not
49 transferred to criminal jurisdiction, the juvenile records shall be open to public inspection
50 pending trial only if the juvenile is released on bond and no longer detained or adjudicated
51 delinquent of the offense.

52 (5) Upon a written petition and pursuant to a written order, the circuit court may permit
53 disclosure of juvenile records to:

54 (A) A court, in this state or another state, which has juvenile jurisdiction and has the
55 juvenile before it in a juvenile proceeding;

1 (B) A court, in this state or another state, exercising criminal jurisdiction over the juvenile
2 which requests such records for the purpose of a presentence report or disposition proceeding;
3 (C) The juvenile, the juvenile's parents or legal guardian, or the juvenile's counsel;
4 (D) The officials of a public institution to which the juvenile is committed if they require such
5 records for transfer, parole or discharge; or
6 (E) A person who is conducting research. However, juvenile records may be disclosed for
7 research purposes only upon the condition that information which would identify the subject
8 juvenile or the juvenile's family shall not be disclosed.
9 (6) Notwithstanding any other provision of this code, juvenile records shall be disclosed,
10 or copies made available, to a probation officer upon his or her written request and
11 approved by his or her supervising circuit court judge: *Provided*, That the clerk of the court
12 shall file the written request and the judge's approval in the juvenile's record and note
13 therein the date and scope of the actual disclosure: *Provided, however*, That any probation
14 officer may, without a court order, access relevant juvenile case information contained in
15 any electronic database maintained by or for the Supreme Court of Appeals and share it
16 with any other probation officer in the same or a different circuit.
17 (7) Notwithstanding any other provision of this code, juvenile records shall be disclosed,
18 or copies made available, in response to any lawfully issued subpoena from a federal court
19 or federal agency.
20 (d) Any records open to public inspection pursuant to the provisions of this section are
21 subject to the same requirements governing the disclosure of adult criminal records.
22 (e) Any person who willfully violates this section is guilty of a misdemeanor and, upon
23 conviction thereof, shall be fined not more than one thousand dollars, or confined in the
24 county or regional jail for not more than six months, or both fined and confined; and shall
25 be liable for damages in the amount of three hundred dollars or actual damages, whichever
26 is greater.

Senate Bill 603

Effective Date: Passed April 9, 2005; in effect July 1, 2005

Signed by Governor: May 4, 2005

Code Reference: Repeals §18B-1-7, §18B-1-9, §18B-2-2, §18B-2-3, §18B-3-5, §18B-3-7, §18B-5-2d; amends and reenacts §5G-1-2 by adding new section §12-1-12b; amends and reenacts §12-3-5, §12-3-6, §12-3-7, §12-3-8; amends and reenacts §18-2-23a by adding new sections §18-2-24, §18A-3-11; amends and reenacts §18A-3A-1, §18A-3A-2b by adding new section §18A-3A-6; amends and reenacts §18B-1-3, §18B-1-6; amends and reenacts §18B-1A-2, §18B-1-6; amends and reenacts §18B-1B-4, §18B-1B-5, §18B-1B-6; adds new section §18B-1B-13; amends and reenacts §18B-2A-3, §18B-2A-4 and adds new sections §18B-2A-7, §18B-2B-9; amends and reenacts §18B-3-1, §18B-3-2, §18B-3-3 and adds new section §18B-3-4; amends and reenacts §18B-4-5, §18B-4-5a, §18B-4-6, §18B-4-7, §18B-5-3, §18B-5-4, §18B-5-7, §18B-5-9 and adds new section §18B-5-10; amends and reenacts §18B-10-1, §18B-10-5, §18B-10-6 and adds new section §18B-10-6a; adds new section §18B-11-7; amends and reenacts §18B-14-11

Title: Relating to public and higher education generally, various professional development issues, reconstituting the Center for Professional Development (CPD)

Major Provisions:

- Among the intentions of the new legislation relating to the annual professional development goals of the State Board of Education is ensuring that the expertise and experience of those higher education institutions with teacher preparation programs are included in developing and implementing professional development programs.
- The Board's professional staff development goals shall include separate goals for teachers, principals and paraprofessional service personnel and may include separate goals for classroom aides and others in the public schools.
- When designing and implementing the proposed professional staff development plan to submit to the State Board of Education for approval, the Center for Professional Development shall first rely upon the available expertise and experience of state institutions of higher education before procuring advice, technical assistance or

- consulting services from sources outside the state.
- New legislative language emphasizes establishing a structure to enhance collaboration between the teacher preparation institutions, the Center for Professional Development, and the regional education services agencies (RESAs) in providing professional development.
- Marshall University (MU) and West Virginia University (WVU) have the most capacity among the state's higher education institutions to handle additional responsibilities for collaboration on professional development services.
- The State Board's authority over the RESAs can be used to motivate the agencies to collaborate with the teacher preparation institutions in providing professional development and will serve as a point of accountability for the collaboration efforts of the agencies.
- WVU and MU shall collaborate with the CPD in performing the Center's duties with the collaboration including at least:
 - o including the teacher preparation institutions in the proposed professional staff development program plan;
 - o providing any available research-based expertise that would be helpful in the design of the proposed professional staff development program plan;
 - o providing any available research-based expertise that would be helpful in the implementation of the professional staff development program plan;
 - o arranging for other state institutions of higher education having a teacher preparation program to assist the Center when that assistance would be helpful.
- All teacher preparation institutions shall collaborate with the RESA of the service area in which the institution is located for the purposes of:
 - o preventing unnecessary duplication of services;
 - o assisting in the implementation of the professional development programs of the RESA;
 - o assisting the RESA in obtaining any available grants for professional development or to apply for any available grant with the agency collaboratively.
- The coordination area of WVU includes RESAs V, VI, VII, VIII; the coordination area of MU includes RESAs I, II, III, IV.
- Before a RESA obtains professional development related services or expertise from any teacher preparation institution outside of that agency's service area, the agency shall inform the CPD Board.
- The collaboration and coordination requirements include collaborating and coordinating to provide professional development for at least teachers, principals and paraprofessionals.

- The Legislative Oversight Commission on Education Accountability shall cause a study to be conducted to determine and to recommend standards and best practices for professional development that are focused on advancing student achievement. The study and a final report of recommendations shall be completed prior to September 1, 2005.
- The CPD Board is reconstituted to consist of 13 persons including the State Superintendent of Schools and the Secretary of Education and the Arts who cochair the Board, two State Board of Education members, one person employed by both WVU and MU, one RESA Executive Director, three experienced educators (one is a working classroom teacher, one is a school principal, one is a county administrator), three citizens of the state.
- The Executive Director position of the CPD is abolished and replaced with a Chief Executive Officer who is appointed by the Governor and serves at the will and pleasure of the Governor.
- The Center Board shall make collaboration with the State Board in providing professional development services to those public schools selected by the State Superintendent and services in any specific submit matter determined by the State Board or Legislature.
- The Center Board shall employ a Coordinator of the Principals Academy who will coordinate and focus primarily on the Principals Academy.
- A professional educator may not be required to attend the principals academy or any other program offered through the CPD outside his/her employment term. A professional employee may attend the academy or other program outside his/her employment term by mutual agreement between the Center, the educator, and his/her employer.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 603

(By Senators Tomblin, Mr. President, and Sprouse,

By Request of the Executive)

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14

AN ACT to repeal §18B-1-7 and §18B-1-9 of the Code of West Virginia, 1931, as amended; to repeal §18B-2-1, §18B-2-2 and §18B-2-3 of said code; to repeal §18B-3-5 and §18B-3-7 of said code; to repeal §18B-5-2d of said code; to amend and reenact §5-6-4a of said code ; to amend and reenact §5G-1-2 of said code ; to amend said code by adding thereto a new section, designated §12-1-12b; to amend and reenact §12-3-5, §12-3-6, §12-3-7 and §12-3-8 of said code; to amend and

1 reenact §18-2-23a of said code; to amend said code by adding thereto a new
2 section, designated §18-2-24; to amend said code by adding thereto a new section,
3 designated §18A-3-11; to amend and reenact §18A-3A-1 and §18A-3A-2b of said
4 code; to amend said code by adding thereto a new section, designated §18A-3A-
5 6; to amend and reenact §18B-1-3 and §18B-1-6 of said code; to amend and
6 reenact §18B-1A-2 and §18B-1A-6 of said code; to amend and reenact §18B-1B-4,
7 §18B-1B-5 and §18B-1B-6 of said code; to amend said code by adding thereto a
8 new section, designated §18B-1B-13; to amend and reenact §18B-2A-3 and §18B-
9 2A-4 of said code; to amend said code by adding thereto a new section, designated
10 §18B-2A-7 ; to amend said code by adding thereto a new section, designated §18B-
11 2B-9; to amend and reenact §18B-3-1, §18B-3-2 and §18B-3-3 of said code; to
12 amend said code by adding thereto a new section, designated §18B-3-4; to amend
13 and reenact §18B-4-5, §18B-4-5a, §18B-4-6 and §18B-4-7 of said code; to amend
14 and reenact §18B-5-3, §18B-5-4, §18B-5-7 and §18B-5-9 of said code; to amend
15 said code by adding thereto a new section, designated §18B-5-10; to amend and
16 reenact §18B-10-1, §18B-10-5 and §18B-10-6 of said code; to amend said code by
17 adding thereto a new section, designated §18B-10-6a; to amend said code by
18 adding thereto a new section, designated §18B-11-7; and to amend and reenact
19 §18B-14-11 of said code, all relating to public and higher education generally;
20 authorizing and requiring certain electronic requisitions; exempting certain
21 institutions from providing certain documentation with requisitions; requiring certain
22 institutions to submit certain documentation to Joint Committee on Government and
23 Finance; expanding certain professional development provisions; establishing a
24 structure to enhance collaboration between certain state and regional entities in
25 providing professional development; requiring certain state and regional entities to
26 ensure coordination and collaboration in professional development efforts and
27 designating certain priorities for professional development; limiting the
28 circumstances for procuring out-of-state services regarding certain professional
29 development issues; reconstituting the Center for Professional Development Board
30 and modifying its membership, duties and certain required employee provisions;
31 creating position of Chief Executive Officer; requiring certain professional
32 development studies and reports; creating the position of Coordinator of the
33 Principals Academy; prohibiting the required attendance of certain employees at
34 certain professional development programs under certain circumstances until date
35 certain; transferring powers, authorities, responsibilities and duties between certain
36 entities; definitions; requiring transfer of real property under certain circumstances
37 from Higher Education Policy Commission to certain institutions; clarifying
38 requirements for promulgation of higher education rules; requiring certain
39 institutions to promulgate certain rules; establishing certain requirements for rule
40 adoption, validation, enforcement and reporting; limiting certain authorities when
41 rules not adopted; clarifying legislative intent relating to mission of certain
42 institutions; limiting Policy Commission jurisdiction, power, responsibility and
43 authority regarding certain institutions; modifying Policy Commission duties;
44 modifying salary limit of Chancellor for Higher Education; specifying limitation of
45 certain entities on exercising certain authorities and fulfilling certain responsibilities;
46 modifying responsibility for assigning institutions' geographic areas of responsibility;
47 modifying participation requirements and authorization for certain state institutions
48 of higher education to offer graduate programs under certain circumstances and
49 expanding the authorized institutions to offer such programs; modifying certain
50 academic program approval provisions; transferring to certain institutions authority
51 regarding certain capital project management and arrangements; preserving the
52 jurisdiction and authority of certain higher education entities to manage technology;
53 clarifying authority of Policy Commission to assess certain fees; specifying when
54 discharging certain duties requires consultation among various higher education
55 entities; transferring to certain institutions authority to approve tuition and fee

1 increases and set standards for conferring degrees; exempting certain institutions
2 from Policy Commission approval requirements for executing certain documents,
3 instruments, purchases and procurements; requiring disease awareness initiatives;
4 requiring study and report of recommendations relating to higher education
5 personnel issues; establishing scope of personnel study and charges for
6 implementation; requiring employee participation; modifying requirements and
7 authorities regarding delegation of powers by certain higher education entities;
8 providing for disability insurance for employees; providing flexibility measures for
9 certain state institutions of higher education and providing for future application of
10 flexibility measures to additional state institutions of higher education; modifying
11 governance by the Council For Community and Technical College Education;
12 expanding and modifying the powers and duties of research, doctoral-granting
13 public universities and their governing boards; providing legislative findings, purpose
14 and intent for such expansion and modification; expanding authority for certain
15 institutions and establishing parameters and procedures for donating certain surplus
16 computers and related items; limiting application to certain institutions of certain
17 surplus item disposal authority; defining the relationship between the Policy
18 Commission and certain governing boards and between the West Virginia Council
19 for Community and Technical College Education and certain governing boards;
20 establishing and defining the duties of certain governing boards to address state
21 priorities and the goals for post-secondary education established by the Legislature;
22 defining state priorities; requiring annual report of progress; expanding penalty
23 options and jurisdiction of certain parking and vehicle operating violations for certain
24 institutions; specifying certain acceptable qualifications for employment as campus
25 police officer at certain institutions; expanding authority of certain campus police
26 officers; expanding responsibility of certain institutions to investigate certain crimes;
27 exempting certain institutions from requirements to participate in certain cooperative
28 purchasing and operating arrangements; modifying format and documentation
29 requirements for acceptance of certain documents by State Auditor; expanding
30 permissible uses for purchase card; transferring to State Auditor certain duties
31 regarding purchase cards; transferring to State Auditor authority to approve certain
32 purchase card payments designated to exceed the purchase amount limits and to
33 set the amount by which such payments may exceed the limits; modifying for certain
34 institutions certain document submission requirements for travel expense
35 reimbursement; specifying responsibility of certain institutions for ensuring fiscal
36 integrity of operations; establishing requirements for implementing best business
37 and management practices for certain institutions, including certain required reports;
38 limiting and clarifying certain document approval authority of the Attorney General;
39 authorizing state medical and health professionals schools to participate in self-
40 insurance retention programs pursuant to certain conditions; authorizing state Board
41 of Risk and Insurance Management to enter into agreements with state medical and
42 health professionals schools to develop and implement self-insurance retention
43 programs; requiring plan review by state Insurance Commissioner prior to
44 implementing self-insurance retention programs; authorizing Insurance
45 Commissioner and state Board of Risk and Insurance Management to promulgate
46 emergency rules; expanding discretion of certain institutions to offer undergraduate-
47 and graduate-level fee waivers, eliminating certain waiver award restrictions and
48 requiring rule governing waivers; requiring certain institutions to establish a nonprofit
49 Regional Brownfield Assistance Center; defining Assistance Center service regions;
50 establishing Assistance Center powers and duties; providing temporary
51 authorization to engage in alternative investment options for certain moneys of
52 certain state institutions of higher education and including a set expiration date for
53 such authorization; creating Governor's Commission on Graduate Study in Science,
54 Technology, Engineering and Mathematics; establishing membership; assigning
55 charge to Commission; providing legislative findings and requiring report to

1 Legislative Oversight Commission on Education Accountability; deleting, repealing
2 and updating certain obsolete provisions; and making technical corrections.

3
4 *Be it enacted by the Legislature of West Virginia:*

5 That §18B-1-7 and §18B-1-9 of the Code of West Virginia, 1931, as amended, be

6 repealed; that sections §18B-2-1, §18B-2-2 and §18B-2-3 of said code be repealed;
7 that §18B-3-5 and §18B-3-7 of said code be repealed; that §18B-5-2d of said code
8 be repealed; that §5-6-4a of said code be amended and reenacted; that §5G-1-2
9 of said code be amended and reenacted; that said code be amended by adding
10 thereto a new section, designated §12-1-12b; that §12-3-5, §12-3-6, §12-3-7 and
11 §12-3-8 of said code be amended and reenacted; that §18-2-23a of said code be
12 amended and reenacted; that said code be amended by adding thereto a new
13 section, designated §18-2-24; that said code be amended by adding thereto a new
14 section, designated §18A-3-11; that §18A-3A-1 and §18A-3A-2b of said code be
15 amended and reenacted; that said code be amended by adding thereto a new
16 section, designated §18A-3A-6; that §18B-1-3 and §18B-1-6 of said code be
17 amended and reenacted; that §18B-1A-2 and §18B-1A-6 of said code be amended
18 and reenacted; that §18B-1B-4, §18B-1B-5 and §18B-1B-6 of said code be
19 amended and reenacted; that said code be amended by adding thereto a new
20 section, designated §18B-1B-13; that §18B-2A-3 and §18B-2A-4 of said code be
21 amended and reenacted; that said code be amended by adding thereto a new
22 section, designated §18B-2A-7; that said code be amended by adding thereto a
23 new section, designated §18B-2B-9; that §18B-3-1, §18B-3-2 and §18B-3-3 of said
24 code be amended and reenacted; that said code be amended by adding thereto a
25 new section, designated §18B-3-4; that §18B-4-5, §18B-4-5a, §18B-4-6 and §18B-
26 4-7 of said code be amended and reenacted; that §18B-5-3, §18B-5-4, §18B-5-7
27 and §18B-5-9 of said code be amended and reenacted; that said code be amended
28 by adding thereto a new section, designated §18B-5-10; that §18B-10-1, §18B-10-5
29 and §18B-10-6 of said code be amended and reenacted; that said code be
30 amended by adding thereto a new section, designated §18B-10-6a; that said code
31 be amended by adding thereto a new section, designated §18B-11-7; and that
32 §18B-14-11 of said code be amended and reenacted, all to read as follows:

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

37 **ARTICLE 6. STATE BUILDINGS.**

38 **§5-6-4a. Review of real property contracts and agreements; master plan for office**
39 **space.**

40 (a) The Secretary of Administration shall provide to the jJoint eCommittee on gGovernment
41 and fFinance a copy of a contract or agreement for real property exceeding one million
42 dollars and a report setting forth a detailed summary of the terms of the contract or
43 agreement, including the name of the owner of the property and the agent involved in the
44 sale, at least thirty days prior to any sale, exchange, transfer, purchase, lease purchase,
45 lease or rental of real property, any refundings of lease purchases, leases or rental
46 agreements, any construction of new buildings and any other acquisition or lease of
47 buildings, office space or grounds by any state agency, including the hHigher eEducation
48 pPolicy eCommission, but excepting the transactions of the state institutions of higher
49 education known as Marshall University and West Virginia University and the dDivision of
50 hHighways for state road purposes pursuant to article two-a, chapter seventeen of this
51 code: *Provided*, That a contract or agreement for the lease purchase, lease or rental of real
52 property by any state agency, where the costs of real property acquisition and

1 improvements are to be financed, in whole or in part, with bond proceeds, may contain a
2 preliminary schedule of rents and leases for purposes of review by the committee.

3 (b) For renewals of contracts or agreements required to be reported by the provisions of
4 this section, the sSecretary of aAdministration shall provide a report setting forth a detailed
5 summary of the terms of the contract or agreement, including the name of the owner of the
6 property.

7 (c) Within thirty days after receipt of the contract, agreement or report, the committee shall
8 meet and review the contract, agreement or report.

9 (d) On or before the first day of July, two thousand six, the sSecretary of aAdministration
10 shall conduct an inventory of available office space and office space needs and shall
11 develop and present a master plan for the utilization of office space for state agencies to
12 the jJoint eCommittee on gGovernment and fFinance.

13 (e) The governing boards of the state institutions of higher education known as Marshall
14 University and West Virginia University shall provide to the Joint Committee on
15 Government and Finance a copy of any contract or agreement for real property exceeding
16 one million dollars and shall make available to the Joint Committee on Government and
17 Finance upon request a summary of the terms of the contract or agreement, including the
18 name of the owner of the property and the agent involved in the sale.

19 **CHAPTER 5G. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES BY STATE**
20 **AND ITS SUBDIVISIONS.**

21 **ARTICLE 1. PROCUREMENT OF ARCHITECT-ENGINEER SERVICES.**

22 **§5G-1-2. Definitions.**

23 As used in this section:

24 (a) The term "agency" means all state departments, agencies, authorities, quasi-public
25 corporations and all political subdivisions, including cities, counties, boards of education
26 and public service districts, except, for the purposes of this section, the term "agency" does
27 not include the state institutions of higher education known as Marshall University and
28 West Virginia University.

29 (b) The term "architectural and engineering services" includes those professional services
30 of an architectural or engineering nature as well as incidental services that members of
31 those professions and those in their employ may logically or justifiably perform.

32 (c) The term "director of purchasing" means any individual assigned by any agency to
33 procure the services of architects and engineers.

34 (d) The term "firm" or "professional firm" means any individual, firm, partnership,
35 corporation, association or other legal entity permitted by law to practice the professions
36 of architecture and engineering.

37 **CHAPTER 12. PUBLIC MONEYS AND SECURITIES.**

38 **ARTICLE 1. STATE DEPOSITORIES.**

39 **§12-1-12b. Pilot program for investments by Marshall University and West**
40 **Virginia University.**

41 (a) Notwithstanding any provision of this article to the contrary, the governing boards of
42 Marshall University and West Virginia University each may invest certain funds with its
43 respective nonprofit foundation that has been established to receive contributions
44 exclusively for that university and which exists on the first day of January, two thousand
45 five. Any such investment is subject to the limitations of this section.

46 (b) A governing board, through its chief financial officer may enter into agreements,
47 approved as to form by the State Treasurer, for the investment by its foundation of certain
48 funds subject to their administration. Any interest or earnings on the moneys invested is
49 retained by the investing university.

50 (c) Moneys of a university that may be invested with its foundation pursuant to this section
51 are those subject to the administrative control of the university that are collected under an
52 act of the Legislature for specific purposes and do not include any funds made available

1 to the university from the state general revenue fund or the funds established in sections
2 eighteen or eighteen-a, article twenty-two, chapter twenty-nine of this code. Moneys
3 permitted to be invested under this section may be aggregated in an investment fund for
4 investment purposes.

5 (d) Of the moneys authorized for investment by this section, Marshall University and West
6 Virginia University each, respectively, may have invested with its foundation at any time not
7 more than the greater of:

8 (1) Eighteen million dollars for Marshall University and twenty-five million dollars for West
9 Virginia University; or

10 (2) Sixty-five percent of its unrestricted net assets as presented in the statement of net
11 assets for the fiscal year end audited financial reports.

12 (e) Investments by foundations that are authorized under this section shall be made in
13 accordance with and subject to the provisions of the Uniform Prudent Investor Act codified
14 as article six-c, chapter forty-four of this code. As part of its fiduciary responsibilities, each
15 governing board shall establish investment policies in accordance with the Uniform Prudent
16 Investor Act for those moneys invested with its foundation. The governing board shall
17 review, establish and modify, if necessary, the investment objectives as incorporated in its
18 investment policies so as to provide for the financial security of the moneys invested with
19 its foundation. The governing boards shall give consideration to the following:

20 (1) Preservation of capital;

21 (2) Diversification;

22 (3) Risk tolerance;

23 (4) Rate of return;

24 (5) Stability;

25 (6) Turnover;

26 (7) Liquidity; and

27 (8) Reasonable cost of fees.

28 (f) A governing board shall report annually by the thirty- first day of December, to the
29 Governor and to the Joint Committee on Government and Finance on the performance of
30 investments managed by its foundation pursuant to this section.

31 (g) The authority of a governing board to invest moneys with its foundation pursuant to this
32 section expires on the first day of July, two thousand ten.

33 **ARTICLE 3. APPROPRIATIONS, EXPENDITURES AND DEDUCTIONS**

34 **§12-3-5. When requisition to a Auditor sufficient authority for issuing warrant.**

35 (a) When an appropriation has been made by law, subject to the order or payable on the
36 requisition of a particular officer, board, or person, the order or written or electronic
37 requisition in writing of such officer, board, or person shall be is sufficient authority to the
38 a Auditor to issue his a warrant for the same or any party thereof. Provided, that the
39 appropriation has not expired and the amount thereof shall not be exceeded.

40 (b) The Auditor:

41 (1) Shall accept an electronic requisition from Marshall University and West Virginia
42 University;

43 (2) May accept an electronic requisition from any entity other than Marshall University or
44 West Virginia University at his or her discretion; and

45 (3) May not issue a warrant for an amount that exceeds the appropriation or for an expired
46 appropriation.

47 **§12-3-6. Requisitions on behalf of state boards and institutions.**

48 (a) An appropriations made to or for any state board or institution shall be drawn from the
49 †Treasury upon the requisition of the proper an appropriate officers thereof made upon the
50 to the a Auditor at such times and in such amounts as may be is necessary for the
51 purposes for which such the appropriations are is made; and †The a Auditor shall pay the
52 amount named in any such the requisition at such times and in such installments as shall
53 be are necessary for the purposes for which any such the appropriation is made.

54 (b) But all requisitions Except as provided in subsection (c) of this section, a requisition for
55 appropriations for new buildings and substantial betterments, except such as are under

1 control of the state commissioner of public institutions; shall be accompanied by the
2 architect's estimate that the amount named in such the requisition is needed for immediate
3 use.

4 (c) The provisions of subsection (b) of this section do not apply to a requisition from:

5 (1) An institution from which the Auditor is required to accept an electronic requisition. Such
6 an institution is not required to submit the documentation required in subsection (b) of this
7 section, but shall maintain the documentation for inspection at the Auditor's request; and

8 (2) The Commissioner of Corrections.

9 (d) The Auditor ~~shall not~~ may issue his a warrant to pay money out of the sState treasury
10 unless only if the same money is needed for the present use.

11 **§12-3-7. Payment of compensation and expenses of members of state boards and**
12 **commissions; embezzlement.**

13 ~~(a) The members of all state boards and commissions; Unless a different rate of~~
14 ~~compensation is otherwise provided by law, a member of any state board or commission:~~

15 ~~(1) shall be allowed Receives four dollars per day for each day necessarily employed~~
16 ~~as such, (including the time spent in going- traveling to and returning from the place of~~
17 ~~the meeting location);~~

18 ~~(2) Receives and the actual and necessary expenses incurred by them in the discharge~~
19 ~~of their his or her duties; and except where it is otherwise specially provided, no~~

20 ~~(3) Does not receive mileage shall be paid reimbursement.~~

21 ~~(b) But before payment of any such member of any such Prior to receiving~~
22 ~~compensation or expenses; reimbursement:~~

23 ~~(1) he shall make up The member prepares in duplicate, and certify to the correctness~~
24 ~~of, an itemized statement of the specifying the number of days spent (giving dates) and~~
25 ~~the expenses, which statement shall be delivered to the secretary or clerk of the~~
26 ~~institution on behalf of which the duties are performed, the original whereof the~~
27 ~~secretary or clerk shall file or preserve in his office, and the duplicate of which he shall at~~
28 ~~once forward to the auditor. incurred;~~

29 ~~(2) The member certifies the accuracy of the itemized statement;~~

30 ~~(3) The member delivers the original to the secretary or clerk of the board or~~
31 ~~commission for preservation in its office; and~~

32 ~~(4) The secretary or clerk immediately forwards the duplicate to the Auditor.~~

33 ~~(c) If any such member shall willfully makes a greater charge for such of services or~~
34 ~~expenses than truth justified, he or she shall be is guilty of embezzlement and~~
35 ~~punished accordingly.~~

36 ~~(d) The governing board of Marshall University and West Virginia University each~~
37 ~~satisfies the requirements of subsection (b) of this section by maintaining the member's~~
38 ~~original itemized, certified statement and submitting an electronic requisition to the~~
39 ~~Auditor.~~

40 **§12-3-8. Requisition on behalf of institutions to be accompanied by statement**
41 **showing funds on hand.**

42 ~~No A requisition shall be made upon the a Auditor for any money appropriated for the a~~
43 ~~state penitentiary correctional facility; the West Virginia s Schools for the d Deaf and~~
44 ~~b Blind; state mental health facilities; state hospitals; corrections facilities; Marshall~~
45 ~~University; West Virginia University; or for any other public institution for education,~~
46 ~~charity or correction; or institutions under governed by the jurisdiction of the university~~
47 ~~of West Virginia board of trustees and by the board of directors of the state college~~
48 ~~system; Higher Education Policy Commission or the West Virginia Council for~~
49 ~~Community and Technical College Education unless such requisition shall be~~
50 ~~accompanied by the a written or electronic statement in writing of the treasurer or other~~
51 ~~of a financial officer of such the institution, showing the amount of money in his or her~~
52 ~~hands to the credit of such the institution, or otherwise in its control, on the day such the~~
53 ~~requisition is forwarded for payment.~~

1 CHAPTER 18. EDUCATION.

2 ARTICLE 2. STATE BOARD OF EDUCATION.

3 §18-2-23a. Annual professional staff development goals established by sState
4 bBoard; coordination of professional development programs; program
5 development, approval and evaluation.

6 (a) *Legislative intent.* -- The intent of this section is:

7 (1) ~~t~~To provide for the coordination of professional development programs by the sState
8 bBoard; and

9 (2) ~~t~~To promote high-quality instructional delivery and management practices for a
10 thorough and efficient system of schools; and

11 (3) To ensure that the expertise and experience of state institutions of higher education
12 with teacher preparation programs are included in developing and implementing
13 professional development programs.

14 (b) *Goals.* -- The sState bBoard annually shall establish goals for professional staff
15 development in the public schools of the state. As a first priority, the sState bBoard shall
16 require adequate and appropriate professional staff development to ensure high quality
17 teaching that will enable students to achieve the content standards established for the
18 required curriculum in the public schools.

19 The sState bBoard shall submit the goals to the sState dDepartment of eEducation, the
20 eCenter for pProfessional dDevelopment, the regional educational service agencies, the
21 hHigher eEducation pPolicy eCommission and the tLegislative eOversight eCommission
22 on eEducation aAccountability on or before the fifteenth day of January; each year.

23 The goals shall include measures by which the effectiveness of the professional staff
24 development programs will be evaluated. The professional staff development goals may
25 shall include separate goals for teachers, principals; and paraprofessional service
26 personnel and may include separate goals for classroom aides and others in the public schools.
27 In establishing the goals, the sState bBoard shall review reports that may indicate a need
28 for professional staff development including, but not limited to, the report of the eCenter
29 for pProfessional dDevelopment created in article three-a, chapter eighteen-a of this code,
30 student test scores on the statewide student assessment program, the measures of
31 student and school performance for accreditation purposes, school and school district
32 report cards; and its plans for the use of funds in the strategic staff development fund
33 pursuant to section thirty-two, article two, chapter eighteen of this code.

34 (c) The eCenter for pProfessional dDevelopment shall design a proposed professional staff
35 development program plan to achieve the goals of the sState bBoard and shall submit the
36 proposed plan to the sState bBoard for approval as soon as possible following receipt of
37 the sState bBoard goals each year. In developing and implementing this plan, the Center
38 first shall rely upon the available expertise and experience of state institutions of higher
39 education before procuring advice, technical assistance or consulting services from
40 sources outside the state.

41 The proposed plan shall include a strategy for evaluating the effectiveness of the
42 professional staff development programs delivered under the plan and a cost estimate. The
43 sState bBoard shall review the proposed plan and return it to the eCenter for pProfessional
44 dDevelopment noting whether the proposed plan is approved or is not approved, in whole
45 or in part. If a proposed plan is not approved in whole, the sState bBoard shall note its
46 objections to the proposed plan or to the parts of the proposed plan not approved and may
47 suggest improvements or specific modifications, additions or deletions to address more
48 fully the goals or eliminate duplication. If the proposed plan is not wholly approved, the
49 eCenter for pProfessional eDevelopment shall revise the plan to satisfy the objections of
50 the sState bBoard. State board approval is required prior to implementation of the
51 professional staff development plan.

52 (d) The sState bBoard approval of the proposed professional staff development plan shall
53 establish a mMaster pPlan for pProfessional sStaff dDevelopment which shall be submitted

1 by the sState bBoard to the affected agencies and to the tLegislative oOversight
2 cCommission on eEducation aAccountability. The mMaster pPlan shall include the sState
3 bBoard-approved plans for professional staff development by the sState dDepartment of
4 eEducation, the cCenter for pProfessional dDevelopment, the state institutions of higher
5 education and the regional educational service agencies to meet the professional staff
6 development goals of the sState bBoard. The mMaster pPlan also shall include a plan for
7 evaluating the effectiveness of the professional staff development delivered through the
8 programs and a cost estimate.

9 The mMaster pPlan shall serve as a guide for the delivery of coordinated professional staff
10 development programs by the sState dDepartment of eEducation, the cCenter for
11 pProfessional dDevelopment, the state institutions of higher education and the regional
12 educational service agencies beginning on the first day of June in the year in which the
13 mMaster pPlan was approved through the thirtieth day of May in the following year:
14 ~~Provided, That nothing in tThis section shall does not prohibit changes in the mMaster~~
15 pPlan, subject to sState bBoard approval, to address staff development needs identified
16 after the mMaster pPlan was approved.

17 **§18-2-24. Collaboration of state institutions of higher education having a teacher**
18 **preparation program with the Center for Professional Development and the**
19 **regional education service agencies.**

20 (a) For the purposes of this section, "teacher preparation institution" means a state
21 institution of higher education with a teacher preparation program.

22 (b) The intent of this section is to establish a structure to enhance collaboration between
23 the teacher preparation institutions, the Center for Professional Development and the
24 regional education service agencies in providing professional development.

25 (c) The Legislature finds that:

26 (1) There is insufficient collaboration of the teacher preparation institutions with the Center
27 for Professional Development and each of the regional education service agencies;

28 (2) More collaboration would prevent duplication of services and result in higher quality
29 professional development;

30 (3) Creating a structure and assigning responsibility would promote more effective
31 collaboration;

32 (4) The state's research and doctoral degree-granting public institutions of higher
33 education, West Virginia University and Marshall University, have the most capacity to be
34 important sources of research and expertise on professional development;

35 (5) West Virginia University and Marshall University are the only institutions in the state that
36 offer course work leading to a doctoral degree in education administration;

37 (6) As the largest state institutions of higher education, West Virginia University and
38 Marshall University have more capacity than any other institution in the state to handle the
39 additional responsibilities assigned in this section;

40 (7) The coordination by West Virginia University and Marshall University of the efforts of
41 other teacher preparation institutions to collaborate with the Center for Professional
42 Development and each of the regional education service agencies will provide points of
43 accountability for the collaboration efforts of the other institutions; and

44 (8) The State Board's authority over the regional education service agencies can be used
45 to motivate the agencies to collaborate with the teacher preparation institutions in providing
46 professional development and will serve as a point of accountability for the collaboration
47 efforts of the agencies.

48 (d) West Virginia University and Marshall University shall collaborate with the Center for
49 Professional Development in performing the Center's duties. This collaboration shall
50 include at least the following:

51 (1) Including the teacher preparation institutions in the proposed professional staff
52 development program plan required to be submitted to the State Board by section twenty-
53 three-a of this article;

54 (2) Providing any available research-based expertise that would be helpful in the design

1 of the proposed professional staff development program plan;
2 (3) Providing any available research-based expertise that would be helpful in the
3 implementation of professional development programs; and
4 (4) Arranging for other state institutions of higher education having a teacher preparation
5 program to assist the Center when that assistance would be helpful.
6 (e) All teacher preparation institutions shall collaborate with the regional education service
7 agency of the service area in which the institution is located at least to:
8 (1) Prevent unnecessary duplication of services;
9 (2) Assist in the implementation of the professional development programs of the regional
10 education service agency; and
11 (3) Assist the regional education service agency in obtaining any available grants for
12 professional development or to apply for any available grant with the agency collaboratively.
13 (f) Since no teacher preparation institution exists in the service area of Regional Education
14 Service Agency IV, Marshall University shall collaborate with that Agency for the purposes
15 set forth in subdivision (e) of this section.
16 (g) In addition to the collaboration required by subsections (e) and (f) of this section of all
17 teacher preparation institutions, West Virginia University and Marshall University shall:
18 (1) Coordinate the collaboration of each of the other teacher preparation institutions in their
19 designated coordination area with the appropriate regional education service agency. This
20 coordination at least includes ensuring that each of the other institutions are collaborating
21 with the appropriate regional education service agency; and
22 (2) Collaborate with each of the other teacher preparation institutions in their designated
23 coordination area. This collaboration at least includes providing assistance to the other
24 institutions in providing professional development and in their collaboration with the
25 appropriate regional education service agency.
26 (h) The designated coordination area of West Virginia University includes the service areas
27 of Regional Education Service Agencies V, VI, VII and VIII. The designated coordination
28 area of Marshall University includes the service areas of Regional Education Service
29 Agencies I, II, III and IV.
30 (i) The State Board shall ensure that each of the regional education service agencies is
31 collaborating with the teacher preparation institution or institutions in its service area for the
32 purposes set forth in subsection (e) of this section. Since Regional Education Service
33 Agency IV does not have a teacher preparation institution in its service area, the State
34 Board shall ensure that it is collaborating with Marshall University for the purposes set forth
35 in subsection (e) of this section.
36 (j) Before a regional education service agency, except for Regional Education Service
37 Agency IV, obtains professional development related services or expertise from any
38 teacher preparation institution outside of that agency's service area, the agency shall
39 inform the Center for Professional Development Board. Before Regional Education Service
40 Agency IV obtains professional development related services or expertise from any teacher
41 preparation institution other than Marshall University, the agency shall inform the Center
42 Board.
43 (k) The collaboration and coordination requirements of this section include collaborating
44 and coordinating to provide professional development for at least teachers, principals and
45 paraprofessionals.

46 **CHAPTER 18A. SCHOOL PERSONNEL.**

47 **ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL** 48 **DEVELOPMENT.**

49 §18A-3-11. Study of professional development standards and best practices.

50 The Legislative Oversight Commission on Education Accountability shall cause a study to
51 be conducted to determine and to recommend standards and best practices for
52 professional development that are focused on advancing student achievement. The study
53 and a final report of recommendations shall be completed prior to the first day of

1 September, two thousand five. The Commission shall submit the final report to the Joint
2 Committee on Government and Finance. The Commission shall determine if resources to
3 assist in the completion of the study are available from sources other than public funds and
4 shall report such to the Joint Committee.

5 **ARTICLE 3A. CENTER FOR PROFESSIONAL DEVELOPMENT.**

6 **§18A-3A-1. Center for pProfessional dDevelopment established; intent and** 7 **mission; pPrincipals aAcademy curriculum and expenses;** 8 **authorization to charge fees.**

9 (a) Teaching is a profession that directly correlates to the social and economic well-being
10 of a society and its citizens. Superior teaching is essential to a well-educated and
11 productive populace. Strong academic leadership provided by principals and administrators
12 skilled in modern management principles is also essential. The intent of this article is to
13 recognize the value of professional involvement by experienced educators, principals and
14 administrators in building and maintaining a superior force of professional educators and
15 to establish avenues for applying ~~such~~ this involvement.

16 (b) The general mission of the eCenter is to advance the quality of teaching and
17 management in the schools of West Virginia through: (1) The implementation primarily of
18 statewide training, professional staff development, including professional staff development
19 for at least teachers, principals and paraprofessionals, and technical assistance programs
20 and practices as recommended by the sState bBoard to assure the highest quality of
21 teaching and management; and (2) the provision of technical and other assistance and
22 support to regional and local education agencies in identifying and providing high-quality
23 professional staff development, including professional staff development for at least
24 teachers, principals and paraprofessionals, and training programs and implementing best
25 practices to meet their locally identified needs. The eCenter also may implement local
26 programs if the sState bBoard, in its mMaster pPlan for pProfessional sStaff dDevelopment
27 established pursuant to section twenty-three-a, article two, chapter eighteen of this code,
28 determines that there is a specific local need for the programs. Additionally, the eCenter
29 shall perform ~~such other~~ other duties ~~as are~~ assigned to it by law.

30 Nothing in this article shall be construed to require any specific level of funding by the Legislature.

31 (c) The Center for Professional Development Board is reconstituted, and all terms of
32 members elected or appointed prior to the effective date of this section are expired. The
33 eCenter bBoard shall consists of ~~eleven~~ thirteen persons as follows:

34 (1) The sSecretary of eEducation and the aArts, ex officio, and the sState sSuperintendent
35 of schools, ex officio, both each of whom shall be is:

36 (A) Entitled to vote; and

37 (B) A Cochair of the Board.

38 (2) ~~three~~ Two members of the sState bBoard, elected by the sState bBoard;

39 (3) One person employed by West Virginia University and one person employed by
40 Marshall University, both of whom are:

41 (A) Appointed by the President of the employing institution;

42 (B) Faculty in the teacher education section of the employing institution; and

43 (C) Knowledgeable in matters relevant to the issues addressed by the Center ;

44 (4) One Regional Education Service Agency Executive Director, elected by all of the
45 Regional Education Service Agency Executive Directors;

46 (5) ~~†Three~~ three experienced educators, of whom ~~two~~ one shall be is a working classroom
47 teachers, and one of whom shall be is a school principal ~~or~~ and one is a county
48 administrator. All such educators are:

49 (A) ~~a~~ Appointed by the gGovernor by and with the advice and consent of the Senate; and
50 of whom shall be

51 (B) eExperienced educators who have achieved recognition for their superior knowledge,
52 ability and performance in teaching or management, as applicable; and

53 (C) Knowledgeable in matters relevant to the issues addressed by the Center ; and

1 ~~(6) Three citizens of the state, one of whom who are: shall be a representative of public~~
2 ~~higher education, and all of whom shall be~~
3 ~~(A) knowledgeable in matters relevant to the issues addressed by the Center, including,~~
4 ~~but not limited to, professional development and management principles; and~~
5 ~~(B) appointed by the Governor by and with the advice and consent of the Senate.~~
6 ~~(C) Not more than two appointees such members shall may be residents within the same~~
7 ~~congressional district. The center board shall be cochaired by the secretary of education~~
8 ~~and the arts and the state superintendent.~~
9 ~~(d) All successive elections shall be~~ Each appointment and election is for a two-year
10 terms. Such Members elected from the state board may serve no more than two
11 consecutive two-year terms.
12 (1) The State Board shall elect another member to fill the unexpired term of any person
13 so elected who subsequently vacates State Board membership.
14 (2) The Regional Education Service Agency Executive Directors shall elect an executive
15 director to fill the unexpired term of any executive director who ceases to be employed in
16 that capacity.
17 (3) Of the initial members appointed members by the Governor, three shall be are
18 appointed for one-year terms and three shall be are appointed for two-year terms. All Each
19 successive appointments by the Governor shall be is for a two-year term. An experienced
20 educator may serve no more than two consecutive two-year terms. The Governor shall
21 appoint a new member to fill the unexpired term of any vacancy in the appointed
22 membership.
23 (4) The President of West Virginia University and Marshall University each appoints an
24 employee to fill the unexpired term of any member who ceases to be employed by that
25 institution.
26 (e) The Center for Professional Development Board shall meet at least quarterly and
27 the appointed members shall be reimbursed for reasonable and necessary expenses
28 actually incurred in the performance of their official duties from funds appropriated or
29 otherwise made available for such those purposes upon submission of an itemized
30 statement therefor.
31 ~~(e)(f) From appropriations to the center for professional development, the center board~~
32 ~~shall employ and fix the compensation of an executive director with knowledge and~~
33 ~~experience in professional development and management principles and such other staff~~
34 ~~as may be necessary to carry out the mission and duties of the center. The executive~~
35 ~~director shall serve at the will and pleasure of the center board. The executive director of~~
36 ~~the center also shall serve as the chair of the principals standards advisory council created~~
37 ~~in section two-c, article three of this chapter, and shall convene regular meetings of this~~
38 ~~council to effectuate the purposes of this council.~~
39 ~~When practicable, personnel employed by state higher education agencies and state,~~
40 ~~regional and county public education agencies shall be made available to the center to~~
41 ~~assist in the operation of projects of limited duration.~~
42 The position of Executive Director is abolished. The Governor shall appoint, by and with
43 the advice and consent of the Senate, a Chief Executive Officer with knowledge and
44 experience in professional development and management principles. Any reference in this
45 code to the Executive Director of the Center for Professional Development means the
46 Chief Executive Officer. From appropriations to the Center for Professional Development,
47 the Center Board sets the salary of the Chief Executive Officer. The Center Board, upon
48 the recommendation of the Chief Executive Officer, may employ other staff necessary to
49 carry out the mission and duties of the Center. The Chief Executive Officer serves at the
50 will and pleasure of the Governor. Annually, the Center Board shall evaluate the Chief
51 Executive Officer, and shall report the results to the Governor. The duties of the Chief
52 Executive Officer include:
53 (1) Managing the daily operations of the Center;
54 (2) Ensuring the implementation of the Center's mission;

1 (3) Ensuring collaboration of the Center with other professional development providers;
2 (4) Requesting from the Governor and the Legislature any resources or statutory changes
3 that would help in enhancing the collaboration of all professional development providers
4 in the state, in advancing the quality of professional development through any other means
5 or both;
6 (5) Serving as the chair of the Principals Standards Advisory Council created in section
7 two-c, article three of this chapter and convening regular meetings of this Council to
8 effectuate its purposes; and
9 (6) Other duties as assigned by the Governor or the Center Board.

10 (g) When practicable, personnel employed by state higher education agencies and state,
11 regional and county public education agencies shall be made available to the Center to
12 assist in the operation of projects of limited duration, subject to the provisions of section
13 twenty-four, article two, chapter eighteen of this code.

14 (f)(h) The eCenter shall assist in the delivery of programs and activities pursuant to this
15 article to meet statewide, and if needed as determined by the goals and mMaster pPlan
16 for pProfessional sStaff dDevelopment established by the sState bBoard pursuant to
17 section twenty-three-a, article two, chapter eighteen of this code, the local professional
18 development needs of paraprofessionals, teachers, principals and administrators and may
19 contract with existing agencies or agencies created after the effective date of this section
20 or others to provide training programs in the most efficient manner. Existing programs
21 currently based in agencies of the state shall be continued in the agency of their origin
22 unless the eCenter establishes a compelling need to transfer or cancel the existing
23 program. The eCenter shall recommend to the gGovernor the transfer of funds to the
24 providing agency, if needed, to provide programs approved by the eCenter.

25 (g)(i) The eCenter for pProfessional dDevelopment shall implement training and
26 professional development programs for the pPrincipals aAcademy based upon the
27 minimum qualities, proficiencies and skills necessary for principals in accordance with the
28 standards established by the sState bBoard pursuant to the terms of section two-c, article
29 three of this chapter.

30 (h)(j) In accordance with section two-c, article three of this chapter, the eCenter shall be
31 responsible for paying reasonable and necessary expenses for persons attending the
32 pPrincipals aAcademy: *Provided*, That nothing in this section shall be construed to require
33 any specific level of funding by the Legislature.

34 (i)(k) Persons attending the professional development offerings of the eCenter and such
35 other courses and services as shall be offered by the eCenter for pProfessional
36 dDevelopment, except the pPrincipals aAcademy shall be assessed fees which shall be
37 less than the full cost of attendance. There is hereby created in the sState tTreasury a
38 special revenue account known as the "eCenter for pProfessional dDevelopment fFund".
39 All moneys collected by the eCenter shall be deposited in the fund for expenditure by the
40 eCenter bBoard for the purposes specified in this section. Moneys remaining in the fund
41 at the end of the fiscal year are subject to reappropriation by the Legislature.

42 (l) The Center Board shall make collaboration with the State Board in providing
43 professional development services in the following areas a priority:
44 (1) Services to those public schools selected by the State Superintendent pursuant to
45 section three-g, article two-e, chapter eighteen of this code; and
46 (2) Services in any specific subject matter area that the State Board, the Legislature or
47 both, determine is justified due to a need to increase student achievement in that area.

48 **§18A-3A-2b. The pPrincipals aAcademy.**

49 (a) There is hereby established within the eCenter for pProfessional dDevelopment the
50 "Principals Academy". Training through the pPrincipals aAcademy shall include at least the
51 following:
52 (a)(1) Training designed to build within principals the minimum qualities, proficiencies and
53 skills that will be required of all principals pursuant to the rules of the sState bBoard;
54 (b)(2) Specialized training and professional development programs for all principals; and
55 (c)(3) Specialized training and professional development programs for the following

1 principals:
2 (1)(A) Newly appointed principals;
3 (2)(B) Principals whose schools have been designated as seriously impaired, which
4 programs shall commence as soon as practicable following the designation;
5 (3)(C) Principals subject to improvement plans; and
6 (4)(D) Principals of schools with significantly different grade level configurations.
7 (b) The Legislature finds that the quality of the principal of a school is one of the most
8 important factors in determining the academic achievement of students and that well-
9 trained, highly qualified principals should be a priority for the state.
10 (c) The Legislature further finds that while the Principals Academy has been effective in
11 training quality leaders for the state's public schools, the training provided is such a
12 significant factor in determining their success that a new position is needed to coordinate
13 and focus primarily on the Principals Academy to increase further the **quality of the training.**
14 (d) Therefore, from appropriations to the Center for Professional Development, the Center
15 Board shall employ and fix the compensation of the Coordinator of the Principals Academy.
16 The Coordinator serves at the will and pleasure of the Center Board. It is the duty of the
17 Coordinator, subject to direction and oversight by the Center and the Chief Executive
18 Officer, to lead the Principals Academy, to focus primarily on the Principals Academy and
19 to make a continuous effort to enhance further the quality of the training and professional
20 development programs of the Academy. The Center Board, the Chief Executive Officer,
21 or both, may assign duties to the coordinator other than those that relate to the Principals
22 Academy so long as the Coordinator is able to focus primarily on the Principals Academy.
23 **§18A-3A-6. Attendance outside the employment term.**
24 (a) A professional educator may not be required to attend the principals academy or any
25 other program offered through the Center for Professional Development outside his or her
26 employment term. A professional educator may attend the academy or other program
27 outside his or her employment term by mutual agreement between the Center, the
28 educator, and his or her employer.
29 (b) The provisions of this section expire on the first day of July, two thousand six.

30 CHAPTER 18B. HIGHER EDUCATION.

31 ARTICLE 1. GOVERNANCE.

32 §18B-1-3. Transfer of powers, duties, property, obligations, etc.

33 (a) All powers, duties and authorities transferred to the bBoard of rRegents pursuant to
34 former provisions of chapter eighteen of this code and transferred to the bBoard of
35 tTrustees and bBoard of dDirectors which were created as the governing boards pursuant
36 to the former provisions of this chapter and all powers, duties and authorities of the bBoard
37 of tTrustees and bBoard of dDirectors, to the extent they are in effect on the seventeenth
38 day of June, two thousand, are hereby transferred to the iInterim gGoverning bBoard
39 created in article one-c of this chapter and shall be exercised and performed by the iInterim
40 gGoverning bBoard until the first day of July, two thousand one, as such powers, duties
41 and authorities may apply to the institutions under its jurisdiction.

42 (b) Title to all property previously transferred to or vested in the bBoard of tTrustees and
43 the bBoard of dDirectors and property vested in either of the bBoards separately, formerly
44 existing under the provisions of this chapter, are hereby transferred to the iInterim
45 gGoverning bBoard created in article one-c of this chapter until the first day of July, two
46 thousand one. Property transferred to or vested in the bBoard of tTrustees and bBoard of
47 dDirectors shall include:

48 (1) All property vested in the bBoard of gGovernors of West Virginia uUniversity and
49 transferred to and vested in the West Virginia bBoard of rRegents;

50 (2) All property acquired in the name of the sState bBoard of eControl or the West Virginia
51 bBoard of eEducation and used by or for the state colleges and universities and transferred
52 to and vested in the West Virginia bBoard of rRegents;

53 (3) All property acquired in the name of the sState eCommission on hHigher eEducation
54 and transferred to and vested in the West Virginia bBoard of rRegents; and

1 (4) All property acquired in the name of the bBoard of rRegents and transferred to and
2 vested in the respective bBoard of tTrustees and bBoard of dDirectors.

3 (c) Each valid agreement and obligation previously transferred to or vested in the bBoard
4 of tTrustees and bBoard of dDirectors formerly existing under the provisions of this chapter
5 is hereby transferred to the iInterim gGoverning bBoard until the first day of July, two
6 thousand one, as those agreements and obligations may apply to the institutions under its
7 jurisdiction. Valid agreements and obligations transferred to the bBoard of tTrustees and
8 bBoard of dDirectors shall include:

9 (1) Each valid agreement and obligation of the bBoard of gGovernors of West Virginia
10 uUniversity transferred to and deemed the agreement and obligation of the West Virginia
11 bBoard of rRegents;

12 (2) Each valid agreement and obligation of the sState bBoard of eEducation with respect
13 to the state colleges and universities transferred to and deemed the agreement and
14 obligation of the West Virginia bBoard of rRegents;

15 (3) Each valid agreement and obligation of the sState eCommission on hHigher eEducation
16 transferred to and deemed the agreement and obligation of the West Virginia bBoard of
17 rRegents; and

18 (4) Each valid agreement and obligation of the bBoard of rRegents transferred to and
19 deemed the agreement and obligation of the respective bBoard of tTrustees and bBoard
20 of dDirectors.

21 (d) All orders, resolutions and rules adopted or promulgated by the respective bBoard of
22 tTrustees and bBoard of dDirectors and in effect immediately prior to the first day of July,
23 two thousand, are hereby transferred to the iInterim gGoverning bBoard until the first day
24 of July, two thousand one, and shall continue in effect and shall be deemed the orders,
25 resolutions and rules of the iInterim gGoverning bBoard until rescinded, revised, altered
26 or amended by the eCommission or the governing boards in the manner and to the extent
27 authorized and permitted by law. Such orders, resolutions and rules shall include:

28 (1) Those adopted or promulgated by the bBoard of gGovernors of West Virginia
29 uUniversity and in effect immediately prior to the first day of July, one thousand nine
30 hundred sixty-nine, unless and until rescinded, revised, altered or amended by the bBoard
31 of rRegents in the manner and to the extent authorized and permitted by law;

32 (2) Those respecting state colleges and universities adopted or promulgated by the West
33 Virginia bBoard of eEducation and in effect immediately prior to the first day of July, one
34 thousand nine hundred sixty-nine, unless and until rescinded, revised, altered or amended
35 by the bBoard of rRegents in the manner and to the extent authorized and permitted by
36 law;

37 (3) Those adopted or promulgated by the sState eCommission on hHigher eEducation and
38 in effect immediately prior to the first day of July, one thousand nine hundred sixty-nine,
39 unless and until rescinded, revised, altered or amended by the bBoard of rRegents in the
40 manner and to the extent authorized and permitted by law; and (4) Those adopted or
41 promulgated by the bBoard of rRegents prior to the first day of July, one thousand nine
42 hundred eighty-nine, unless and until rescinded, revised, altered or amended by the
43 respective bBoard of tTrustees or bBoard of dDirectors in the manner and to the extent
44 authorized and permitted by law.

45 (e) Title to all real property transferred to or vested in the iInterim gGoverning bBoard
46 pursuant to this section of the code is hereby transferred to the eCommission effective the
47 first day of July, two thousand one. The board of governors for each institution may request
48 that the eCommission transfer title to the board of governors of any real property
49 specifically identifiable with that institution or the eCommission may initiate the transfer.
50 Any such request must be made within two years of the effective date of this section and
51 be accompanied by an adequate legal description of the property. In the case of real
52 property that is specifically identifiable with Marshall University or West Virginia University,
53 the Commission shall transfer title to all real property, except real property that is used
54 jointly by institutions or for statewide programs under the jurisdiction of the Commission or
55 the Council, to the Board of Governors of Marshall University or West Virginia University,

1 as appropriate, upon receipt of a request from the appropriate governing board
2 accompanied by an adequate legal description of the property.
3 The title to any real property that is jointly utilized by institutions or for statewide programs
4 under the jurisdiction of the eCommission or the Council shall be retained by the eCommission.
5 (f) Ownership of or title to any other property, materials, equipment or supplies obtained
6 or purchased by the interim gGoverning bBoard or the previous governing boards on
7 behalf of an institution is hereby transferred to the board of governors of that institution
8 effective the first day of July, two thousand one.
9 (g) Each valid agreement and obligation previously transferred or vested in the interim
10 gGoverning bBoard and which was undertaken or agreed to on behalf of an institution or
11 institutions is hereby transferred to the board of governors of the institution or institutions
12 for whose benefit the agreement was entered into or the obligation undertaken effective
13 the first day of July, two thousand one.
14 (1) The obligations contained in revenue bonds issued by the previous governing boards
15 under the provisions of section eight, article ten of this chapter and article twelve-b, chapter
16 eighteen of this code are hereby transferred to the eCommission and each institution shall
17 transfer to the eCommission those funds the eCommission determines are necessary to
18 pay that institution's share of bonded indebtedness.
19 (2) The obligations contained in revenue bonds issued on behalf of a state institution of
20 higher education pursuant to any other section of this code is hereby transferred to the
21 board of governors of the institution on whose behalf the bonds were issued.
22 (h) All orders, resolutions, policies and rules:
23 (1) Adopted or promulgated by the respective bBoard of trustees, bBoard of directors
24 or interim gGoverning bBoard and in effect immediately prior to the first day of July, two
25 thousand one, are hereby transferred to the eCommission effective the first day of July, two
26 thousand one, and continue in effect until rescinded, revised, altered, amended or
27 transferred to the governing boards by the eCommission as provided in this section and
28 in section six of this article.
29 (2) Adopted or promulgated by the eCommission relating solely to community and technical
30 colleges or community and technical college education, or rules which the eCouncil finds
31 necessary for the exercise of its lawful powers and duties pursuant to the provisions of this
32 chapter, may be adopted by the eCouncil and continue in effect until rescinded, revised,
33 altered, amended or transferred to the governing boards under the jurisdiction of the
34 eCouncil pursuant to section six of this article. Nothing in this section requires the initial
35 rules of the eCommission that are adopted by the eCouncil to be promulgated again under
36 the procedure set forth in article three-a, chapter twenty-nine-a of this code unless such
37 rules are rescinded, revised, altered or amended.
38 (3) Adopted or promulgated by the eCommission relating to multiple types of public
39 institutions of higher education or community and technical college education as well as
40 baccalaureate and post-baccalaureate education are transferred to the eCouncil in part as
41 follows:
42 (A) That portion of the rule relating solely to community and technical colleges or
43 community and technical college education is transferred to the eCouncil and continues
44 in effect until rescinded, revised, altered, amended or transferred to the governing boards
45 by the eCouncil as provided in this section and in section six of this article;
46 (B) That portion of the rule relating to institutions or education other than community and
47 technical colleges is retained by the eCommission and continues in effect until rescinded,
48 revised, altered, amended or transferred to the governing boards by the eCommission as
49 provided in this section and in section six of this article.
50 (i) The eCommission may, in its sole discretion, transfer any rule, other than a legislative
51 rule, to the jurisdiction of the governing boards of the institutions under its jurisdiction who
52 may rescind, revise, alter or amend any rule so transferred pursuant to rules adopted by
53 the eCommission pursuant to section six of this article.
54 The eCouncil may, in its sole discretion, transfer any rule, other than a legislative rule, to
55 the jurisdiction of the governing boards of the institutions under its jurisdiction who may

1 rescind, revise, alter or amend any rule so transferred pursuant to rules adopted by the
2 eCouncil pursuant to section six of this article.

3 (j) As to any title, agreement, obligation, order, resolution, rule or any other matter about
4 which there is some uncertainty, misunderstanding or question, the matter shall be
5 summarized in writing and sent to the eCommission which shall make a determination
6 regarding such matter within thirty days of receipt thereof.

7 (k) Rules or provisions of law which refer to other provisions of law which were repealed,
8 rendered inoperative or superseded by the provisions of this section shall remain in full
9 force and effect to such extent as may still be applicable to higher education and may be
10 so interpreted. Such references include, but are not limited to, references to sections and
11 prior enactments of article twenty-six, chapter eighteen of this code and code provisions
12 relating to retirement, health insurance, grievance procedures, purchasing, student loans
13 and savings plans. Any determination which needs to be made regarding applicability of
14 any provision of law shall first be made by the Commission.

15 **§18B-1-6. Rulemaking.**

16 (a) The eCommission is hereby empowered to promulgate, adopt, amend or repeal rules,
17 in accordance with the provisions of article three-a, chapter twenty-nine-a of this code,
18 subject to the provisions of section three of this article.

19 (b) The eCouncil is hereby empowered to promulgate, adopt, amend or repeal rules in
20 accordance with the provisions of article three-a, chapter twenty-nine-a of this code and
21 subject to the provisions of section three of this article. This grant of rule-making power
22 extends only to those areas over which the eCouncil has been granted specific authority
23 and jurisdiction by law.

24 (c) As it relates to the authority granted to governing boards of state institutions of higher
25 education to promulgate, adopt, amend or repeal any rule under the provisions of this
26 code:

27 (1) "Rule" means any regulation, guideline, directive, standard, statement of policy or
28 interpretation of general application which has institutionwide effect or which affects the
29 rights, privileges or interests of employees, students or citizens. Any regulation, guideline,
30 directive, standard, statement of policy or interpretation of general application that meets
31 this definition is a rule for the purposes of this section.

32 (2) Regulations, guidelines or policies established for individual units, divisions,
33 departments or schools of the institution, which deal solely with the internal management
34 or responsibilities of a single unit, division, department or school or with academic
35 curricular policies that do not constitute a mission change for the institution, are excluded
36 from this subsection, except for the requirements relating to posting.

37 (e)(3) The eCommission and cCouncil each shall promulgate a rule to guide the
38 development and approval of rules guidelines and other policy statements made by their
39 respective governing boards, including the governing boards of Marshall University and
40 West Virginia University. The rules promulgated by the eCommission and eCouncil shall
41 include, but are not limited to, the following provisions which shall be included in the rule
42 on rules adopted by each governing board of a state institution of higher education:

43 (1)(A) A procedure to ensure that public notice is given and that the right of interested
44 parties to have a fair and adequate opportunity to respond is protected, including providing
45 for a thirty-day public comment period prior to final adoption of a rule;

46 (2)(B) Designation of a single location where all proposed and approved rules, guidelines
47 and other policy statements are posted and can be accessed by the public; and

48 (3)(C) A procedure to maximize iInternet access to all proposed and approved rules,
49 guidelines and other policy statements to the extent technically and financially feasible.

50 ~~d) On and after the effective date of this section, and notwithstanding any other provision~~
51 ~~of this code to the contrary, any rule heretofore required by law to be promulgated as a~~
52 ~~legislative rule prior to the first day of July, two thousand one, may not be considered to be~~
53 ~~a legislative rule for the purposes of article three-a, chapter twenty-nine-a of this code~~
54 ~~except for the following:~~

- 1 ~~(1) The legislative rule required by subsection (c), section eight of this article;~~
2 ~~(2) The legislative rule required by section eight-a of this article;~~
3 ~~(3) The legislative rule required by section two, article one-a of this chapter;~~
4 ~~(4) The legislative rule required by section four, article one-b of this chapter;~~
5 ~~(5) The legislative rule required by section one, article three, chapter eighteen-c of this code;~~
6 ~~(6) The legislative rule required by section one, article four, chapter eighteen-c of this code;~~
7 ~~(7) The legislative rule required by section seven, article five, chapter eighteen-c of this~~
8 ~~code; and~~
9 ~~(8) The legislative rule required by section one, article six, chapter eighteen-c of this code.~~
10 ~~(e)(d) Nothing in this section requires that any rule reclassified or transferred by the~~
11 ~~Commission or the Council under this section be promulgated again under the procedures~~
12 ~~set out in article three-a, chapter twenty-nine-a of this code unless the rule is amended or~~
13 ~~modified.~~
14 ~~(f)(e) The eCommission and eCouncil each shall file with the tLegislative eOversight~~
15 ~~eCommission on eEducation aAccountability any rule it proposes to promulgate, adopt,~~
16 ~~amend or repeal under the authority of this article.~~
17 ~~(f) The governing boards of Marshall University and West Virginia University, respectively,~~
18 ~~shall promulgate and adopt any rule which they are required to adopt by this chapter or~~
19 ~~chapter eighteen-c of this code no later than the first day of July, two thousand six. On and~~
20 ~~after this date:~~
21 ~~(1) Any rule of either governing board which meets the definition set out in subsection (c)~~
22 ~~of this section and which has not been promulgated and adopted by formal vote of the~~
23 ~~appropriate governing board is void and may not be enforced;~~
24 ~~(2) Any authority granted by this code which inherently requires the governing board to~~
25 ~~promulgate and adopt a rule is void until the governing board complies with the provisions~~
26 ~~of this section.~~
27 ~~(g) Within thirty days of the adoption of a rule, including repeal or amendment of an~~
28 ~~existing rule, the governing boards of Marshall University and West Virginia University,~~
29 ~~respectively, shall furnish to the Commission or the Council, as appropriate, a copy of each~~
30 ~~rule which has been formally adopted;~~
31 ~~(h) Not later than the first day of October, two thousand five, and annually thereafter, each~~
32 ~~governing board of a state institution of higher education shall file with the Commission or~~
33 ~~the Council, as appropriate, a list of all institutional rules that were in effect for that~~
34 ~~institution on the first day of July of that year, including the most recent date on which each~~
35 ~~rule was considered and adopted, amended or repealed by the governing board. For all~~
36 ~~rules adopted, amended or repealed after the effective date of this section, the list shall~~
37 ~~include a statement by the chair of the governing board certifying that the governing board~~
38 ~~has complied with the provisions of this section when each listed rule was adopted.~~

39 **ARTICLE 1A. COMPACT WITH HIGHER EDUCATION FOR THE FUTURE OF**
40 **WEST VIRGINIA.**

41 **§18B-1A-2. Institutional compacts with state institutions of higher education;**
42 **establishment and review process.**

- 43 (a) Each state college and university shall prepare an institutional compact for submission
44 to the eCommission. Each community and technical college shall prepare an institutional
45 compact for submission to the eCouncil. When the process herein provided is completed,
46 the institutional compacts shall form the agreements between the institutions of higher
47 education and the eCommission or eCouncil, respectively, and, ultimately, between the
48 institutions of higher education and the people of West Virginia on how the institutions will
49 use their resources to address the intent of the Legislature and the goals set forth in
50 section one-a, article one of this chapter. The compacts shall contain the following:
51 (1) A step-by-step process to accomplish the intent of the Legislature and the goals set
52 forth in section one-a, article one of this chapter as organized by the eCommission and
53 eCouncil. The step-by-step process shall be delineated by objectives and shall set forth a

1 time line for achieving the objectives which shall, where applicable, include benchmarks
2 to measure institutional progress as defined in subsection (e) of this section.

3 (2) A determination of the mission of the institution which specifically addresses changes,
4 as applicable, in the areas of research, graduate education, baccalaureate education,
5 revised admission requirements, community and technical colleges and such other areas
6 as the eCommission or eCouncil determines appropriate. In the determination of mission,
7 the institutions and the eCommission or eCouncil shall consider the report completed by
8 the national center for higher education management systems pursuant to the legislative
9 study as provided in section seven, article three of this chapter;

10 (3) A plan which is calculated to make any changes in institutional mission and structure
11 within a six-year period;

12 (4) A statement of the geographic areas of responsibility, where applicable, for each goal
13 to be accomplished as provided in subsection (d) of this section;

14 (5) A detailed statement of how the compact is aligned with and will be implemented in
15 conjunction with the master plan of the institution;

16 (6) Such other items, requirements or initiatives, required by the eCommission or eCouncil,
17 designed to accomplish the intent of the Legislature and the goals set forth in section one-
18 a, article one of this chapter or other public policy goals established by the eCommission
19 or eCouncil.

20 (b) Each institutional compact shall be updated annually and shall follow the same general
21 guidelines contained in subsection (a) of this section.

22 (c) Development and updating of the institutional compacts is subject to the following:

23 (1) The ultimate responsibility for developing and updating the institutional compacts at the
24 institutional level resides with the institutional board of advisors or the board of governors,
25 as appropriate;

26 (2) The ultimate responsibility for developing and adopting the final version of the state
27 college and university institutional compacts resides with the eCommission and the
28 ultimate responsibility for developing and adopting the final version of the community and
29 technical college institutional compacts resides with the eCouncil;

30 (3) Each institution shall submit its compact to the eCommission or eCouncil annually by
31 the fifteenth day of November;

32 (4) The eCommission and eCouncil shall review each compact of the institutions under
33 their respective jurisdictions and either adopt the compact or return it with specific
34 comments for change or improvement. The eCommission and eCouncil, as appropriate,
35 shall continue this process as long as each considers advisable;

36 (5) By the first day of May annually, if the institutional compact of any institution as
37 presented by that institution is not adopted by the eCommission or eCouncil, then the
38 eCommission or eCouncil is empowered and directed to develop and adopt the institutional
39 compact for the institution and the institution is bound by the compact so adopted; and

40 (6) As far as practicable, the eCommission and eCouncil each shall establish uniform
41 processes and forms for the development and submission of the institutional compacts by
42 the institutions under their respective jurisdictions. As a part of this function, the
43 eCommission and eCouncil shall organize the statements of legislative intent and goals
44 contained in section one-a, article one of this chapter in a manner that facilitates the
45 purposes of this subdivision and the purposes of this section.

46 (d) Assignment of geographic areas of responsibility. -

47 ~~(1)~~ (1) The eCommission and council shall assign geographic areas of responsibility to the
48 state institutions of higher education under their respective its jurisdictions as, except for
49 the state institutions of higher education known as Marshall University and West Virginia
50 University. For institutions other than the state institutions of higher education known as
51 Marshall University and West Virginia University, the geographic areas of responsibility are
52 made a part of their institutional compacts to ensure that all areas of the state are provided
53 necessary programs and services to achieve the public policy agenda.

54 (2) Pursuant to the provisions of section four, article three-c of this chapter, the Council
55 shall assign geographic areas of responsibility to the state institutions of higher education

1 under its jurisdiction, including the administratively linked institution known as Marshall
2 Community and Technical College, the administratively linked institution known as the
3 Community and Technical College at West Virginia University Institute of Technology and
4 the regional campus known as West Virginia University at Parkersburg.

5 (3) The geographic areas of responsibility for the state institutions of higher education
6 known as Marshall University and West Virginia University are assigned by the Legislature.

7 ~~(d)~~(4) The benchmarks established in the institutional compacts shall include measures of
8 programs and services by geographic area throughout the assigned geographic area of responsibility.

9 (e) The compacts shall contain benchmarks used to determine progress toward meeting
10 the goals established in the compacts. The benchmarks shall meet the following criteria:

11 (1) They shall be as objective as possible;

12 (2) They shall be directly linked to the goals in the compacts;

13 (3) They shall be measured by the indicators described in subsection (f) of this section; and

14 (4) Where applicable, they shall be used to measure progress in geographic areas of
15 responsibility.

16 (f) The ~~e~~Commission and ~~e~~Council each shall establish by legislative rule indicators which
17 measure the degree to which the goals and objectives set forth in section one-a, article one
18 of this chapter are being addressed and met by the institutions under their respective
19 jurisdictions. The benchmarks established in subsection (e) of this section shall be
20 measured by the indicators.

21 ~~(1) The Legislature finds that an emergency exists; therefore, not later than the first day~~
22 ~~of October, two thousand four, the council shall file as an emergency rule a legislative rules~~
23 ~~pertaining to benchmarks and indicators in accordance with the provisions of article three-~~
24 ~~a, chapter twenty-nine-a of this code. effect for the Commission and the Council on the~~
25 ~~effective date of this section remain in effect for the institutions under their respective~~
26 ~~jurisdictions. The rule pertaining to benchmarks and indicators in effect for the commission~~
27 ~~at the time of the effective date of this section remains in effect for the institutions under~~
28 ~~its jurisdiction.~~

29 (2) The legislative rules shall set forth at the least the following as pertains to all state
30 institutions of higher education:

31 (A) The indicators used to measure the degree to which the goals and objectives are being
32 met;

33 (B) Uniform definitions for the various data elements to be used in establishing the
34 indicators;

35 (C) Guidelines for the collection and reporting of data; and

36 (D) Sufficient detail within the benchmarks and indicators to:

37 (i) Provide measurable evidence that the pursuits of the institution are targeting the
38 educational needs of the citizens of the state and the components of the compacts and
39 master plans;

40 (ii) Delineate the goals and benchmarks for an institution so that the ~~e~~Commission, or
41 ~~e~~Council can precisely measure the degree to which progress is being made toward
42 achieving the goals for post-secondary education provided in section one-a, article one of
43 this chapter; and

44 (iii) Distinctly identify specific goals within the master plan or compact of an institution that
45 are not being met or toward which sufficient progress is not being made.

46 (3) In addition to any other requirement, the legislative rule established by the ~~e~~Council
47 shall set forth at the least the following as pertains to community and technical college education:

48 (A) Benchmarks and indicators which are targeted to identify:

49 (i) The degree to which progress is being made by institutions toward meeting the goals
50 for post-secondary education and the essential conditions provided in section three, article
51 three-c of this chapter;

52 (ii) Information and data necessary to be considered by the ~~e~~Council in making the
53 determination required by section three, article two-c of this chapter;

54 (iii) The degree to which progress is being made in the areas considered by the ~~e~~Council
55 for the purpose of making the determination required by section three, article two-c of this

1 chapter; and
2 (B) Sufficient detail within the benchmarks and indicators to provide clear evidence to
3 support an objective determination by the eCouncil that an institution's progress toward
4 achieving the goals for post-secondary education and the essential conditions is so
5 deficient that implementation of the provisions of section four, article two-c of this chapter
6 is warranted and necessary.

7 (g) The eCommission or the eCouncil, as appropriate, shall approve the master plans
8 developed by the boards of governors and the institutional boards of advisors pursuant to
9 section four, article two-a of this chapter or section one, article six of this chapter, as
10 appropriate.

11 **§18B-1A-6. Graduate education.**

12 (a) *Intent.* -- It is the intent of the Legislature to address the need for high quality graduate
13 education programs to be available throughout the state.

14 (b) *Findings.* -- The Legislature makes the following findings:

15 (1) Since West Virginia ranks below its competitor states in graduate degree production,
16 particularly in the areas that are important to the state's competitive position in the new
17 economy of the twenty-first century, there is a considerable need for greater access to
18 graduate education, especially at the master's degree level;

19 (2) There is a significant disparity in access to part-time graduate degree programs among
20 the different regions of the state and part-time graduate enrollments are heavily
21 concentrated in the counties immediately surrounding Marshall uUniversity and West
22 Virginia uUniversity;

23 (3) There is a particular need for increased access to graduate programs linked directly to
24 the revitalization of the regional economies of the state; and

25 (4) There is a particular need for improved quality and accessibility of preservice and in-
26 service programs for teachers in subject matter fields.

27 (c) In order to meet the need for graduate education, the eCommission shall be is
28 responsible for accomplishing the following:

29 (1) Ensuring that West Virginia uUniversity and Marshall uUniversity assist in the ~~expand~~
30 expansion of access to master's degree programs throughout West Virginia; with These
31 institutions shall place a strong emphasis on collaboration with the baccalaureate colleges
32 and community and technical colleges in each region when funds are available;

33 (2) Ensuring that any institution providing a master's degree program under the provisions
34 of this section provides a meaningful, coherent program by offering courses in such a way
35 that students, including place-bound adults, have ample opportunity to complete a degree
36 in a reasonable period of time;

37 (3) Focusing on providing courses that enhance the professional skills of teachers in their
38 subject areas; and

39 (4) Ensuring that programs are offered in the most cost-effective manner to expand access
40 throughout the region and the state; and

41 (5) Determining the graduate program needs of each region.

42 (d) ~~Bluefield State College, Concord college University, Fairmont sState college University,~~
43 ~~Glennville sState eCollege, Shepherd college University, West Liberty sState eCollege and~~
44 ~~West Virginia sState college University shall meet the need for graduate education in their~~
45 ~~regions by following the procedures outlined below pursuant to this subsection and~~
46 ~~subsection (c) of this section.~~

47 (1) ~~The institutions shall develop as graduate centers for their regions to broker access to~~
48 ~~graduate programs by contracting with accredited colleges and universities in and out of~~
49 ~~state. These programs shall be related directly to each region's education and economic~~
50 ~~needs. If an institution's proposal to offer a Master's degree receives the approval of the~~
51 ~~Commission, that Master's degree may be offered solely by the institution.~~

52 (2) ~~The institutions may begin collaborative programs with other institutions leading to the~~
53 ~~granting of master's degrees in selected areas that are demonstrated to be related directly~~
54 ~~to the needs of their regions and that draw on faculty strengths. An institution may continue~~

1 to offer collaborative programs aimed at meeting the documented needs with the approval
2 of the commission or, if a sustained need still exists, the institution may move to the next
3 level: If an institution does not receive the approval of the Commission for a proposal to
4 offer a Master's degree, that institution may broker or collaborate with another higher
5 education institution to develop a revised proposal for offering that brokered or
6 collaborative Master's degree.

7 (3) If the graduate education needs of the region have not been met through brokering and
8 collaborative programs, the institution may explore the option of beginning its own
9 graduate-level program leading to the granting of a master's degree. The institution may
10 begin its own master's degree program if it can meet the following conditions as
11 determined by the commission:

12 (A) Demonstrate that the institution has successfully completed each of the steps required
13 before exploring development of its own master's degree program;

14 (B) Provide evidence based on experience gained in the brokering and collaborative
15 arrangements that a sustained demand exists for the program;

16 (C) Demonstrate that the baccalaureate institution has the capacity to provide the program;

17 (D) Demonstrate that the core mission of the baccalaureate institution will not be impaired
18 by offering the graduate program;

19 (E) Provide evidence that the graduate program has a reasonable expectation of being accredited;

20 (F) Demonstrate that the need documented in subdivision (B) of this subsection is not
21 currently being met by any other state institution of higher education; and

22 (G) The commission may designate one of the institutions listed in subsection (d) of this
23 section to develop and implement no more than four of its own masters level programs as
24 a pilot project: *Provided*, That the selected institution shall move toward and achieve
25 regional accreditation of the masters program within a reasonable time as determined by
26 the commission. The institution shall be selected based on the following:

27 (i) Sufficient credentialed faculty to offer quality programs in the areas selected;

28 (ii) Sufficient unmet demand for the programs; and

29 (iii) Sustainable unmet demand based on generally accepted projections for population
30 growth in the region served by the institution.

31 The programs authorized by this clause may not be restricted by the provisions of
32 subdivisions (1), (2) and (3) of this subsection nor by the provisions of subsection (e) of this
33 section.

34 (e) There is an urgent need for master's degree programs for teachers in disciplines or
35 subject areas, such as mathematics, science, history, literature, foreign languages and the
36 arts. Currently, master's-level courses in education that are offered in the regions served
37 by the state universities are primarily in areas such as guidance and counseling,
38 administration, special education and other disciplines unrelated to teaching in subject
39 areas. If this need is not being met in a region through the procedure established in
40 subsection (d) of this section, then the graduate center in that region may plan a master's
41 degree program in education focused on teaching in subject area fields in which the
42 demand is not being met. No institution may begin a graduate program under the
43 provisions of this section until the program has been reviewed and approved by the
44 eCommission. The eCommission shall approve only those programs, as authorized by this
45 subsection, that emphasize serving the needs of teachers and schools in the colleges'
46 immediate regions. In determining whether a program should be approved, the
47 eCommission also shall rely upon the recommendations of the statewide task force on
48 teacher quality provided in section eight, article fourteen of this chapter.

49 (f) The eCommission shall review all graduate programs being offered under the provisions
50 of this section and, using the criteria established for program startup in subsection (d) of
51 this section, determine which programs should be discontinued.

52 (g) At least annually, the governing boards shall evaluate graduate programs developed
53 pursuant to the provisions of this section and report to the eCommission on the following:

- 1 (1) The number of programs being offered and the courses offered within each program;
 - 2 (2) The disciplines in which programs are being offered;
 - 3 (3) The locations and times at which courses are offered;
 - 4 (4) The number of students enrolled in the program; and
 - 5 (5) The number of students who have obtained master's degrees through each program.
- 6 The governing boards shall provide the eCommission with any additional information the
7 eCommission requests in order to make a determination on the viability of a program.
- 8 (h) In developing any graduate program under the provisions of this section, institutions
9 shall consider delivering courses at times and places convenient to adult students who are
10 employed full time. Institutions shall place an emphasis on extended degree programs,
11 distance learning and off-campus centers which utilize the cost-effective nature of
12 extending existing university capacity to serve the state rather than duplicating the core
13 university capacity and incurring the increased cost of developing master's degree
14 programs at other institutions throughout the state.
- 15 (i) Brokering institutions shall invite proposals from other public institutions of higher
16 education for service provision prior to contracting with other institutions: *Provided*, That
17 if institutions propose providing graduate programs in service areas other than in their
18 responsibility district, the institution seeking to establish a program shall work through the
19 district's lead institution in providing those services.
- 20 (j) In addition to the approval required by the eCommission, authorization for any institution
21 to offer a master's degree program under the provisions of this section is subject to the
22 formal approval processes established by the governing boards.

23 **ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.**

24 **§18B-1B-4. Powers and duties of higher education policy eCommission.**

25 (a) The primary responsibility of the eCommission is to develop, establish and implement
26 policy that will achieve the goals and objectives found in section one-a, article one of this
27 chapter. The eCommission shall exercise its authority and carry out its responsibilities in
28 a manner that is consistent and not in conflict with the powers and duties assigned by law
29 to the West Virginia eCouncil for community and technical college education and the
30 powers and duties assigned to the governing boards of Marshall University and West
31 Virginia University, respectively. To that end, the eCommission has the following powers
32 and duties relating to the institutions under its jurisdiction:

33 (1) Develop, oversee and advance the public policy agenda pursuant to section one, article
34 one-a of this chapter to address major challenges facing the state, including, but not limited
35 to, the goals and objectives found in section one-a, article one of this chapter and including
36 specifically those goals and objectives pertaining to the compacts created pursuant to
37 section two, article one-a of this chapter and to develop and implement the master plan
38 described in section nine of this article for the purpose of accomplishing the mandates of
39 this section;

40 (2) Develop, oversee and advance the implementation jointly with the eCouncil of a
41 financing policy for higher education in West Virginia. The policy shall meet the following
42 criteria:

43 (A) Provide an adequate level of education and general funding for institutions pursuant
44 to section five, article one-a of this chapter;

45 (B) Serve to maintain institutional assets, including, but not limited to, human and physical
46 resources and deferred maintenance;

47 (C) Invest and provide incentives for achieving the priority goals in the public policy
48 agenda, including, but not limited to, those found in section one-a, article one of this
49 chapter; and

50 (D) Incorporate the plan for strategic funding to strengthen capacity for support of
51 community and technical college education established by the West Virginia eCouncil for
52 eCommunity and tTechnical eCollege eEducation pursuant to the provisions of section six,
53 article two-b of this chapter;

54 (3) In collaboration with the eCouncil, create a policy leadership structure capable of the

1 following actions:

2 (A) Developing, building public consensus around and sustaining attention to a long-range
3 public policy agenda. In developing the agenda, the eCommission and eCouncil shall seek
4 input from the Legislature and the gGovernor and specifically from the sState bBoard of
5 eEducation and local school districts in order to create the necessary linkages to assure
6 smooth, effective and seamless movement of students through the public education and
7 post-secondary education systems and to ensure that the needs of public school courses
8 and programs can be fulfilled by the graduates produced and the programs offered;

9 (B) Ensuring that the governing boards carry out their duty effectively to govern the
10 individual institutions of higher education; and

11 (C) Holding the higher education institutions and the higher education systems as a whole
12 accountable for accomplishing their missions and implementing the provisions of the compacts;

13 (4) Develop and adopt each institutional compact;

14 (5) Review and adopt the annual updates of the institutional compacts;

15 (6) Serve as the accountability point to:

16 (A) The gGovernor for implementation of the public policy agenda; and

17 (B) The Legislature by maintaining a close working relationship with the legislative
18 leadership and the tLegislative oOversight eCommission on eEducation aAccountability;

19 (7) Jointly with the eCouncil, promulgate legislative rules pursuant to article three-a, chapter
20 twenty-nine-a of this code to fulfill the purposes of section five, article one-a of this chapter;

21 (8) Establish and implement a peer group for each institution as described in section three,
22 article one-a of this chapter;

23 (9) Establish and implement the benchmarks and performance indicators necessary to
24 measure institutional achievement towards state policy priorities and institutional missions
25 pursuant to section two, article one-a of this chapter;

26 (10) Annually report to the Legislature and to the tLegislative oOversight eCommission on
27 eEducation aAccountability during the January interim meetings on a date and at a time
28 and location to be determined by the pPresident of the Senate and the sSpeaker of the
29 House of Delegates. The report shall address at least the following:

30 (A) The performance of its system of higher education during the previous fiscal year,
31 including, but not limited to, progress in meeting goals stated in the compacts and progress
32 of the institutions and the higher education system as a whole in meeting the goals and
33 objectives set forth in section one-a, article one of this chapter;

34 (B) An analysis of enrollment data collected pursuant to section one, article ten of this
35 chapter and recommendations for any changes necessary to assure access to high-quality,
36 high-demand education programs for West Virginia residents;

37 (C) The priorities established for capital investment needs pursuant to subdivision (11) of
38 this subsection and the justification for such priority;

39 (D) Recommendations of the eCommission for statutory changes needed to further the
40 goals and objectives set forth in section one-a, article one of this chapter;

41 (11) Establish a formal process for identifying needs for capital investments and for
42 determining priorities for these investments for consideration by the Governor and the
43 Legislature as part of the appropriation request process. It is the responsibility of the
44 eCommission to assure a fair distribution of funds for capital projects between the
45 eCommission and the eCouncil. To that end the eCommission shall take the following steps:

46 (A) Receive the list of priorities developed by the eCouncil for capital investment for the
47 institutions under the eCouncil's jurisdiction pursuant to subsection (b), section six, article
48 two-b of this chapter;

49 (B) Place the ranked list of projects on the agenda for action within sixty days of the date
50 on which the list was received;

51 (C) Select a minimum of three projects from the list submitted by the eCouncil to be
52 included on the ranked list established by the eCommission. At least one of the three
53 projects selected must come from the top two priorities established by the eCouncil.

54 (12) Maintain guidelines for institutions to follow concerning extensive capital projects-
55 management except the governing boards of Marshall University and West Virginia

1 University are not subject to the provisions of this subdivision as it relates to the state
2 institutions of higher education known as Marshall University and West Virginia University.
3 The guidelines shall provide a process for developing capital projects, including, but not
4 limited to, the notification by an institution to the eCommission of any proposed capital
5 project which has the potential to exceed one million dollars in cost. Such a project may
6 not be pursued by an institution without the approval of the eCommission. An institution
7 may not participate directly or indirectly with any public or private entity in any capital
8 project which has the potential to exceed one million dollars in cost;

9 (13) Acquire legal services as are considered necessary, including representation of the
10 eCommission, its institutions, employees and officers before any court or administrative
11 body, notwithstanding any other provision of this code to the contrary. The counsel may
12 be employed either on a salaried basis or on a reasonable fee basis. In addition, the
13 eCommission may, but is not required to, call upon the aAttorney gGeneral for legal
14 assistance and representation as provided by law;

15 (14) Employ a eChancellor for hHigher eEducation pursuant to section five of this article;

16 (15) Employ other staff as necessary and appropriate to carry out the duties and
17 responsibilities of the eCommission and the eCouncil, in accordance with the provisions
18 of article four of this chapter;

19 (16) Provide suitable offices in Charleston for the chancellor, vice chancellors and other
20 staff;

21 (17) Advise and consent in the appointment of the presidents of the institutions of higher
22 education under its jurisdiction pursuant to section six of this article. The role of the
23 eCommission in approving an institutional president is to assure through personal interview
24 that the person selected understands and is committed to achieving the goals and
25 objectives as set forth in the institutional compact and in section one-a, article one of this
26 chapter;

27 (18) Approve the total compensation package from all sources for presidents of institutions
28 under its jurisdiction, as proposed by the governing boards. The governing boards must
29 obtain approval from the eCommission of the total compensation package both when
30 institutional presidents are employed initially and afterward when any change is made in
31 the amount of the total compensation package;

32 (19) Establish and implement the policy of the state to assure that parents and students
33 have sufficient information at the earliest possible age on which to base academic
34 decisions about what is required for students to be successful in college, other post-
35 secondary education and careers related, as far as possible, to results from current
36 assessment tools in use in West Virginia;

37 (20) Approve and implement a uniform standard jointly with the eCouncil to determine
38 which students shall be placed in remedial or developmental courses. The standard shall
39 be aligned with college admission tests and assessment tools used in West Virginia and
40 shall be applied uniformly by the governing boards throughout the public higher education
41 system. The chancellors shall develop a clear, concise explanation of the standard which
42 they shall communicate to the sState bBoard of eEducation and the sState
43 sSuperintendent of schools;

44 (21) Review and approve or disapprove capital projects as described in subdivision (11)
45 of this subsection;

46 (22) Jointly with the eCouncil, develop and implement an oversight plan to manage
47 systemwide technology such as the following:

48 (A) Expanding distance learning and technology networks to enhance teaching and
49 learning, promote access to quality educational offerings with minimum duplication of
50 effort; and

51 (B) Increasing the delivery of instruction to nontraditional students, to provide services to
52 business and industry and increase the management capabilities of the higher education
53 system;:

54 (C) Notwithstanding any other provision of law or this code to the contrary, the Council,
55 Commission and state institutions of higher educations are not subject to the jurisdiction

1 of the Chief Technology Officer for any purpose.

2 (23) Establish and implement policies and procedures to ensure that students may transfer
3 and apply toward the requirements for a bachelor's degree the maximum number of credits
4 earned at any regionally accredited in-state or out-of-state community and technical college
5 with as few requirements to repeat courses or to incur additional costs as is consistent with
6 sound academic policy;

7 (24) Establish and implement policies and procedures to ensure that students may transfer
8 and apply toward the requirements for a degree the maximum number of credits earned
9 at any regionally accredited in-state or out-of-state higher education institution with as few
10 requirements to repeat courses or to incur additional costs as is consistent with sound
11 academic policy;

12 (25) Establish and implement policies and procedures to ensure that students may transfer
13 and apply toward the requirements for a master's degree the maximum number of credits
14 earned at any regionally accredited in-state or out-of-state higher education institution with
15 as few requirements to repeat courses or to incur additional costs as is consistent with
16 sound academic policy;

17 (26) Establish and implement policies and programs, in cooperation with the eCouncil and
18 the institutions of higher education, through which students who have gained knowledge
19 and skills through employment, participation in education and training at vocational schools
20 or other education institutions, or internet-based education programs, may demonstrate
21 by competency-based assessment that they have the necessary knowledge and skills to
22 be granted academic credit or advanced placement standing toward the requirements of
23 an associate degree or a bachelor's degree at a state institution of higher education;

24 (27) Seek out and attend regional, national and international meetings and forums on
25 education and workforce development-related topics, as in the eCommission's discretion
26 is critical for the performance of their duties as members, for the purpose of keeping
27 abreast of education trends and policies to aid it in developing the policies for this state to
28 meet the established education goals and objectives pursuant to section one-a, article one
29 of this chapter;

30 (28) Develop, establish and implement guidelines a rule for higher education governing
31 boards and institutions to follow when considering capital projects. The guidelines shall
32 ~~include, but are not limited to, the following: assure (A) That the governing boards and~~
33 ~~institutions do not approve or promote capital projects that give competitive advantage to~~
34 ~~involving new private sector over existing West Virginia businesses, unless the commission~~
35 ~~determines such private sector projects are in the best interest of the students, the~~
36 ~~institution and the community to be served; and (B) That the governing boards of~~
37 ~~institutions not approve or promote projects involving private sector businesses which~~
38 ~~would have the effect of reducing property taxes on existing properties or avoiding, in~~
39 ~~whole or in part, the full amount of taxes which would be due on newly developed or future~~
40 ~~properties;~~

41 (29) Consider and submit to the appropriate agencies of the executive and legislative
42 branches of state government a budget that reflects recommended appropriations from the
43 eCommission and the institutions under its jurisdiction. The eCommission shall submit as
44 part of its budget proposal the separate recommended appropriations it received from the
45 eCouncil, both for the eCouncil and the institutions under the eCouncil's jurisdiction. The
46 eCommission annually shall submit the proposed institutional allocations based on each
47 institution's progress toward meeting the goals of its institutional compact;

48 (30) The eCommission has the authority to assess institutions under its jurisdiction ~~for,~~
49 ~~including the state institutions of higher education known as Marshall University and West~~
50 ~~Virginia University, for the payment of expenses of the eCommission or for the funding of~~
51 ~~statewide higher education services, obligations or initiatives related to the goals set forth~~
52 ~~for the provision of public higher education in the state;~~

53 (31) Promulgate rules allocating reimbursement of appropriations, if made available by the
54 Legislature, to institutions of higher education for qualifying noncapital expenditures
55 incurred in the provision of services to students with physical, learning or severe sensory

1 disabilities;

2 (32) Make appointments to boards and commissions where this code requires
3 appointments from the sState eCollege sSystem bBoard of dDirectors or the uUniversity
4 of West Virginia sSystem bBoard of tTrustees which were abolished effective the thirtieth
5 day of June, two thousand, except in those cases where the required appointment has a
6 specific and direct connection to the provision of community and technical college
7 education, the appointment shall be made by the eCouncil. Notwithstanding any provisions
8 of this code to the contrary, the eCommission or the eCouncil may appoint one of its own
9 members or any other citizen of the state as its designee. The eCommission and eCouncil
10 shall appoint the total number of persons in the aggregate required to be appointed by
11 these previous governing boards;

12 (33) Pursuant to the provisions of article three-a, chapter twenty-nine-a of this code and
13 section six, article one of this chapter, promulgate rules as necessary or expedient to fulfill
14 the purposes of this chapter. The eCommission and the eCouncil shall promulgate a
15 uniform joint legislative rule for the purpose of standardizing, as much as possible, the
16 administration of personnel matters among the institutions of higher education;

17 (34) Determine when a joint rule among the governing boards of the institutions under its
18 jurisdiction is necessary or required by law and, in those instances, and in consultation with
19 the governing boards, of all the institutions under its jurisdiction, promulgate the joint rule;

20 (35) In consultation with the Governing Boards of Marshall University and West Virginia
21 University, implement a policy jointly with the eCouncil whereby course credit earned at
22 a community and technical college transfers for program credit at any other state institution
23 of higher education and is not limited to fulfilling a general education requirement; and

24 (36) Promulgate a joint rule with the eCouncil establishing tuition and fee policy for all
25 institutions of higher education, other than state institutions of higher education known as
26 Marshall University and West Virginia University which are subject to the provisions of
27 section one, article ten of this chapter. The rule shall include, but is not limited to, the following:

28 (A) Comparisons with peer institutions;
29 (B) Differences among institutional missions;
30 (C) Strategies for promoting student access;
31 (D) Consideration of charges to out-of-state students; and
32 (E) Such other policies as the eCommission and eCouncil consider appropriate; and

33 (37) Implement general disease awareness initiatives to educate parents and students,
34 particularly dormitory residents, about meningococcal meningitis; the potentially life-
35 threatening dangers of contracting the infection; behaviors and activities that can increase
36 risks; measures that can be taken to prevent contact or infection; and potential benefits of
37 vaccination. The Commission shall encourage institutions that provide medical care to
38 students to provide access to the vaccine for those who wish to receive it.

39 (b) In addition to the powers and duties listed in subsection (a) of this section, the
40 eCommission has the following general powers and duties related to its role in developing,
41 articulating and overseeing the implementation of the public policy agenda:

42 (1) Planning and policy leadership including a distinct and visible role in setting the state's
43 policy agenda and in serving as an agent of change;
44 (2) Policy analysis and research focused on issues affecting the system as a whole or a
45 geographical region thereof;
46 (3) Development and implementation of institutional mission definitions including use of
47 incentive funds to influence institutional behavior in ways that are consistent with public priorities;
48 (4) Academic program review and approval for institutions under its jurisdiction, including
49 the use of institutional missions as a template to judge the appropriateness of both new
50 and existing programs and the authority to implement needed changes; The Commission's
51 authority to review and approve academic programs for either the state institution of higher
52 education known as Marshall University or West Virginia University is limited to programs
53 that are proposed to be offered at a new location not presently served by that institution;

54 (5) Development of budget and allocation of resources, including review and approving
55 institutional operating and capital budgets and distributing Distribution of funds

1 appropriated to the Commission, including incentive and performance-based funding;
2 (6) Administration of state and federal student aid programs under the supervision of the
3 vice chancellor for administration, including promulgation of any rules necessary to
4 administer those programs;
5 (7) Serving as the agent to receive and disburse public funds when a governmental entity
6 requires designation of a statewide higher education agency for this purpose;
7 (8) Development, establishment and implementation of information, assessment and
8 accountability systems, including maintenance of statewide data systems that facilitate
9 long-term planning and accurate measurement of strategic outcomes and performance indicators;
10 (9) Jointly with the eCouncil, developing, establishing and implementing policies for
11 licensing and oversight for both public and private degree-granting and nondegree-granting
12 institutions that provide post-secondary education courses or programs in the state
13 pursuant to the findings and policy recommendations ~~to be determined as set forth in~~
14 required by section eleven of this article;
15 (10) Development, implementation and oversight of statewide and region-wide projects and
16 initiatives related to providing post-secondary education at the baccalaureate level and
17 above such as those using funds from federal categorical programs or those using
18 incentive and performance-based funding from any source; and
19 (11) Quality assurance that intersects with all other duties of the eCommission particularly
20 in the areas of research, data collection and analysis, planning, policy analysis, program
21 review and approval, budgeting and information and accountability systems.
22 (c) In addition to the powers and duties provided in subsections (a) and (b) of this section
23 and any other powers and duties as may be assigned to it by law, the eCommission has
24 such other powers and duties as may be necessary or expedient to accomplish the
25 purposes of this article.
26 (d) The eCommission is authorized to withdraw specific powers of any governing board of
27 an institution under its jurisdiction for a period not to exceed two years, if the eCommission
28 makes a determination that:
29 (1) The governing board has failed for two consecutive years to develop an institutional
30 compact as required in article one of this chapter;
31 (2) The eCommission has received information, substantiated by independent audit, of
32 significant mismanagement or failure to carry out the powers and duties of the board of
33 governors according to state law; or
34 (3) Other circumstances which, in the view of the eCommission, severely limit the capacity
35 of the board of governors to carry out its duties and responsibilities.
36 (4) The period of withdrawal of specific powers may not exceed two years during which
37 time the eCommission is authorized to take steps necessary to reestablish the conditions
38 for restoration of sound, stable and responsible institutional governance.

39 **§18B-1B-5. Employment of eChancellor for hHigher eEducation; office; powers and**
40 **duties generally; employment of vVice eChancellors.**

41 (a) The eCommission, created pursuant to section one of this article, shall employ a
42 eChancellor for hHigher eEducation who is the eChief eExecutive eOfficer of the
43 eCommission and who serves at its will and pleasure.
44 (b) The eCommission shall set the qualifications for the position of eChancellor and shall
45 conduct a thorough nationwide search for qualified candidates. A qualified candidate is one
46 who meets at least the following criteria:
47 (1) Possesses an excellent academic and administrative background;
48 (2) Demonstrates strong communication skills;
49 (3) Has significant experience and an established national reputation as a professional in
50 the field of higher education;
51 (4) Is free of institutional or regional biases; and
52 (5) Holds or retains no other administrative position within a system of higher education
53 while employed as chancellor.

1 (c) The eCommission shall conduct written performance evaluations of the eChancellor
2 annually and may offer the eChancellor a contract not to exceed three years. At the end
3 of each contract period, the eCommission shall review the evaluations and make a
4 determination by vote of its members on continuing employment and compensation level.
5 (d) When filling a vacancy in the position of eChancellor, the eCommission shall enter into
6 an initial employment contract for one year with the candidate selected. At the end of the
7 initial contract period, and each contract period thereafter, the eCommission shall review
8 the evaluations and make a determination by vote of its members on continuing
9 employment and compensation level for the eChancellor.
10 (e) ~~The chancellor shall be compensated on a basis in excess of, but~~ Commission sets the
11 Chancellor's salary. ~~The salary may not to exceed by more than twenty percent greater~~
12 ~~than, the base salary of any president of a state institution of higher education or the~~
13 ~~administrative head of a governing board~~ the average annual salary of chief executive
14 ~~officers of state systems of higher education in the states that comprise the membership~~
15 ~~of the Southern Regional Education Board.~~
16 (f) The eCommission may employ a vVice eChancellor for hHealth sSciences who serves
17 at the will and pleasure of the eCommission. The vVice eChancellor for hHealth sSciences
18 shall coordinate the West Virginia uUniversity sSchool of mMedicine, the Marshall
19 University School of Medicine and the West Virginia sSchool of oOsteopathic mMedicine
20 and also shall provide assistance to the governing boards on matters related to medical
21 education and health sciences. The vVice eChancellor for hHealth sSciences shall perform
22 all duties assigned by the eChancellor, the eCommission and state law. In the case of a
23 vacancy in the office of vVice eChancellor of hHealth sSciences, the duties assigned to this
24 oOffice by law are the responsibility of the eChancellor or a designee.
25 (g) The eCommission shall employ a vVice eChancellor for aAdministration pursuant to
26 section two, article four of this chapter.
27 (h) The eCommission may employ a vVice eChancellor for sState eColleges who serves
28 at the will and pleasure of the eCommission. It is the duty and responsibility of the vVice
29 eChancellor for sState eColleges to:
30 (1) Provide assistance to the eCommission, the eChancellor and the state colleges on
31 matters related to or of interest and concern to these institutions;
32 (2) Advise, assist and consult regularly with the institutional presidents and institutional
33 boards of governors of each state college;
34 (3) Serve as an advocate and spokesperson for the state colleges to represent them and
35 to make their interests, views and issues known to the eChancellor, the eCommission and
36 governmental agencies;
37 (4) Perform all duties assigned by the eChancellor, the eCommission and state law.
38 In addition, the vVice eChancellor for sState eColleges has the responsibility and the duty
39 to provide staff assistance to the institutional presidents and governing boards to the extent
40 practicable.
41 (i) On behalf of the eCommission, the eChancellor may enter into agreements with any
42 state agency or political subdivision of the state, any state higher education institution or
43 any other person or entity to enlist staff assistance to implement the powers and duties
44 assigned by the eCommission or by state law.
45 (j) The eChancellor is responsible for the daily operations of the eCommission and has the
46 following responsibilities relating to the eCommission and the institutions under its
47 jurisdiction:
48 (1) To carry out policy and program directives of the eCommission;
49 (2) To develop and submit annual reports on the implementation plan to achieve the goals
50 and objectives set forth in section one-a, article one of this chapter and in the institutional
51 compacts;
52 (3) To prepare and submit to the eCommission for its approval the proposed budget of the
53 eCommission including the offices of the eChancellor and the vVice eChancellors;
54 (4) To assist the governing boards in developing rules, subject to the provisions of section
55 six, article one of this chapter. Nothing in this chapter requires the rules of the governing

1 boards to be filed pursuant to the rule-making procedures provided in article three-a,
2 chapter twenty-nine-a of this code. The ~~chancellor~~ Commission and the Council, either
3 separately or jointly as appropriate, ~~is~~ are responsible for ensuring that any policy which
4 is required to be uniform across the institutions is applied in a uniform manner;

5 (5) To perform all other duties and responsibilities assigned by the eCommission or by
6 state law.

7 (k) The eChancellor shall be reimbursed for all actual and necessary expenses incurred
8 in the performance of all assigned duties and responsibilities.

9 (l) The eChancellor, with the eCommission, advises the Legislature on matters of higher
10 education in West Virginia. The eChancellor shall work closely with the tLegislative
11 oOversight eCommission on eEducation aAccountability and with the elected leadership
12 of the state to ensure that they are fully informed about higher education issues and that
13 the eCommission fully understands the goals for higher education that the Legislature has
14 established by law.

15 (m) The eChancellor may design and develop for consideration by the eCommission new
16 statewide or regional initiatives in accordance with the goals set forth in section one-a,
17 article one of this chapter and the public policy agenda articulated by the eCommission.
18 In those instances where the initiatives to be proposed have a direct and specific impact
19 or connection to community and technical college education as well as to baccalaureate
20 and graduate education, the eChancellor for hHigher eEducation and the eChancellor for
21 eCommunity and tTechnical eCollege eEducation shall design and develop the initiatives
22 jointly for consideration by the eCommission and the eCouncil.

23 (n) The eChancellor shall work closely with members of the sState bBoard of eEducation
24 and with the sState sSuperintendent of sSchools to assure that the following goals are met:

25 (1) Development and implementation of a seamless kindergarten-through-college system
26 of education; and

27 (2) Appropriate coordination of missions and programs. To further the goals of cooperation
28 and coordination between the eCommission and the sState bBoard of eEducation, the
29 eChancellor serves as an ex officio, nonvoting member of the sState bBoard of
30 eEducation.

31 **§18B-1B-6. Appointment of institutional presidents; evaluation.**

32 (a) *Appointment of institutional presidents.* -- Appointment of presidents of the state
33 institutions of higher education shall be made as follows:

34 (1) Subject to the approval of the eCommission, the governing board of the institution
35 appoints a president for Bluefield sState eCollege, Concord ~~college~~ University, Fairmont
36 sState college University, Glenville sState eCollege, Marshall uUniversity, Shepherd
37 college University, West Liberty sState eCollege, West Virginia sSchool of oOsteopathic
38 mMedicine, West Virginia sState college University and West Virginia uUniversity.

39 (2) Subject to the approval of the eCouncil and to the provisions of article three-c of this
40 chapter, the gGoverning bBoard of West Virginia University appoints the pPresident of the
41 regional campus known as West Virginia uUniversity at Parkersburg. When selecting
42 candidates for consideration to fill the office of president, the gGoverning bBoard shall use
43 the search and screening process provided in section one, article six of this chapter.

44 Subject to the approval of the eCommission, the gGoverning bBoard of West Virginia
45 University appoints the pPresident of the regional campus known as West Virginia
46 uUniversity iInstitute of tTechnology. The president of each regional campus serves at the
47 will and pleasure of the appointing governing board.

48 (3) Subject to the approval of the eCouncil, the governing board of the community and
49 technical college appoints a president for eEastern West Virginia eCommunity and
50 tTechnical eCollege, sSouthern West Virginia eCommunity and tTechnical eCollege and
51 West Virginia nNorthern eCommunity and tTechnical eCollege.

52 (4) Subject to the approval of the eCouncil, the governing board of the sponsoring
53 institution appoints a president for each administratively linked community and technical
54 college which shares a physical campus location with the sponsoring institution, including
55 Fairmont sState eCommunity and tTechnical eCollege, Marshall eCommunity and

1 ~~Technical College, the Community and Technical College at West Virginia University~~
2 ~~institute of Technology and West Virginia State Community and Technical College.~~
3 (5) Subject to the approval of the Council, the governing board of the community and
4 technical college appoints a president for each administratively linked community and
5 technical college which does not share a physical campus location with the sponsoring
6 institution, including New River Community and Technical College and the Community
7 and Technical College of Shepherd.

8 ~~Subject to the approval of the council, the governing board of the sponsoring institution~~
9 ~~appoints a president for each of these two community and technical colleges until the~~
10 ~~institution gains independent accreditation.~~

11 (b) ~~Other appointments.~~ -- ~~Effective the first day of July, two thousand five, The~~
12 ~~institutional president shall appoints a provost to be the administrative head of the Potomac~~
13 ~~campus of West Virginia University.~~

14 (c) ~~Evaluation of presidents.~~ -- The appointing governing board shall conduct written
15 performance evaluations of each institution's president, including the presidents of
16 administratively linked community and technical colleges. Evaluations shall be done in
17 every fourth year of employment as president, recognizing unique characteristics of the
18 institution and utilizing institutional personnel, institutional boards of advisors as
19 appropriate, staff of the appropriate governing board and persons knowledgeable in higher
20 education matters who are not otherwise employed by a governing board. A part of the
21 evaluation shall be a determination of the success of the institution in meeting the
22 requirements of its institutional compact.

23 **§18B-1B-13. Study of issues affecting employees in public higher education.**

24 (a) In consultation with the Council, the governing boards, the State Advisory Council of
25 Faculty established pursuant to section two, article six of this chapter and the State
26 Advisory Council of Classified Employees established pursuant to section five, article six
27 of this chapter, the Commission shall conduct a study relating to issues affecting
28 employees in public higher education.

29 (b) The study includes, but is not limited to, the following:

30 (1) Reviewing statutes, rules, guidelines, interpretations and other statements of policy;

31 (2) Surveying the capacity, professional training and practices of human resources staff by
32 institution, including the number of staff employed in each institutional human resources
33 office, their job titles and responsibilities;

34 (3) Evaluating the strengths and weaknesses of the statewide classification and
35 compensation system and examining alternatives;

36 (4) Reviewing job titles and responsibilities to determine if certain families of jobs should
37 be classified or nonclassified;

38 (5) Evaluating and recommending best practices and methods to establish salary rates for
39 faculty, classified employees, nonclassified employees and administrators, including:

40 (A) Developing measurable indicators of "merit" and "performance" if these terms are to
41 be used in a system for determining benefits;

42 (B) Developing reliable instruments of performance evaluation for all classes of employees;
43 and

44 (C) Exploring the feasibility of authorizing employee bonuses under a merit or
45 performance-based system;

46 (6) Determining the most effective and efficient method to train administrators who perform
47 employee evaluations and assuring that they use these instruments appropriately;

48 (7) Exploring justifications for maintaining or removing the internal preference for hiring,
49 promoting and transferring classified employees pursuant to article seven of this chapter;

50 (8) Developing recommendations for a fair and rational policy covering reductions in force;
51 (9) Identifying unnecessary state-level paperwork requirements related to personnel and
52 recommending methods to eliminate them while maintaining strict fiscal accountability;

53 (10) Evaluating the strengths and weaknesses of statewide tenure and promotion policies
54 for faculty and examining alternatives;

1 (11) Evaluating the feasibility of implementing differential salary rates based on cost of
2 living or other relevant factors;

3 (12) Determining whether employees whose salaries are derived from funds other than
4 state appropriations should be subject to the provisions of article seven of this chapter and
5 how such employees should be treated in any policy on reductions in force; and

6 (13) Determining the true costs or benefits as well as the advantages and disadvantages
7 that may accrue as a result of decisions to outsource certain institutional functions. In order
8 to perform a cost/benefit analysis, the Commission must first develop an accurate
9 database of institutional practices including the number of positions being outsourced or
10 filled by temporary employees and the true amount of cost savings, if any.

11 (c) The Commission shall report to the Legislative Oversight Commission on Education
12 Accountability by the first day of October, two thousand five, and every six months
13 thereafter on the progress of the study.

14 (d) The Commission shall complete its work and report its findings, conclusions and
15 recommendations, together with drafts of any legislation necessary to effectuate the
16 recommendations, to the Legislative Oversight Commission on Education Accountability
17 by the first day of December, two thousand eight.

18 (1) In making its recommendations, the Commission shall take into account the impact of
19 proposed changes on employees and the communities in which state institutions of higher
20 education are located; and

21 (2) The Commission shall include documentation to support any conclusion or
22 recommendation included as a part of their findings and shall attach estimates of cost or
23 savings to each recommendation, if that recommendation has a fiscal impact on any public
24 agency or institution.

25 **ARTICLE 2A. INSTITUTIONAL BOARDS OF GOVERNORS.**

26 **§18B-2A-3. Supervision of governing boards; promulgation of rules.**

27 (a) For the transition year beginning on the first day of July, two thousand and ending
28 on the thirtieth day of June, two thousand one, the interim governing board is subject to
29 the supervision of the secretary of education and the arts. Rules adopted by the
30 governing board are subject to approval by the secretary of education and the arts.

31 The governing boards are subject to the supervision of the Commission or the Council, as
32 appropriate, except for the governing boards of Marshall University and West Virginia
33 University as it relates to the state institutions of higher education know as Marshall
34 University and West Virginia University. The Chancellor for Higher Education and the
35 Chancellor for Community and Technical College Education, under the supervision of their
36 respective boards, are responsible for the coordination of policies and purposes of the
37 governing boards and shall provide for and facilitate sufficient interaction among the
38 governing boards and between the governing boards and the State Board of Education to
39 meet the goals and objectives provided in the compacts and in section one-a, article one
40 of this chapter.

41 (b) Effective the first day of July, two thousand one, and thereafter, the governing boards
42 are subject to the supervision of the chancellor. The chancellor is responsible for the
43 coordination of policies and purposes of the governing boards and shall provide for and
44 facilitate sufficient interaction among the governing boards and between the governing
45 boards and the state board of education to meet the goals and objectives provided for in
46 the compacts and in section one-a, article one of this chapter.

47 (c) (b) The governing boards and the sState bBoard of eEducation shall provide any and
48 all information requested by the chancellor Commission or the Council in an appropriate
49 format and in a timely manner.

50 **§18B-2A-4. Powers and duties of governing boards generally.**

51 Each governing board separately has the following powers and duties:

52 (a) Determine, control, supervise and manage the financial, business and education
53 policies and affairs of the state institutions of higher education under its jurisdiction;

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

5 (1) The ultimate responsibility for developing and updating the master plans at the
6 institutional level resides with the board of governors, or board of advisors, as applicable,
7 but the ultimate responsibility for approving the final version of the institutional master
8 plans, including periodic updates, resides with the eCommission or eCouncil, as
9 appropriate.

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

11 ~~(1)~~(A) A detailed demonstration of how the master plan will be used to meet the goals and
12 objectives of the institutional compact;

13 ~~(2)~~(B) A well-developed set of goals outlining missions, degree offerings, resource
14 requirements, physical plant needs, personnel needs, enrollment levels and other planning
15 determinates and projections necessary in such a plan to assure that the needs of the
16 institution's area of responsibility for a quality system of higher education are addressed;

17 ~~(3)~~(C) Documentation of the involvement of the eCommission or eCouncil, as appropriate,
18 institutional constituency groups, clientele of the institution and the general public in the
19 development of all segments of the institutional master plan.

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

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

26 (d) Direct the preparation of a budget request for the institutions under its jurisdiction, such
27 request to relate directly to missions, goals and projections as found in the institutional
28 master plans and the institutional compacts;

29 (e) Consider, revise and submit to the eCommission or eCouncil, as appropriate, a budget
30 request on behalf of the institutions under its jurisdiction;

31 (f) Review, at least every five years, all academic programs offered at the institutions under
32 its jurisdiction. The review shall address the viability, adequacy and necessity of the
33 programs in relation to its institutional master plan, the institutional compact and the
34 education and workforce needs of its responsibility district. As a part of the review, each
35 governing board shall require the institutions under its jurisdiction to conduct periodic
36 studies of its graduates and their employers to determine placement patterns and the
37 effectiveness of the education experience. Where appropriate, these studies should
38 coincide with the studies required of many academic disciplines by their accrediting bodies;

39 (g) The governing boards shall ensure that the sequence and availability of academic
40 programs and courses offered by the institutions under their jurisdiction is such that
41 students have the maximum opportunity to complete programs in the time frame normally
42 associated with program completion. Each governing board is responsible to see that the
43 needs of nontraditional college-age students are appropriately addressed and, to the
44 extent it is possible for the individual governing board to control, to assure core course
45 work completed at institutions under its jurisdiction is transferable to any other state
46 institution of higher education for credit with the grade earned;

47 (h) Subject to the provisions of article one-b of this chapter, the appropriate governing
48 board has the exclusive authority to approve the teacher education programs offered in the
49 institution under its control. In order to permit graduates of teacher education programs to
50 receive a degree from a nationally accredited program and in order to prevent expensive
51 duplication of program accreditation, the eCommission may select and utilize one nationally
52 recognized teacher education program accreditation standard as the appropriate standard
53 for program evaluation;

54 (i) Utilize faculty, students and classified employees in institutional-level planning and
55 decisionmaking when those groups are affected;

1 (j) Subject to the provisions of federal law and pursuant to the provisions of article nine of
2 this chapter and to rules adopted by the eCommission and the eCouncil, administer a
3 system for the management of personnel matters, including, but not limited to, personnel
4 classification, compensation and discipline for employees at the institutions under their jurisdiction;
5 (k) Administer a system for hearing employee grievances and appeals. Notwithstanding
6 any other provision of this code to the contrary, the procedure established in article six-a,
7 chapter twenty-nine of this code is the exclusive mechanism for hearing prospective
8 employee grievances and appeals. In construing the application of said article to
9 grievances of higher education employees, the following apply:
10 (1) "Chief administrator" means the president of a state institution of higher education as
11 to those employees employed by the institution and the appropriate chancellor as to those
12 employees employed by the eCommission or eCouncil;
13 (2) The sState dDivision of pPersonnel may not be a party to nor have any authority
14 regarding a grievance initiated by a higher education employee; and
15 (3) The provisions of this section supersede and replace the grievance procedure set out
16 in article twenty-nine, chapter eighteen of this code for any grievance initiated by a higher
17 education employee after the first day of July, two thousand one;
18 (l) Solicit and utilize or expend voluntary support, including financial contributions and
19 support services, for the institutions under its jurisdiction;
20 (m) Appoint a president for the institutions under its jurisdiction subject to the provisions
21 of section six, article one-b of this chapter;
22 (n) Conduct written performance evaluations of the president pursuant to section six, article
23 one-b of this chapter;
24 (o) Employ all faculty and staff at the institution under its jurisdiction. Such employees
25 operate under the supervision of the president, but are employees of the governing board;
26 (p) Submit to the eCommission or eCouncil, as appropriate, no later than the first day of
27 November of each year an annual report of the performance of the institution under its
28 jurisdiction during the previous fiscal year as compared to stated goals in its master plan
29 and institutional compact;
30 (q) Enter into contracts or consortium agreements with the public schools, private schools
31 or private industry to provide technical, vocational, college preparatory, remedial and
32 customized training courses at locations either on campuses of the public institution of
33 higher education or at off-campus locations in the institution's responsibility district. To
34 accomplish this goal, the boards are permitted to share resources among the various
35 groups in the community;
36 (r) Provide and transfer funding and property to certain corporations pursuant to section
37 ten, article twelve of this chapter;
38 (s) Delegate, with prescribed standards and limitations, the part of its power and control
39 over the business affairs of the institution to the president in any case where it considers
40 the delegation necessary and prudent in order to enable the institution to function in a
41 proper and expeditious manner and to meet the requirements of its institutional compact.
42 If a governing board elects to delegate any of its power and control under the provisions
43 of this subsection, it shall enter such delegation in the minutes of the meeting when the
44 decision was made and shall notify the appropriate chancellor Commission or Council, as
45 appropriate. Any such delegation of power and control may be rescinded by the
46 appropriate governing board, ~~or the chancellor the Commission or Council, as appropriate,~~
47 at any time, in whole or in part, except that the Commission may not revoke delegations
48 of authority made by the governing boards of Marshall University or West Virginia
49 University as they relate to the state institutions of higher education known as Marshall
50 University and West Virginia University;
51 (t) Unless changed by the eCommission or the eCouncil, as appropriate, the governing
52 boards shall continue to abide by existing rules setting forth standards for acceptance of
53 advanced placement credit for their respective institutions. Individual departments at
54 institutions of higher education may, upon approval of the institutional faculty senate,
55 require higher scores on the advanced placement test than scores designated by the

1 appropriate governing board when the credit is to be used toward meeting a requirement
2 of the core curriculum for a major in that department;

3 (u) Each governing board, or its designee, shall consult, cooperate and work with the
4 sState tTreasurer and the sState aAuditor to update as necessary and maintain an efficient
5 and cost-effective system for the financial management and expenditure of special revenue
6 and appropriated state funds at the institutions under its jurisdiction that ensures that
7 properly submitted requests for payment be paid on or before due date but, in any event,
8 within fifteen days of receipt in the sState aAuditor's office;

9 (v) The governing boards in consultation with the appropriate chancellor and the sSecretary
10 of the dDepartment of aAdministration shall develop, update as necessary and maintain
11 a plan to administer a consistent method of conducting personnel transactions, including,
12 but not limited to, hiring, dismissal, promotions and transfers at the institutions under their
13 jurisdiction. Each such personnel transaction shall be accompanied by the appropriate
14 standardized system or forms which will be submitted to the respective governing board
15 and the dDepartment of fFinance and aAdministration;

16 (w) Transfer of funds. -

17 (1) Notwithstanding any other provision of this code to the contrary, the governing boards
18 may transfer funds from any account specifically appropriated for their use to any
19 corresponding line item in a general revenue account at any agency or institution under
20 their jurisdiction as long as such transferred funds are used for the purposes appropriated.

21 (2) The governing boards may transfer funds from appropriated special revenue accounts
22 for capital improvements under their jurisdiction to special revenue accounts at agencies
23 or institutions under their jurisdiction as long as such transferred funds are used for the
24 purposes appropriated.

25 (x) Notwithstanding any other provision of this code to the contrary, the governing boards
26 may acquire legal services as are considered necessary, including representation of the
27 governing boards, their institutions, employees and officers before any court or
28 administrative body. The counsel may be employed either on a salaried basis or on a
29 reasonable fee basis. In addition, the governing boards may, but are not required to, call
30 upon the aAttorney gGeneral for legal assistance and representation as provided by law;
31 and

32 (y) Each governing board which has under its jurisdiction an administratively linked
33 community and technical college or a regional campus offering community and technical
34 college education programs shall create within the administrative structure of its governing
35 board a subcommittee for community and technical college education. The subcommittee
36 shall have at least four members, one of whom is the chairperson of the board of advisors
37 of the community and technical college or, in the case of the gGoverning bBoard of West
38 Virginia university, both the member representing the community and technical college and
39 the member representing the regional campus; and

40 (z) A governing board may contract and pay for disability insurance for a class or classes
41 of employees at a state institution of higher education under its jurisdiction.

42 §18B-2A-7. Additional powers and duties of governing boards.

43 (a) A state institution of higher education is granted the powers, duties and authorities
44 previously granted to the state institutions of higher education known as Marshall University
45 and West Virginia University, subject to the following:

46 (1) The institutional operating budgets of all institutions to which this section applies have
47 achieved a level of funding comparable with, but not less than ninety percent of, their
48 respective peers, as established pursuant to section three, article one-a of this chapter;

49 (2) The Commission approves granting the powers, duties and authorities to that institution;
50 and

51 (3) The powers, duties and authorities may not be granted to any institution prior to the first
52 day of July, two thousand twelve.

53 (b) The powers, duties and authorities granted pursuant to this section are those provided
54 in:

- 1 (1) Section four-a, article six, chapter five of this code;
- 2 (2) Section two, article one, chapter five-g of this code;
- 3 (3) Section twelve-b, article one, chapter twelve of this code;
- 4 (4) Sections five, six, seven and eight, article three, chapter twelve of this code;
- 5 (5) Sections three and six, article one of this chapter;
- 6 (6) Section two, article one-a of this chapter;
- 7 (7) Section four, article one-b of this chapter;
- 8 (8) Sections three and four of this article;
- 9 (9) Sections two and three, article three of this chapter;
- 10 (10) Sections five, five-a, six and seven, article four of this chapter;
- 11 (11) Sections three, four, seven and nine, article five of this chapter; and
- 12 (12) Sections one and six-a, article ten of this chapter.
- 13 (c) This section does not apply to any community and technical college.

14 **ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL**
15 **COLLEGE EDUCATION.**

16 **§18B-2B-9. Permits required for correspondence, business, occupational and trade**
17 **schools; surety bonds and fees; issuance, renewal and revocation of permit;**
18 **reports; rules; penalty and enforcement.**

19 (a) The following words when used in this section have the meaning hereinafter ascribed
20 to them unless the context clearly indicates a different meaning:

21 (1) "Proprietary schools that award specialized associate degrees" means institutions of
22 higher education; and

23 (2) "Specialized associate degrees" means degrees awarded by such institutions pursuant
24 to a program of not fewer than two academic years.

25 (b) Nothing in this section qualifies proprietary schools for additional state moneys not
26 otherwise qualified under other provisions of this code.

27 (c) It is unlawful for any person representing a correspondence, business, occupational or
28 trade school inside or outside this state, as these are defined by the Council by rule
29 promulgated in accordance with article three-a, chapter twenty-nine-a of this code, to
30 solicit, sell or offer to sell courses of instruction to any resident of this state for
31 consideration or remuneration unless the school first applies for a permit, or obtains a
32 permit, from the Council in the manner and on the terms herein prescribed, except this
33 section does not apply to private organizations which offer only tax return preparation
34 courses. The rule previously promulgated by the State College System Board of Directors
35 and transferred to the Council by section six, article two-b, chapter eighteen-b of this code
36 remains in effect until rescinded or amended by the Council.

37 (1) All private training or educational institutions, schools or academies or other
38 organizations shall apply for a permit from the Council on forms provided by the Council.

39 (2) Each initial application shall be accompanied by a nonrefundable fee of two thousand
40 dollars. The Council also may assess an additional fee based on any additional expense
41 required to evaluate the application.

42 (3) The Council shall make a determination on the initial permit application within ninety
43 days after receipt of the application and fee.

44 (4) An applicant for an initial permit shall show proof at the time of filing an application that
45 adequate facilities are available and ready for occupancy and that all instructional
46 equipment, books and supplies and personnel are in place and ready for operation. A
47 representative of the Council shall make an on-site visit to the facilities of all new applicants
48 to confirm their readiness for operation prior to issuance of the initial permit if the facilities
49 are located in West Virginia. (5) A school is considered to be established under the
50 provisions of this article on the date it first begins to operate lawfully. An established school
51 is not required to reapply for a permit as a result of changes in governance; administration;
52 ownership; or form of operation.

53 (6) After the first permit year, an annual fee of five hundred dollars is imposed on each

1 school for each campus it operates in this state.
2 (d) Each application shall be accompanied by a surety bond in the penal sum of thirty-five
3 thousand dollars for any school which has its physical facilities located in this state and
4 which has operated in this state for at least ten years:
5 (1) If the school has changed ownership within the last ten years by transfer of ownership
6 control to a person who is a spouse, parent, sibling, child or grandchild of the previous
7 owner, the surety bond shall continue in the penal sum of thirty-five thousand dollars.
8 (2) Any school which has operated in West Virginia for fewer than ten years, excluding
9 those schools which have changed ownership within the last ten years as provided in
10 subdivision (1) of this section, and any school located in another state which applies for a
11 permit hereunder, shall provide a surety bond of fifty thousand dollars.
12 (3) Any school may be required to increase its bond to one hundred fifty thousand dollars
13 if either of the following conditions apply:
14 (A) The school's accreditation is terminated for cause; or
15 (B) The school's institutional eligibility under the Higher Education Act of 1965, as
16 amended, has been terminated for cause. Expiration, nonrenewal or voluntary
17 relinquishment of accreditation or institutional eligibility under the Higher Education Act, or
18 failure to meet the requirements of one or more programs under the Act, are not
19 considered to be a termination for cause.
20 (4) Any school may be required to increase its bond to an amount not to exceed four
21 hundred thousand dollars if, in accordance with the standards of the American Institute of
22 Certified Public Accountants, the school's audited financial statements are qualified
23 because the school's continued financial viability as an ongoing concern is in doubt and
24 the Council determines an increased bond is reasonably necessary to protect the financial
25 obligations legally due the students then enrolled at the institution.
26 (A) A school may be required to maintain the increased bonding requirements described
27 above until all students attending classes at the date of termination either graduate or withdraw.
28 (B) The bond may be continuous and shall be conditioned to provide indemnification to any
29 student suffering loss as a result of any fraud or misrepresentation used in procuring the
30 student's enrollment, failure of the school to meet contractual obligations, or failure of the
31 school to meet the requirements of this section.
32 (C) The bond shall be given by the school itself as a blanket bond covering all of its
33 representatives.
34 (D) The surety on a bond may cancel the same upon giving thirty days' notice in writing to
35 the principal on the bond and to the state Council and thereafter shall be relieved of liability
36 for any breach of condition occurring after the effective date of the cancellation.
37 (e) A permit shall be valid for one year corresponding to the effective date of the bond and
38 may be renewed upon application, accompanied by the required fee and the surety bond
39 as herein required. All fees collected for the issuance or renewal of a permit shall be
40 deposited in the State Treasury to the credit of the Council. (f) The Council may refuse a
41 permit to any school if the Council finds that the school engages in practices which are
42 inconsistent with this section or with rules issued pursuant thereto.
43 (g) A permit issued hereunder may be suspended or revoked by the Council for fraud or
44 misrepresentation in soliciting or enrolling students, for failure of the school to fulfill its
45 contract with one or more students who are residents of West Virginia or for violation of or
46 failure to comply with any provision of this section or with any regulation of the Council
47 pertinent thereto.
48 (1) Before taking any action to suspend or revoke a school's permit, the Council shall give
49 the school fifteen days' notice and convene a hearing, if a hearing is requested by the school.
50 (2) Prior to the Council taking any adverse action, including refusal, suspension or
51 revocation of a permit, the Council shall give the school reasonable opportunity to take
52 corrective measures.
53 (3) Any refusal, suspension or revocation of a permit, or any other adverse action against
54 a school, shall comply with all constitutional provisions, including due process, relating to
55 the protection of property rights.

1 (h) All correspondence, business, occupational or trade schools which have been issued
2 a permit shall make annual reports to the Council on forms furnished by the Council and
3 shall provide such appropriate information as the Council reasonably may require. All
4 correspondence, business, occupational or trade schools which have been issued a permit
5 shall furnish to the Council a list of its official representatives. Each school shall be issued
6 a certificate of identification by the Council for each of its official representatives.

7 (i) The issuance of a permit pursuant to this section does not constitute approval or
8 accreditation of any course or school. No school, nor any representative of a school, may
9 make any representation stating, asserting or implying that a permit issued pursuant to this
10 section constitutes approval or accreditation by the State of West Virginia, Council or any
11 other department or agency of the state. (j) The Council is hereby authorized to adopt rules
12 and conduct on-site reviews to evaluate academic standards maintained by schools for the
13 awarding of certificates, diplomas, associate degrees and specialized associate degrees.

14 (1) These standards may include curriculum, personnel, facilities, materials and
15 equipment. (2) For accredited correspondence, business, occupational and trade schools
16 under permit on the first day of July, one thousand nine hundred seventy-nine, which have
17 their physical facilities located in this state and which are accredited by the appropriate
18 nationally recognized accrediting agency or association approved by the United States
19 Department of Education, the accrediting agency's standards, procedures and criteria are
20 accepted as meeting applicable laws, standards and rules of the Council.

21 (3) Institutions which are institutionally accredited by accrediting agencies recognized by
22 the United States Department of Education to establish academic standards for post-
23 secondary education may offer post-secondary educational programs leading to
24 certificates, diplomas and associate degrees and may award certificates, diplomas and
25 associate degrees to graduates who successfully complete required programs in
26 accordance with the academic standards required by such accrediting agency.

27 (4) If a review undertaken by the Council indicates there may be deficiencies in the
28 academic standards the institution maintains in its educational programs and if such
29 deficiencies are of such a material nature that they jeopardize continued accreditation, the
30 Council shall notify the institution. If the Council and the institution are unable to agree on
31 the deficiencies or the steps necessary to correct the deficiencies, the Council shall consult
32 with the institution's accrediting agency regarding an academically appropriate resolution
33 which may include a joint on-site review by the Council and the accrediting agency.

34 (5) The Council also may review the academic standards of unaccredited institutions and
35 may require such institutions to maintain recognized academic standards that are
36 reasonably appropriate to the nature of the institution and the training offered.

37 (k) The Council may authorize an investigation of written student complaints alleging a
38 violation of this section, Council rules or accreditation standards and may take appropriate
39 action based on the findings of such an investigation.

40 (l) All evaluations or investigations of correspondence, business, occupational and trade
41 schools and actions resulting from such evaluations or investigations shall be made in
42 accordance with rules promulgated by the Council pursuant to article three-a, chapter
43 twenty-nine-a of this code.

44 (m) In regard to private, proprietary educational institutions operating under this section of
45 the code, accredited by a national or regional accrediting agency or association recognized
46 by the United States Department of Education and which provide training at a campus
47 located in this state:

48 (1) Any rule or standard which is authorized by this or any section of the code or other law
49 and which is now in effect or promulgated hereafter by the Council (or other agency with
50 jurisdiction) shall be clearly, specifically and expressly authorized by narrowly construed
51 enabling law and shall be unenforceable and without legal effect unless authorized by an
52 Act of the Legislature under the provisions of article three-a, chapter twenty-nine-a of this
53 code.

54 (2) Notwithstanding any other provision of this section or other law to the contrary, the
55 institution's accrediting agency standards, procedures and criteria shall be accepted as the

1 standards and rules of the Council (or other agency with jurisdiction) and as meeting other
2 law or legal requirements relating to the operation of proprietary institutions which such
3 Council or other agency has the legal authority to enforce under any section of the code
4 or other law. Nothing in this section denies students the use of remedies that would
5 otherwise be available under state or federal consumer laws or federal law relating to
6 federal college financial assistance programs.

7 (3)Accredited institutions operating hereunder are hereby recognized as postsecondary.
8 Academic progress is measured and reported in credit hours and all reports/documents
9 are filed on a credit-hour basis unless the institution notifies the Council that it utilizes clock
10 hours as its unit of measurement.

11 (n)A representative of any school who solicits, sells or offers to sell courses of instruction
12 to any resident of this state for consideration or remuneration unless the school first applies
13 for a permit, or obtains a permit, is guilty of a misdemeanor and, upon conviction thereof,
14 shall be fined not more than two hundred dollars per day per violation, or imprisoned in jail
15 not more than sixty days, or both fined and imprisoned. No correspondence, business,
16 occupational or trade school shall maintain an action in any court of this state to recover
17 for services rendered pursuant to a contract solicited by the school if the school did not
18 hold a valid permit at the time the contract was signed by any of the parties thereto. The
19 Attorney General or any county prosecuting attorney, at the request of the Council or upon
20 his or her own motion, may bring any appropriate action or proceeding in any court of
21 competent jurisdiction for the enforcement of the provisions of this section relating to
22 permits, bonds and sureties.

23 (o) In regard to institutions operating under this section, all substantive standards and
24 procedural requirements established by the Council (or the West Virginia state program
25 review entity or other agency with jurisdiction over institutions operating hereunder) shall
26 meet all substantive and procedural standards of due process relating to the protection of
27 an individual citizen's property rights as provided under the United States Constitution and
28 shall follow the substantive standards and procedural requirements established by or under
29 authority of this section.

30 **ARTICLE 3. ADDITIONAL POWERS AND DUTIES OF RESEARCH, DOCTORAL-** 31 **GRANTING PUBLIC UNIVERSITIES.**

32 ~~§18B-3-1. Composition of board; terms and qualifications and members; vacancies;~~ 33 ~~eligibility for reappointment; oath of office; removal from office~~ Legislative 34 ~~findings, purpose; intent; definition.~~

35 (a) The board of directors of the state college system shall consist of sixteen persons, of
36 whom one shall be the chancellor of the university of West Virginia board of trustees, ex
37 officio, who shall not be entitled to vote; one shall be the state superintendent of schools,
38 ex officio, who shall not be entitled to vote; one shall be the chair of the joint commission
39 for vocational-technical-occupational education, ex officio, who shall not be entitled to vote;
40 one shall be the chairman of the advisory council of students, ex officio, who shall be
41 entitled to vote; one shall be the chairman of the advisory council of faculty, ex officio, who
42 shall be entitled to vote; and one shall be the chairman of the advisory council of classified
43 employees, ex officio, who shall be entitled to vote. The other ten directors shall be citizens
44 of the state, appointed by the governor, by and with the advice and consent of the Senate.
45 On or after the tenth day of March, one thousand nine hundred ninety-six, the board shall
46 be reconstituted and all terms of members appointed by the governor prior to the tenth day
47 of March, one thousand nine hundred ninety-six, shall expire upon the appointment by the
48 governor of all the directors required to be appointed by this section. The governor shall
49 make appointments required by this section no later than the fifteenth day of March, one
50 thousand nine hundred ninety-six.

51 Each of the directors appointed to the board by the governor shall represent the public
52 interest and shall be especially qualified in the field of higher education by virtue of the

1 person's knowledge, learning, experience or interest in the field. The relative enrollments
2 of baccalaureate and community and technical students in the state college system shall
3 be considered by the governor when making such appointments and the governor shall
4 use his or her best efforts to achieve a balance among the members who reflect the
5 various interests, goals and concerns reflected by the relative enrollments:

6 Except for the ex officio directors, no person shall be eligible for appointment to
7 membership on the board of directors who is an officer, employee or member of an
8 advisory board of any state college or university; an officer or member of any political party
9 executive committee, the holder of any other public office or public employment under the
10 government of this state or any of its political subdivisions, or an appointee or employee
11 of the board of trustees or board of directors: *Provided*, That if there are no ethical
12 restrictions under state or federal law, a federal employee may serve as a member of the
13 board of directors. Of the ten directors appointed by the governor from the public at large,
14 not more than five thereof shall belong to the same political party and at least three
15 directors of the board shall be appointed from each congressional district.

16 Except as provided in this section, no other person may be appointed to the board.

17 The Legislature finds that an effective and efficient system of doctoral-level education is
18 vital to providing for the economic well-being of the citizens of West Virginia and for
19 accomplishing established state goals and objectives. As the only research and doctoral-
20 granting public universities in the state, Marshall University and West Virginia University
21 are major assets to the citizens of West Virginia and must be an integral part of any plan
22 to strengthen and expand the economy.

23 (b) ~~The governor shall appoint ten directors as soon after the tenth day of March, one~~
24 ~~thousand nine hundred ninety-six, as is practicable and the original terms of all directors~~
25 ~~shall commence on that date. The terms of the directors appointed by the governor shall~~
26 ~~be for overlapping terms of six years, except, of the original appointments, three shall be~~
27 ~~appointed to terms of two years, three shall be appointed to terms of four years and four~~
28 ~~shall be appointed to terms of six years. Each subsequent appointment which is not for the~~
29 ~~purpose of filling a vacancy in an unexpired term shall be appointed to a term of six years.~~

30 ~~The governor shall appoint a director to fill any vacancy among the ten directors appointed~~
31 ~~by the governor, by and with the advice and consent of the Senate, which director~~
32 ~~appointed to fill such vacancy shall serve for the unexpired term of the vacating director.~~
33 ~~The governor shall fill the vacancy within sixty days of the occurrence of the vacancy.~~

34 ~~All directors appointed by the governor shall be eligible for reappointment: *Provided*, That~~
35 ~~a person who serves as a director or trustee during all or any part of two consecutive terms~~
36 ~~beginning after the first day of March, one thousand nine hundred ninety-six, shall be~~
37 ~~ineligible to serve as a director for a period of three years immediately following the second~~
38 ~~of the two consecutive terms.~~

39 ~~The chairman of the advisory council of students, ex officio; the chairman of the advisory~~
40 ~~council of faculty, ex officio; and the chairman of the advisory council of classified~~
41 ~~employees, ex officio, shall serve the terms for which they were elected by their respective~~
42 ~~advisory councils. These members shall be eligible to succeed themselves.~~

43 The Legislature further finds that these two institutions must compete in both a national
44 and global environment that is rapidly changing, while they continue to provide high quality
45 education that is both affordable and accessible and remain accountable to the people of
46 West Virginia for the most efficient and effective use of scarce resources.

47 (c) ~~Before exercising any authority or performing any duties as a director, each director~~
48 ~~shall qualify as such by taking and subscribing to the oath of office prescribed by section~~
49 ~~five, article IV of the constitution of West Virginia and the certificate thereof shall be filed~~
50 ~~with the secretary of state.~~

51 The Legislature further finds that Marshall University and West Virginia University, under
52 the direction of their respective governing boards, have sufficient staff and internal
53 expertise to manage operational governance of their institutions in an efficient and

1 accountable manner and can best fulfill their public missions when their governing boards
2 are given flexibility and autonomy sufficient to meet state goals established in this article
3 and in section one-a, article one of this chapter.

4 ~~(d) No director appointed by the governor shall be removed from office by the governor~~
5 ~~except for official misconduct, incompetence, neglect of duty or gross immorality and then~~
6 ~~only in the manner prescribed by law for the removal by the governor of the state elective~~
7 ~~officers.~~

8 Therefore, the purposes of this article include, but are not limited to, the following:

9 (1) Enhancing the competitive position of Marshall University and West Virginia
10 University in the current environment for research and development;

11 (2) Providing the governing boards of these institutions with operational flexibility and
12 autonomy, including tools to promote economic development in West Virginia;

13 (3) Encouraging the development of research expertise in areas directly beneficial to
14 the state; and

15 (4) Focusing the attention and resources of the governing boards on state goals and
16 priorities to enhance the competitive position of the state and the economic, social and
17 cultural well-being of its citizens.

18 ~~(e) The board of directors is abolished the thirtieth day of June, two thousand.~~

19 The following terms wherever used or referred to in this chapter have the following
20 meaning, unless a different meaning plainly appears from the context:

21 (1) "State institution of higher education known as Marshall University" means the doctoral-
22 granting research institution and does not include Marshall Community and Technical
23 College; and

24 (2) "State institution of higher education known as West Virginia University" means the
25 doctoral-granting research institution and does not include any of the following:

26 (A) The regional campus known as West Virginia University Institute of Technology;

27 (B) The administratively linked institution known as the Community and Technical College
28 at West Virginia University Institute of Technology; and

29 (C) The regional campus known as West Virginia University at Parkersburg.

30 (f) On the first day of July, two thousand, there is transferred to the interim governing board
31 all powers, duties, property, obligations, contracts, rules, orders, resolutions or any other
32 matters which were vested in the prior boards of trustees, directors or both. The governing
33 boards of Marshall University and West Virginia University each have the power and the
34 obligation to perform functions, tasks and duties as prescribed by law and to exercise their
35 authority and carry out their responsibilities in a manner that is consistent with and not in
36 conflict with the powers and duties assigned by law to the West Virginia Council for
37 Community and Technical College Education and the Higher Education Policy Commission.

38 (g) While the governing boards of Marshall University and West Virginia University,
39 respectively, may choose to delegate powers and duties to the presidents of the state
40 institutions of higher education known as Marshall University and West Virginia University
41 pursuant to subsection (s), section four, article two-a of this chapter, ultimately, it is they
42 who are accountable to the Legislature, the Governor and the citizens of West Virginia for
43 meeting the established state goals set forth in this article and section one-a, article one
44 of this chapter. Therefore, it is the intent of the Legislature that grants of operational
45 flexibility and autonomy be made directly to the governing boards and are not grants of
46 operational flexibility and autonomy to the presidents of these institutions.

47 **§18B-3-2. Meetings and compensation Computer and computer equipment donation**
48 **program.**

49 (a) The board of directors shall hold at least ten meetings in every fiscal year, including an
50 annual meeting each June: Provided, That a meeting for the purpose of selecting the first
51 chairman shall be held during March, one thousand nine hundred ninety-six. Except for the
52 annual meeting, which may be held at a location anywhere in the state, the meetings shall
53 be held on different campuses of institutions in the state college system on a rotating basis
54 or at the central office. The directors may set aside time at these meetings held at the

1 campuses to afford administrators, faculty, students and classified staff at these institutions
2 an opportunity to discuss issues affecting these groups. The directors shall hold at least
3 one meeting each year with the advisory council of faculty, the advisory council of students
4 and the advisory council of classified employees, each of these bodies to be met with
5 separately. Except as otherwise provided in this section, meetings shall be held on such
6 dates and at such places as the directors may prescribe. In addition to the statutorily
7 required meetings, the directors may meet at such other times as may be necessary, such
8 meetings to be held upon its own resolution or at the written request of at least five
9 appointed directors.

10 Of the thirteen voting members of the board of directors, seven shall constitute a quorum;
11 and a majority vote of the quorum shall be necessary to pass upon matters before the directors.

12 (b) The directors shall be reimbursed for actual and necessary expenses incident to the
13 performance of such duties, upon presentation of an itemized sworn statement thereof.
14 The foregoing reimbursement for actual and necessary expenses shall be paid from
15 appropriations made by the Legislature to the directors.

16 Notwithstanding any other provision of this code to the contrary, the governing boards are
17 authorized to create a program to donate surplus computers and computer-related
18 equipment to education facilities, nonprofit organizations, juvenile detention centers,
19 municipal and county public safety offices and other public, charitable or educational
20 enterprises or organizations in this state.

21 (a) Only equipment which otherwise would be transferred to the Surplus Property Unit of
22 the Purchasing Division may be donated;

23 (b) The governing boards shall keep records and accounts that clearly identify the
24 equipment donated, the age of the equipment, the reasons for declaring it obsolete and
25 the name of the education facility, nonprofit organization, juvenile detention center,
26 municipal or county public safety office or other public, charitable or educational enterprise
27 or organization to which the equipment was donated;

28 (c) Each governing board shall promulgate a rule in accordance with the provisions of
29 section six, article one of this chapter to implement the donation program. The rules shall
30 specify the procedures to be used for record keeping and shall provide for fair and impartial
31 selection of equipment recipients.

32 **§18B-3-3. Additional duties of board of directors Relationship of governing boards**
33 **to the Commission and the Council.**

34 (a) The board of directors of the state college system shall govern the state college system.

35 (b) The board of directors shall determine programs to be offered by state institutions of
36 higher education under its jurisdiction, shall clarify the missions of the institutions under its
37 jurisdiction and, in so doing, ensure that Fairmont state and West Virginia institute of
38 technology are given primary responsibility for technical preparation teacher training programs.

39 (c) The board of directors shall govern state college system community and technical
40 colleges in accordance with the provisions of section three-a of this article.

41 (d) The board of directors shall adopt a faculty salary program with an overall goal of
42 attaining salaries equal to the average faculty salaries within similar groups of disciplines
43 and program levels at comparable peer institutions within member states of the southern
44 regional education board.

45 (a) *Relationship between the Commission and the governing boards. -*

46 (1) The Commission functions as a state-level coordinating board exercising its powers and
47 duties in relation to the governing boards of Marshall University and West Virginia
48 University only as specifically prescribed by law;

49 (2) The primary responsibility of the Commission is to work collaboratively with the
50 governing boards to research, develop and propose policy that will achieve the established
51 goals and objectives set forth in this chapter and chapter eighteen-c of this code; and

52 (3) The Commission has specific responsibilities which include, but are not limited to, the
53 following:

54 (A) Advocating for public higher education at the state level; and

1 (B) Collecting and analyzing data, researching, developing recommendations, and advising
2 the Legislature and the Governor on broad policy initiatives, use of incentive funding,
3 national and regional trends in higher education and issues of resource allocation involving
4 multiple governing boards.

5 (b) *Relationship between the Council and the governing boards.* -

6 (1) The Council maintains all powers and duties assigned to it by law or policy relating to
7 the administratively linked institution known as Marshall Community and Technical College,
8 the administratively linked institution known as the Community and Technical College at
9 West Virginia University Institute of Technology and the regional campus known as West
10 Virginia University at Parkersburg;

11 (2) In addition to recognizing the authority assigned by law to the Council, it is the
12 responsibility of the governing boards of Marshall University and West Virginia University
13 to exercise their authority and carry out their responsibilities in a manner that is consistent
14 with and complementary to the powers and duties assigned by law or policy to the
15 community and technical colleges or to the Council;

16 (3) It is further the responsibility of the governing boards to abide by the rules duly
17 promulgated by the Council relating to the community and technical colleges, to strengthen
18 the community and technical college mission of these institutions, to aid them in meeting
19 the essential conditions set forth in section three, article three-c of this chapter and to
20 promote them to students, parents and the community as independently accredited
21 institutions in their own right.

22 (c) The governing boards shall work collaboratively with the Commission, the Council and
23 their staff to provide any and all information requested by the Commission or the Council
24 in an appropriate format and in a timely manner.

25 **§18B-3-4. Community and technical colleges; tuition and fees; memoranda of**

26 **agreements; and joint administrative boards Duty of governing boards to**

27 **address state priorities.**

28 (a) Effective the first day of July, one thousand nine hundred eighty-nine, the following
29 institutions are hereby established or continued as freestanding community and technical
30 colleges: Southern West Virginia community and technical college and West Virginia
31 northern community and technical college. Such freestanding community and technical
32 colleges shall not be operated as branches or off-campus locations of any other state
33 institution of higher education.

34 (b) The directors, in accordance with article two-b, chapter eighteen of this code, shall
35 cooperate with the state board of education, the state council of vocational-technical
36 education and the joint commission for vocational-technical-occupational education to
37 develop a comprehensive system of academic, vocational, technical and career
38 development programs to serve the educational needs of adults for college preparatory,
39 two-year associate degree, continuing education, work force training and retraining and
40 other such programs within the state. The board of directors shall delegate such authority
41 as they deem prudent to the community and technical college presidents, provosts or other
42 administrative heads, to work with district consortia committees to assess the work force
43 needs of business and industry within their service areas, regularly review and revise
44 curricula to ensure that the work force needs are met, develop new programs and phase
45 out or modify existing programs as appropriate to meet such needs, provide professional
46 development opportunities for faculty and staff, establish cooperative programs and
47 student internships with business and industry, streamline procedures for designing and
48 implementing customized training programs and to accomplish such other complements
49 of a quality comprehensive community and technical college. In developing such a system,
50 the various educational agencies shall establish cooperative relationships to utilize existing
51 community and technical colleges and programs, public school vocational centers and
52 other existing facilities to serve the identified needs within the community and technical
53 college district.

54 (c) A separate division of community and technical colleges shall be established under the

1 board of directors. Unless approved by the board, programs at community and technical
2 colleges shall be two years or less in duration.

3 (d) The board of directors may fix tuition and establish and set such other fees to be
4 charged students at state college system community and technical colleges as it deems
5 appropriate, and shall pay such tuition and fees collected into a revolving fund for the
6 partial or full support, including the making of capital improvements, of any state college
7 system community and technical college. Funds collected at any such community and
8 technical college may be used only for the benefit of that community and technical college.
9 The board of directors may also establish special fees for such purposes as, including, but
10 not limited to, health services, student activities, student recreation, athletics or any other
11 extracurricular purposes. Such special fees shall be paid into special funds in the state
12 treasury and used only for the purposes for which collected.

13 (e) The board of directors may allocate funds from the appropriations for the state college
14 system for the operation of individual university system and state college system
15 community and technical colleges in accordance with rules adopted by the board pursuant
16 to the provisions of subsection (d), section three-a of this article, and for the capital
17 improvement of any state college system community and technical college. The board of
18 directors may accept federal grants and funds from county boards of education, other local
19 governmental bodies, corporations or persons. The directors may enter into memoranda
20 of agreements with such governmental bodies, corporations or persons for the use or
21 acceptance of local facilities and/or the acceptance of grants or contributions toward the
22 cost of the acquisition or construction of such facilities. Such local governmental bodies
23 may convey capital improvements, or lease the same without monetary consideration, to
24 the board of directors for the use by the community and technical college and the board
25 of directors may accept such facilities, or the use or lease thereof, and grants or
26 contributions for such purposes from such governmental bodies, the federal government
27 or any corporation or person.

28 (f) To facilitate the administration, operation and financing of programs in shared facilities
29 of the state college system or the university of West Virginia system and a county board
30 or boards of education, the affected governing board and county board or boards of
31 education may appoint a joint administrative board consisting of such membership and
32 possessing such delegated authorities as the respective boards deem necessary and
33 prudent for the operation of such shared facilities. Such joint administrative board may
34 consist of five members to be appointed as follows: The county board of education shall
35 appoint two members in consultation with the county superintendent of schools; the
36 appropriate governing board shall appoint two members in consultation with the president
37 of the affected state institution of higher education; and one at-large member, who shall
38 chair the joint administrative board, shall be appointed by mutual agreement of the
39 respective boards in consultation with their superintendent and president. When two or
40 more county boards of education are participating in such shared program, such county
41 board appointments shall be made by mutual agreement of each of the participating county
42 boards in consultation with their respective superintendents. Members shall serve for
43 staggered terms of three years. With respect to initial appointments, one member
44 appointed by the county board or boards of education and one member appointed by the
45 governing board shall serve for one year, one member appointed by the county board or
46 boards of education and one member appointed by the governing board shall serve for two
47 years and the at-large member shall serve for three years. Subsequent appointments shall
48 be for three years. A member may not serve more than two consecutive terms. Members
49 shall be reimbursed for reasonable and necessary expenses actually incurred in the
50 performance of their duties as board members from funds allocated to the shared facility;
51 except that members who are employed by a board of education, governing board or state
52 institution of higher education shall be reimbursed by their employer.

53 The expertise of faculty and graduate students at the state institutions of higher education
54 known as Marshall University and West Virginia University is important to every citizen of

1 this state. It is the responsibility of the governing boards to channel this expertise into
2 research and analysis that will yield measurable benefits to the citizens of West Virginia.
3 Therefore, in addition to the goals for post-secondary education established in section one-
4 a, article one of this chapter, and goals established elsewhere in this code, it is the
5 responsibility of the governing boards in collaboration to concentrate attention and
6 resources on certain specific state priorities that have a direct, positive impact on the
7 economic, social and cultural well-being of the people of West Virginia. These priorities
8 include, but are not limited to, the following:

9 (1) Developing Regional Brownfield Assistance Centers pursuant to section seven, article
10 eleven of this chapter;

11 (2) Performing professional development-related research and coordinating the delivery
12 of professional development to educators in the public schools of the state pursuant to the
13 provisions of article two, chapter eighteen of this code;

14 (3) Building subject matter expertise in public school finance, including mastery of the
15 theories and concepts used in developing formulas to provide state-level financial support
16 to public education; and

17 (4) Researching and proposing cost-efficient methods to the Legislature for governing
18 boards other than Marshall University and West Virginia University to dispose of obsolete
19 computers and computer-related equipment.

20 (b) The Legislature may, but is not required to, make additional appropriations for the
21 benefit of the state institutions of higher education known as Marshall University and West
22 Virginia University to assist them in fulfilling the purposes set forth in subsection (a) of this
23 section.

24 (c) In addition to the priorities established in subsection (a) of this section, each governing
25 board separately shall focus resources and attention on improving their graduation rates
26 for full-time undergraduate students as a specific institutional priority. The graduation rate
27 is measured as a percentage of the undergraduate students who obtain a degree within
28 six years of the date of enrollment as full-time freshmen. The governing boards shall
29 develop and implement plans to reach the following goals:

30 (1) Marshall University shall attain a graduation rate for full-time undergraduate students
31 of forty percent by the first day of July, two thousand eight, and shall attain a graduation
32 rate for full-time undergraduate students of forty-five percent by the first day of July, two
33 thousand ten.

34 (2) West Virginia University shall attain a graduation rate for full-time undergraduate
35 students of sixty percent by the first day of July, two thousand eight, and shall attain a
36 graduation rate for full-time undergraduate students of sixty-three percent by the first day
37 of July, two thousand ten.

38 (3) The Commission shall monitor and report by the first day of December, two thousand
39 five, and annually thereafter, to the Legislative Oversight Commission on Education
40 Accountability on the progress of the governing boards toward meeting the goals set forth
41 in subdivisions (1) and (2) of this subsection.

42 **§18B-4-7. Accreditation of institutions of higher education; standards for**
43 **degrees.**

44 The eCouncil shall make rules for the accreditation of community and technical
45 colleges in this state and shall determine the minimum standards for conferring
46 degrees. The eCommission shall make rules for the accreditation of colleges and
47 universities in this state, except the governing boards of Marshall University and
48 West Virginia University shall make rules for the state institutions of higher
49 education known as Marshall University and West Virginia University, and shall
50 determine the minimum standards for conferring degrees. The governing boards of
51 Marshall University and West Virginia University shall promulgate rules pursuant to
52 the provisions of section six, article one of this chapter for the accreditation of the
53 state institutions of higher education known as Marshall University and West
54 Virginia University. An institution of higher education may not confer any degree on

1 any basis of work or merit below the minimum standards prescribed by the
2 eCouncil, or eCommission or the governing boards. Nothing in this section infringes
3 upon the rights, including rights to award degrees, granted to any institution by
4 charter given according to law, or by actions of the eCouncil or eCommission or their
5 predecessors, prior to the effective date of this section. With the approval of the
6 eCommission, governing boards of institutions which currently offer substantial
7 undergraduate course offerings and a master's degree in a discipline are authorized
8 to grant baccalaureate degrees in that discipline.
9 Except as otherwise provided in this section, a charter or other instrument
10 containing the right to confer degrees of higher education status may not be granted
11 by the sState of West Virginia to any institution, association or organization within
12 the state, nor may any such degree be awarded, until the condition of conferring the
13 degree has first been approved in writing by the eCouncil, or eCommission or
14 appropriate governing board.

Senate Bill 604

Effective Date: Passed April 9, 2005; to take effect July 1, 2005.

Signed by Governor: April 28, 2005

Code Reference: Amends and reenacts §§18-9A-15 and 18-9A-22

Title: Increased Enrollment

Major Provisions:

- Requires the State Board to promulgate a rule by September 1, 2005 that establishes an objective method for projecting an increase in net enrollment.
- Requires that:
 - o Sixty percent of the funds appropriated for this purpose be distributed by September 1 of the year for which the appropriation is made;
 - o The balance be distributed by December 31 of the same year, after the first distribution is made and after the actual increase in net enrollment is available for the year;
 - o If the amount distributed to a school district during the first distribution is greater than the total amount to which a school district is entitled to receive for the year, the district shall refund the difference by June of the year in which the excess distribution is made.
- Deletes the exclusion that students less than five years of age not enrolled in special education classes be excluded from the calculation.
- Deletes the provision stating that no specific level of funding is required by the Legislature.

1 **ENROLLED**

2 **Senate Bill No. 604**

3 (By Senators Unger, Helmick, Sharpe, Chafin, Plymale, Prezioso,
4 Edgell, Love, Bailey, Bowman, Minear, Boley, Facemyer, Yoder, Guills and
5 Sprouse)
6

7 [Passed April 9, 2005; to take effect July 1, 2005.]
8

9 AN ACT to amend and reenact §18-9A-15 and §18-9A-22 of the Code of West
10 Virginia, 1931, as amended, all relating to allowances of public school
11 support; requiring appropriation for increased enrollment based on
12 projection; requiring initial distribution to be based on projection; requiring
13 refund in certain instances; including students who have not attained the age
14 of five ; and authorizing grant allowances for certain counties with low
15 student net enrollment under certain circumstances.

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

17 That §18-9A-15 and §18-9A-22 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted, all to read as follows:

19 **ARTICLE 9A. PUBLIC SCHOOL SUPPORT.**

20 **§18-9A-15. Allowance for increased enrollment.**

21 (a) To provide for the support of increased net enrollments in the counties in a school year
22 over the net enrollments used in the computation of total state aid for that year, there shall
23 be appropriated for that purpose from the general revenue fund an amount equal to the
24 average total state aid per net pupil multiplied by the total of all of the increases in the net
25 enrollments of the counties made by comparing the most recent reports of net enrollment
26 for the second school month to the immediately previous year's reports for the same
27 school month to be determined in accordance with this section.

28 ~~Upon determination of the several increases in the respective counties' net enrollments,~~
29 ~~as of the close of the second school month, each county showing such increase shall be~~
30 ~~allocated an amount equal to that county's average per net pupil total state aid multiplied~~
31 ~~by the increase in that county's net enrollment determined as provided heretofore. Such~~
32 ~~allocations shall be distributed not later than the thirty-first day of December of each year~~
33 ~~to the counties having increases in net enrollment as heretofore provided. If the amount~~
34 ~~appropriated for this purpose shall not be sufficient to provide payment in full for the total~~
35 ~~of these several allocations, each county allocation shall be reduced to an amount which~~
36 ~~is proportionate to the appropriation compared to the total of the several allocations, and~~
37 ~~the allocations as thus adjusted shall be distributed to the counties as provided in this~~
38 ~~section: *Provided*, That the governor shall request a supplemental appropriation at the next~~
39 ~~legislative session for the reduced amount.~~

40 ~~No provision of this section shall be construed to in any way affect the allocation of moneys~~
41 ~~for educational purposes to a county under other provisions of law.~~

42 ~~Except for those students who are enrolled in special education programs, students who~~
43 ~~have not attained the age of five prior to the first day of September shall not be included~~
44 ~~for any purpose of this section.~~

45 ~~Nothing in this section shall be construed to require any specific level of funding by the Legislature.~~

46 (b) On or before the first day of September, two thousand five, the State Board shall
47 promulgate a rule pursuant to article three-b, chapter twenty-nine-a of this code that
48 establishes an objective method for projecting the increase in net enrollment for each
49 school district. The State Superintendent shall use the method prescribed by the rule to
50 project the increase in net enrollment for each school district.

1 (c) The State Superintendent shall multiply the average total state aid per net pupil by the
2 sum of the projected increases in net enrollment for all school districts and report this
3 amount to the Governor for inclusion in his or her proposed budget to the Legislature. The
4 Legislature shall appropriate to the West Virginia Department of Education the amount
5 calculated by the State Superintendent and proposed by the Governor.

6 (d) The State Superintendent shall calculate each school district's share of the
7 appropriation by multiplying the projected increase in net enrollment for the school district
8 by the average total state aid per net pupil and shall distribute sixty percent of each school
9 district's share to the school district on or before the first day of September of each year.
10 The State Superintendent shall make a second distribution of the remainder of the
11 appropriation in accordance with subsection (e) of this section.

12 (e) After the first distribution pursuant to subsection (d) of this section is made and after the
13 actual increase in net enrollment is available, the State Superintendent shall compute the
14 total actual amount to be allocated to each school district for the year. The total actual
15 amount to be allocated to each school district for the year is the actual increase in the
16 school district's net enrollment multiplied by the average total state aid per net pupil. The
17 State Superintendent shall make the second distribution to each school district in an
18 amount determined so that the total amount distributed to the district for the year, in both
19 the first and second distributions, equals the actual increase in net enrollment multiplied
20 by the average total state aid per net pupil. The State Superintendent shall make the
21 second distribution on or before the thirty-first day of December of each year: *Provided,*
22 That if the amount distributed to a school district during the first distribution is greater than
23 the total amount to which a district is entitled to receive for the year, the district shall refund
24 the difference to the Department of Education prior to the thirtieth day of June of the fiscal
25 year in which the excess distribution is made.

26 (f) If the amount of the appropriation for increased enrollment is not sufficient to provide
27 payment in full for the total of these several allocations, each county allocation shall be
28 reduced to an amount which is proportionate to the appropriation compared to the total of
29 the several allocations and the allocations as thus adjusted shall be distributed to the
30 counties as provided in this section: *Provided,* That the Governor shall request a
31 supplemental appropriation at the next legislative session for the reduced amount.

32 (g) No provision of this section shall be construed to in any way affect the allocation of
33 moneys for educational purposes to a county under other provisions of law.

34 **§18-9A-22. Standards for educational quality Allowance to improve economies of**
35 **scale of low student enrollment counties.**

36 (a) The purpose of this section is to declare the intent of the Legislature to provide a
37 thorough and efficient system of education for West Virginia public school students. High
38 quality educational standards shall be provided all public school students on an equal
39 educational opportunity basis. A system for the review of county educational plans and the
40 on-site reviews of county educational programs shall provide assurances that the high
41 quality standards, established pursuant to this section, are being met.

42 On or before January one, one thousand nine hundred eighty-five, the state board of
43 education shall establish and adopt high quality educational standards and shall provide
44 each county board of education a copy thereof.

45 On or before July one, one thousand nine hundred eighty-five, and each July one
46 thereafter, each county board of education shall file an annual specific program plan with
47 the state department of education. The program plan shall, at a minimum, meet the
48 statewide high quality educational standards as established by the state board of
49 education.

50 The purpose of the program plan is to allow county boards of education flexibility in
51 developing school improvement programs structured around locally identified needs, but
52 in compliance with the high quality standards adopted by the state board of education. High
53 quality standards must be met in curriculum, finance, transportation, special education,
54 facilities, textbooks, personnel qualifications and other such areas as determined by the

1 state board of education.
2 The state department of education shall review the plans annually and conduct an on-site
3 review of each county's educational program every fourth year. The state board of
4 education shall have authority to issue four types of recognition status: (1) Full approval;
5 (2) substantial approval, (3) probationary and (4) nonapproval.
6 Full approval status may be granted to a county board of education whose educational
7 program has undergone an on-site evaluation by representatives of the state department
8 of education and has met the high quality standards adopted by the state board of
9 education. Full approval status shall be for a period not to exceed four years.
10 Substantial approval status may be granted to a county board of education whose
11 educational program has satisfied all conditions identified under full approval status, with
12 the exception of an on-site review, or all conditions identified under full approval have been
13 satisfied except that one or more of the high quality standards have not been met but will
14 be attained within one year, as described in an acceptable plan of action.
15 Probationary status is given to a county board of education whose educational program
16 has not met the high quality standards. Probationary status is a warning that the county
17 board of education must make specified improvements. If progress is not made toward
18 meeting the high quality standards during the succeeding year, the county board of
19 education is automatically placed on nonapproval status.
20 Nonapproval status is given to a county board of education which fails to submit an annual
21 program plan, fails to give evidence of meeting the high quality standards or has not
22 demonstrated a reasonable effort to meet such standards. The Legislature finds that
23 counties whose net enrollment falls below a certain level may not have the economies of
24 scale to support the proper operation of the school system and the education of their
25 students. The Legislature further finds that to make a determination of whether additional
26 assistance is needed by such a county, and if it is, then in what form and amount, it is
27 necessary to examine the local circumstances and ensure the efficient use of available
28 resources. Therefore, the purpose of this section is to provide a process for examining the
29 economies of scale of counties with low student net enrollment and providing additional
30 assistance to them if necessary, including, but not limited to, the grant of funds.
31 (b) After the thirty-first day of December, one thousand nine hundred eighty-eight, the
32 approval of educational programs based on high quality educational standards established
33 by the state board shall be in accordance with the provisions of article two-e of this chapter
34 and the provisions of this section shall expire. Upon the written request of a county with
35 a student net enrollment of less than one thousand four hundred students, the State
36 Superintendent shall examine whether all of the resources available to the county are
37 being efficiently utilized and whether additional assistance is needed within the county to
38 improve its economies of scale. The State Superintendent may take any of the following
39 actions:
40 (1) If the State Superintendent finds that all of the resources of the county are not being
41 used efficiently, the State Superintendent shall recommend areas of improvement to the
42 county and, if requested by the county, may provide technical assistance to make the
43 improvements;
44 (2) If the State Superintendent finds that additional assistance is needed to improve the
45 economies of scale of the county, the State Superintendent shall determine whether the
46 economies of scale may be increased with additional resources through the regional
47 education service agency, through cooperative agreements with adjoining counties and by
48 technical assistance and other programs available to the State Superintendent. The State
49 Superintendent shall take the actions that are within his or her authority to increase the
50 economies of scale of the county through these means; and
51 (3) If the State Superintendent finds that additional assistance is needed to improve the
52 economies of scale of the county after the actions provided in subdivisions (1) and (2) of
53 this subsection are exhausted, the State Superintendent may, subject to appropriations
54 made by the Legislature therefor, make a grant of funds to the county to assist in improving

1 its economies of scale. The grant of funds may include any restrictions, conditions and
2 purposes that the State Superintendent determines necessary to improve the economies
3 of scale of the county.

Senate Bill 639

Effective Date: Passed April 8, 2005; in effect from passage.

Signed by Governor: May 4, 2005

Code Reference: Amends and reenacts §§39A-3-1, 39A-3-2 and 39A-3-3

Title: Digital Signatures; State Electronic Records and Transactions

Major Provisions:

- Adds the following definition for “Electronic Postmark”:
 - o An electronic service provided by the US Postal Service that provides evidentiary proof that an electronic document was opened or the contents displayed at a time and date documented by the US Post Office.

1
2
3
4
5
6
7
8
9
10
11
12
13

ENROLLED
Senate Bill No. 639

(By Senators Fanning, Harrison and Minard)

[Passed April 8, 2005; in effect from passage.]

14 AN ACT to amend and reenact §§39A-3-1, §§39A-3-2 and §§39A-3-3 of the Code of West
15 Virginia, 1931, as amended, all relating to digital signatures generally; defining
16 certain terms; providing for use of an electronic postmark; authorizing promulgation
17 of an emergency rule; and authorizing use of a federal certificate authority and
18 repository program.

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

20 That §§39A-3-1, §§39A-3-2 and §§39A-3-3 of the Code of West Virginia, 1931, as
21 amended, be amended and reenacted, all to read as follows:

22 **ARTICLE 3. DIGITAL SIGNATURES; STATE ELECTRONIC RECORDS AND**
23 **TRANSACTIONS.**

24 **§§39A-3-1. Definitions.**

25 (1) "Certificate" means a computer-based record that:

- 26 (A) Identifies the certification authority issuing it;
- 27 (B) Names or identifies its subscriber;
- 28 (C) Contains the subscriber's public key; and
- 29 (D) Is digitally signed by the certification authority issuing it.

30 (2) "Certification authority" means a person who issues a certificate.

31 (3) "Digital mark" consists of an electronic code indicating approval or confirmation which
32 is entered into a protected digital record following access protocols which identify the user
33 and require a password, personal identification number, encrypted card or other security
34 device which restricts access to one or more authorized individuals; and

35 (4) "Digital signature" consists of a message transformed using an asymmetric
36 cryptosystem so that a person having the initial message and the signer's public key can
37 accurately determine:

- 38 (A) Whether the transformed message was created using the private key that corresponds
39 to the signer's public key; and
- 40 (B) Whether the initial message has been altered since the message was transformed.

41 (5) "Electronic postmark" means an electronic service provided by the United States Postal
42 Service that provides evidentiary proof that an electronic document existed in a certain
43 form at a certain time and that an electronic document was opened or the contents of the
44 electronic document were displayed at a time and date documented by the United States
45 Post Office.

46 (6) "Federal certificate authority and repository program" means an official program
47 established by an agency of the United States government for the issuance and
48 authentication of digital signature certificates or other secure electronic authorizations to
49 individuals for use in electronic transactions.

50 **§§39A-3-2. Acceptance of electronic signature by governmental entities in**
51 **satisfaction of signature requirement.**

52 (a) Any governmental entity may, by appropriate official action, authorize the acceptance
53 of electronic signatures in lieu of original signatures on messages or filings requiring one
54 or more original signatures, subject to the requirements and limitations of section three of
55 this article.

56 (b) Any governmental entity may elect to participate and utilize the sSecretary of sState's
57 digital signature authority and registry. Upon acceptance of and registration with the
58 sSecretary of sState's digital signature authority and registry, the governmental entity's
59 electronic transactions are bound to the regulation of the authority and registry and those
60 the rules promulgated thereunder. Any governmental entity not required to participate, but

1 which elects to participate, may withdraw at any time from the program upon notification
2 of the sSecretary of sState and all others who utilize that entity's digital signature program.
3 (c) Any governmental entity may adopt, in the manner provided by law, an ordinance, rule
4 or official policy designating the documents on which electronic signatures, electronic
5 postmarks or both are authorized and the type or types of electronic signatures which may
6 be accepted for each type of document. Those governmental entities not subject to the
7 provisions of chapter twenty-nine-a of this code which propose to authorize the acceptance
8 of electronic signatures, electronic postmarks or both on documents filed with that entity
9 shall give public notice of the proposed adoption in a manner prescribed by law, an
10 ordinance, rule or official policy, but in no case for less than thirty days before adoption.
11 (d) Any governmental entity which intends to extend, modify or revoke the authority to
12 accept electronic signatures shall do so by the same means and with the same notice as
13 required in this section for adoption.

14 **§§39A-3-3. Duties of the sSecretary of sState; state agencies use of electronic**
15 **signatures.**

16 (a) The sSecretary of sState shall propose emergency and legislative rules for
17 promulgation in accordance with the provisions of article three, chapter twenty-nine-a of
18 this code to establish standards and processes to facilitate the use of electronic signatures
19 in all governmental transactions by state agencies subject to chapter twenty-nine-a of this
20 code. The rules shall include minimum standards for secure transactions to promote
21 confidence and efficiency in legally binding electronic document transactions. The rules
22 may be amended from time to time to keep the rules current with new developments in
23 technology and improvements in secured transaction processes.

24 (b) The sSecretary of sState is designated the certification authority and repository for all
25 governmental agencies which are subject to chapter twenty-nine-a of this code and shall
26 regulate transactions and digital signature verifications. The sSecretary may enter into
27 reciprocal agreements with all state and federal governmental entities to promote the
28 efficient governmental use of electronic transactions. The sSecretary of sState may
29 propose legislative rules for issuing certificates that bind public keys to individuals, and
30 other electronic transaction authentication devices as provided in this article. The
31 sSecretary of sState is further authorized to contract with a public or private entity to serve
32 as certification authority for the sState of West Virginia. ~~This~~ The private certification
33 authority may contract with persons to provide certification services. Any contract entered
34 into must require the certification authority to meet the requirements of this article and any
35 rules promulgated by the sSecretary of sState.

36 (c) Nothing contained in this article may be construed to mandate any specific form of
37 technology, process or standard to be the only technology, process or standard which may
38 be utilized by state entities. Nor may anything contained in this article be construed to limit
39 the sSecretary of sState in adopting by legislative rule, alternative technologies to authorize
40 electronic signatures and electronic postmarks.

41 (d) Nothing contained in this article may be construed to authorize the use of electronic
42 signatures, electronic postmarks, or both, to effect service of a summons and complaint.

Senate Bill 667

Effective Date: Passed April 8, 2005; in effect ninety days from passage.

Signed by Governor: April 28, 2005

Code Reference: Amends and reenacts §§11-14C-9 and 11-14C-31

Title: Motor Fuel Excise Tax

Major Provisions:

- Modifies the process for filing refunds of state motor fuel excise tax paid, requiring that:
 - o The requests must be filed in the form specified by the tax commissioner;
 - o The requests must be filed quarterly (on or before the last day of January, April, July and October) for purchases made during the immediate preceding calendar quarter;
 - o Billing statements and electronic invoices may be acceptable in lieu of original invoices, at the discretion of the tax commissioner;
 - o Copies of original invoices must be retained for at least three years.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55

ENROLLED
Senate Bill No. 667

(By Senators Helmick and Plymale)

[Passed April 8, 2005; in effect ninety days from passage.]

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.

(a) *Per se exemptions from flat rate component of tax.* -- Sales of motor fuel to the following, or as otherwise stated in this subsection, are exempt per se from the flat rate of the tax levied by section five of this article and the flat rate ~~shall~~ may not be paid at the rack:

(1) All motor fuel exported from this state to any other state or nation: *Provided*, That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation: *Provided, however*, That this exemption does not apply to any motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle;

(2) Sales of aviation fuel;

(3) Sales of dyed special fuel; and

(4) Sales of propane.

(b) *Per se exemptions from variable component of tax.* -- Sales of motor fuel to the following are exempt per se from the variable component of the tax levied by section five of this article and the variable component ~~shall~~ may not be paid at the rack:

All motor fuel exported from this state to any other state or nation: *Provided*, That the supplier collects and remits to the destination state or nation the appropriate amount of tax due on the motor fuel transported to that state or nation: *Provided, however*, That this exemption ~~shall~~ does not apply to any motor fuel which is transported and delivered outside this state in the motor fuel supply tank of a highway vehicle.

(c) *Refundable exemptions from flat rate component of tax.* -- Any person having a right or claim to any of the following exemptions from the flat rate component of the tax levied by section five of this article ~~that is set forth in this subsection~~ shall first pay the tax levied by this article and then apply to the Tax Commissioner for a refund:

(1) The United States or any agency thereof: *Provided*, That if the United States government, or any agency or instrumentality thereof, does not pay the seller the tax imposed by section five of this article on any purchase of motor fuel, the person selling tax previously paid motor fuel to the United States government, or its agencies or instrumentalities, may then claim a refund of the flat rate component of tax imposed by said section on those sales ;

(2) Any county government or unit or agency thereof;

(3) Any municipal government or any agency thereof;

(4) Any county boards of education;

(5) Any urban mass transportation authority created pursuant to the provisions of article twenty-seven, chapter eight of this code;

(6) Any municipal, county, state or federal civil defense or emergency service program pursuant to a government contract for use in conjunction therewith, or to any person on

1 whom is imposed a requirement to maintain an inventory of motor fuel for the purpose of
2 the program: *Provided*, That motor fueling facilities used for these purposes are not
3 capable of fueling motor vehicles and the person in charge of the program has in his or her
4 possession a letter of authority from the ~~t~~Tax ~~e~~Commissioner certifying his or her right to
5 the exemption: *Provided, however*, That in order for this exemption to apply, motor fuel
6 sold under this subdivision and subdivisions (1) through (5), inclusive, of this subsection
7 shall be used in vehicles or equipment owned and operated by the respective government
8 entity or government agency or authority;

9 (7) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently
10 exported from this state to any other state or nation: *Provided*, That the exporter has paid
11 the applicable motor fuel tax to the destination state or nation prior to claiming this refund
12 or the exporter has reported to the destination state or nation that the motor fuel was sold
13 in a transaction not subject to tax in that state or nation: *Provided, however*, That a refund
14 shall ~~may~~ not be granted on any motor fuel which is transported and delivered outside this
15 state in the motor fuel supply tank of a highway vehicle;

16 (8) All gallons of motor fuel used and consumed in stationary off-highway turbine engines;

17 (9) All gallons of special fuel used for heating any public or private dwelling, building or
18 other premises;

19 (10) All gallons of special fuel used for boilers;

20 (11) All gallons of motor fuel used as a dry cleaning solvent or commercial or industrial
21 solvent;

22 (12) All gallons of motor fuel used as lubricants, ingredients or components of any
23 manufactured product or compound;

24 (13) All gallons of motor fuel sold for use or used as a motor fuel for commercial watercraft;

25 (14) All gallons of special fuel sold for use or consumed in railroad diesel locomotives;

26 (15) All gallons of motor fuel purchased in quantities of twenty-five gallons or more for use
27 as a motor fuel for internal combustion engines not operated upon highways of this state;

28 (16) All gallons of motor fuel purchased in quantities of twenty-five gallons or more and
29 used to power a power take-off unit on a motor vehicle. When a motor vehicle with auxiliary
30 equipment uses motor fuel and there is no auxiliary motor for the equipment or separate
31 tank for a motor, the person claiming the refund may present to the ~~t~~Tax ~~e~~Commissioner
32 a statement of his or her claim and is allowed a refund for motor fuel used in operating a
33 power take-off unit on a cement mixer truck or garbage truck equal to twenty-five percent
34 of the tax levied by this article paid on all motor fuel used in such a truck;

35 (17) Motor fuel used by any person regularly operating any vehicle under a certificate of
36 public convenience and necessity or under a contract carrier permit for transportation of
37 persons when purchased in an amount of twenty-five gallons or more: *Provided*, That the
38 amount refunded is equal to six cents per gallon: *Provided, however*, That the gallons of
39 motor fuel shall have been consumed in the operation of urban and suburban bus lines
40 and the majority of passengers use the bus for traveling a distance not exceeding forty
41 miles, measured one way, on the same day between their places of abode and their places
42 of work, shopping areas or schools; and

43 (18) All gallons of motor fuel that are not otherwise exempt under subdivisions (1) through
44 (6), inclusive, of this subsection and that are purchased and used by any bona fide
45 volunteer fire department, nonprofit ambulance service or emergency rescue service that
46 has been certified by the municipality or county wherein the bona fide volunteer fire
47 department, nonprofit ambulance service or emergency rescue service is located.

48 (d) *Refundable exemptions from variable rate component of tax.* -- Any of the following
49 persons may claim an exemption from the variable rate component of the tax levied by
50 section five of this article on the purchase and use of motor fuel by first paying the tax
51 levied by this article and then applying to the ~~t~~Tax ~~e~~Commissioner for a refund.

52 (1) The United States or any agency thereof: *Provided*, That if the United States
53 government, or any agency or instrumentality thereof, does not pay the seller the tax
54 imposed by section five of this article on any purchase of motor fuel, the person selling tax
55 previously paid motor fuel to the United States government, or its agencies or

1 instrumentalities, may then claim a refund of the variable rate of tax imposed by said
2 section on those sales.

3 (2) This state and its institutions;

4 (3) Any county government or unit or agency thereof;

5 (4) Any municipal government or any agency thereof;

6 (5) Any county boards of education;

7 (6) Any urban mass transportation authority created pursuant to the provisions of article
8 twenty-seven, chapter eight of this code;

9 (7) Any municipal, county, state or federal civil defense or emergency service program
10 pursuant to a government contract for use in conjunction therewith, or to any person on
11 whom is imposed a requirement to maintain an inventory of motor fuel for the purpose of
12 the program: *Provided*, That fueling facilities used for these purposes are not capable of
13 fueling motor vehicles and the person in charge of the program has in his or her
14 possession a letter of authority from the †Tax eCommissioner certifying his or her right to
15 the exemption;

16 (8) Any bona fide volunteer fire department, nonprofit ambulance service or emergency
17 rescue service that has been certified by the municipality or county wherein the bona fide
18 volunteer fire department, nonprofit ambulance service or emergency rescue service is
19 located; or

20 (9) All invoiced gallons of motor fuel purchased by a licensed exporter and subsequently
21 exported from this state to any other state or nation: *Provided*, That the exporter has paid
22 the applicable motor fuel tax to the destination state or nation prior to claiming this refund:
23 *Provided, however*, That a refund shall may not be granted on any motor fuel which is
24 transported and delivered outside this state in the motor fuel supply tank of a highway vehicle.

25 (e) The provision in subdivision (9), subsection (a), section nine, article fifteen of this
26 chapter that exempts as a sale for resale those sales of gasoline and special fuel by a
27 distributor or importer to another distributor does not apply to sales of motor fuel under this
28 article.

29 **§§11-14C-31. Claiming refunds.**

30 (a) Any person seeking a refund pursuant to subsection (c) or (d), section nine of this
31 article shall present to the eCommissioner a petition accompanied by refund in the form
32 required by the Commissioner and provide the information required by the Commissioner.

33 The Tax Commissioner may require the petitioner to provide the original or duplicate
34 original sales slips or invoices from the distributor or producer or retail dealer, as the case
35 may be, showing the amount of the purchases, together with evidence of payment thereof,
36 and a statement stating how the motor fuel was used: *Provided*, That sales slips or
37 invoices marked "duplicate" are not acceptable: *Provided, however*, That certified copies
38 of sales slips or invoices are acceptable: *Provided further*, That copies of sales slips and
39 invoices may be used with any application for refund made under authority of subdivision
40 (15), subsection (c), section nine of this article when the motor fuel is used to operate
41 tractors and gas engines or threshing machines for agricultural purposes: *And provided*
42 further, That a refund claim made under the authority of subdivision (1), subsection (c),
43 section nine of this article and a refund claim made under the authority of subdivision (1),
44 subsection (d) of said section shall be accompanied by such verification as prescribed by
45 the Tax Commissioner: *And provided further*, That billing statements and electronic
46 invoices are acceptable in lieu of original invoices at the discretion of the Tax
47 Commissioner: *And provided further*, That the person claiming a refund under subsection
48 (c) or (d) of said section shall retain for at least three years following the postmark date of
49 the application for refund a copy of the invoices, sales slips and billing statements for which
50 the refund was claimed.

51 (b) Any person claiming a refund pursuant to section thirty of this article shall file a petition
52 in writing with the eCommissioner. The petition shall be in the form and with supporting
53 records as required by the eCommissioner and made under the penalty of perjury.

54 (c) The right to receive any refund under the provisions of this section is not assignable and
55 any assignment thereof is void and of no effect. No payment of any refund may be made

1 to any person other than the original person entitled to claim the refund except as
2 otherwise expressly provided in this article. The eCommissioner shall cause a refund to be
3 made under the authority of this section only when the claim for refund is filed with the
4 eCommissioner within the following time periods:

5 (1) A petition for refund under section thirty of this article, other than for evaporation loss,
6 shall be filed with the eCommissioner within three years from the end of the month in
7 which: (A) ~~†The tax was erroneously or illegally paid or;~~ (B) the gallons were exported or
8 lost by casualty; or in which (C) a change of rate took effect;

9 (2) A petition for refund under section thirty of this article for evaporation loss shall be filed
10 within three years from the end of the year in which the evaporation occurred;

11 (3) A petition for refund under subsection (c) or (d), section nine of this article shall be filed
12 with the eCommissioner ~~within six months from the month of purchase or delivery of on or~~
13 ~~before the last day of January, April, July and October for purchases of the motor fuel~~
14 during the immediately preceding calendar quarter: *Provided*, That any application for
15 refund made under authority of subdivision (15), subsection (c) of said section when the
16 motor fuel is used to operate tractors and gas engines or threshing machines for
17 agricultural purposes shall be filed within twelve months from the month of purchase or
18 delivery of the motor fuel: *Provided, however*, That all persons authorized to claim a
19 refundable exemption under the authority of subdivisions (1) through (6), inclusive,
20 subsection (c), section nine of this article and subdivisions (1) through (6), inclusive,
21 subsection (d) of said section shall do so no later than the thirty-first day of August for the
22 purchases of motor fuel made during the preceding fiscal year ending the thirtieth day of
23 June.

24 (d) Any petition for a refund not timely filed is not construed to be or constitute a moral
25 obligation of the state of West Virginia for payment. Every petition for refund is subject to
26 the provisions of section fourteen, article ten of this chapter.

27 (e) The eCommissioner may make any investigation considered necessary before
28 refunding to a person the tax levied by section five of this article. The eCommissioner may
29 also subject to audit the records related to a refund of the tax levied by section five of this
30 article.

Senate Bill 728

Effective Date: July 1, 2005

Signed by Governor: May 2, 2005

Code Reference: Amends and reenacts §5A-3-45 of the Code of West Virginia

Title: Disposition of Surplus State Property

Major Provisions:

- For the purposes of this section of the code, "cannibalization" means the removal of parts from one commodity to use in the creation or repair of another commodity. Guidelines were identified for use by State agencies.
- The legislation also indicates that the Director of the Purchasing Division shall establish procedures that permit the cannibalization of a commodity when it is in the best interests of the state. The procedures shall require the approval of the Director prior to the cannibalization of the commodity with an initial value of over ten thousand dollars.
- This section as amended also establishes procedures for disposing of the property through waste disposal processes.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55

ENROLLED
Senate Bill No. 728

(By Senator Bowman)

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

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.

(a) ~~The state agency shall have for surplus property~~ has the exclusive power and authority to make disposition of commodities or expendable commodities now owned or in the future acquired by the state when ~~any such~~ the commodities are or become obsolete or unusable or are not being used or should be replaced.

(b) The agency shall determine what commodities or expendable commodities should be disposed of and make disposition in the manner which will be most advantageous to the state; ~~either by:~~ The disposition may include:

(1) ~~Transferring the particular commodities or expendable commodities between departments;~~

(2) ~~by~~ Selling such the commodities to county commissions, county boards of education, municipalities, public service districts, county building commissions, airport authorities, parks and recreation commissions, nonprofit domestic corporations qualified as tax exempt under ~~s~~Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or volunteer fire departments in this state; when ~~such the~~ volunteer fire departments have been held exempt from taxation under ~~s~~Section 501(c) of the ~~United States~~ Internal Revenue Code; ~~by;~~

(3) ~~Trading in such the~~ commodities as a part payment on the purchase of new commodities ~~;~~ ~~or by sale thereof to the highest bidder by means of public auctions or sealed bids, after having first advertised the time, terms and place of such sale as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county wherein the sale is to be conducted. The sale may also be advertised in such other advertising media as the agency may deem advisable. The agency may sell to the highest bidder or to any one or more of the highest bidders, if there is more than one, or, if the best interest of the state will be served, reject all bids;~~

(4) ~~Cannibalizing the commodities pursuant to procedures established under subsection (g) of this section;~~

(5) ~~Properly disposing of the commodities as waste; or~~

(6) ~~Selling the commodities to the highest bidder by means of public auctions or sealed bids, after having first advertised the time, terms and place of the sale as a Class II legal advertisement in compliance with the provisions of article three,~~

1 chapter fifty- nine of this code. The publication area for the publication is the county
2 in which the sale is to be conducted. The sale may also be advertised in other
3 advertising media that the agency considers advisable. The agency may sell to the
4 highest bidder or to any one or more of the highest bidders, if there is more than
5 one, or, if the best interest of the state will be served, reject all bids.
6 (c) Upon the transfer of commodities or expendable commodities between
7 departments, or upon the sale thereof of commodities or expendable commodities
8 to an eligible organization, described above, the agency shall set the price to be
9 paid by the receiving eligible organization, with due consideration given to current
10 market prices.
11 (d) The agency may sell expendable, obsolete or unused motor vehicles owned by
12 the state to an eligible organization, other than volunteer fire departments. In
13 addition, the agency may sell expendable, obsolete or unused motor vehicles
14 owned by the state with a gross weight in excess of four thousand pounds to an
15 eligible volunteer fire department. The agency, with due consideration given to
16 current market prices, shall set the price to be paid by the receiving eligible
17 organization; for motor vehicles sold pursuant to this provision: *Provided*, That the
18 sale price of any motor vehicle sold to an eligible organization shall ~~may~~ not be less
19 than the "average loan" value, as published in the most recent available eastern
20 edition of the National Automobile Dealer's Association (N. A. D. A.) Official Used
21 Car Guide, if ~~such a~~ the value is available, unless the fair market value of the
22 vehicle is less than the N. A. D. A. "average loan" value, in which case the vehicle
23 may be sold for less than the "average loan" value. ~~Such~~ The fair market value
24 must shall be based on a thorough inspection of the vehicle by an employee of the
25 agency who shall consider the mileage of the vehicle; and the condition of the
26 body, engine and tires as indicators of its fair market value. If no ~~such~~ fair market
27 value is available, the agency shall set the price to be paid by the receiving eligible
28 organization with due consideration given to current market prices. The duly
29 authorized representative of ~~such~~ the eligible organization, for whom ~~such~~ the
30 motor vehicle or other similar surplus equipment is purchased or otherwise
31 obtained, shall cause ownership and proper title ~~thereto~~ to the motor vehicle to be
32 vested only in the official name of the authorized governing body for whom the
33 purchase or transfer was made. ~~Such~~ The ownership or title, or both, shall remain
34 in the possession of that governing body and be nontransferable for a period of not
35 less than one year from the date of ~~such~~ the purchase or transfer. Resale or
36 transfer of ownership of ~~such~~ the motor vehicle or equipment prior to an elapsed
37 period of one year may be made only by reason of certified unserviceability.
38 (e) The agency shall report to the ~~L~~egislative ~~a~~Auditor, semiannually, all sales of
39 commodities or expendable commodities made during the preceding six months
40 to eligible organizations. The report shall include a description of the commodities
41 sold, the price paid by the eligible organization; which received the commodities;
42 and ~~the report shall show~~ to whom each commodity was sold.
43 (f) The proceeds of ~~such~~ the sales or transfers shall be deposited in the ~~s~~State
44 ~~t~~Treasury to the credit on a pro rata basis of the fund or funds out of which the
45 purchase of the particular commodities or expendable commodities was made:
46 *Provided*, That the agency may charge and assess fees reasonably related to the
47 costs of care and handling with respect to the transfer, warehousing, sale and
48 distribution of state property disposed of or sold pursuant to the provisions of this
49 section.
50 (g)(1) For purposes of this section, "cannibalization" means the removal of parts
51 from one commodity to use in the creation or repair of another commodity.
52 (2) The Director of the Purchasing Division shall propose for promulgation
53 legislative rules to establish procedures that permit the cannibalization of a
54 commodity when it is in the best interests of the state. The procedures shall require
55 the approval of the Director prior to the cannibalization of the commodity under

1 such circumstances as the procedures may prescribe.
2 (3)(A) Under circumstances prescribed by the procedures, state agencies shall be
3 required to submit a form, in writing or electronically, that, at a minimum, elicits the
4 following information for the commodity the agency is requesting to cannibalize:
5 (i) The commodity identification number;
6 (ii) The commodity's acquisition date;
7 (iii) The commodity's acquisition cost;
8 (iv) A description of the commodity;
9 (v) Whether the commodity is operable and, if so, how well it operates;
10 (vi) How the agency will dispose of the remaining parts of the commodity; and
11 (vii) Who will cannibalize the commodity and how the person is qualified to remove
12 and reinstall the parts.
13 (B) If the agency has immediate plans to use the cannibalized parts, the form shall
14 elicit the following information for the commodity or commodities that will receive
15 the cannibalized part or parts:
16 (i) The commodity identification number;
17 (ii) The commodity's acquisition date;
18 (iii) The commodity's acquisition cost;
19 (iv) A description of the commodity;
20 (v) Whether the commodity is operable;
21 (vi) Whether the part restores the commodity to an operable condition; and
22 (vii) The cost of the parts and labor to restore the commodity to an operable
23 condition without cannibalization.
24 (C) If the agency intends to retain the cannibalized parts for future use, it shall
25 provide information justifying its request.
26 (D) The procedures shall provide for the disposal of the residual components of
27 cannibalized property.
28 (h)(1) The Director of the Purchasing Division shall propose for promulgation
29 legislative rules to establish procedures that allow state agencies to dispose of
30 commodities in a landfill, or by other lawful means of waste disposal, if the value
31 of the commodity is less than the benefit that may be realized by the state by
32 disposing of the commodity using another method authorized in this section. The
33 procedures shall specify circumstances where the state agency for surplus property
34 shall inspect the condition of the commodity prior to authorizing the disposal and
35 those circumstances when the inspection is not necessary prior to the authorization.
36 (2) Whenever a state agency requests permission to dispose of a commodity in a
37 landfill, or by other lawful means of waste disposal, the state agency for surplus
38 property has the right to take possession of the commodity and to dispose of the
39 commodity using any other method authorized in this section.
40 (3) If the state agency for surplus property determines, within fifteen days of
41 receiving a commodity, that disposing of the commodity in a landfill or by other
42 lawful means of waste disposal would be more beneficial to the state than
43 disposing of the commodity using any other method authorized in this section, the
44 cost of the disposal is the responsibility of the agency from which it received the
45 commodity.

1 **HOUSE CONCURRENT RESOLUTION NO. 21**

2
3 (By Delegates Williams, Perry, Beach, Paxton and Hartman)

4
5 Requesting the Department of Education to create a position in the Department to
6 coordinate, oversee and advocate for public school libraries.

7 Whereas, Public school libraries can fulfill an important role in teaching students,
8 supporting curriculum delivery and providing resources for staff development; and

9 Whereas, Public school libraries, when adequately funded and staffed with
10 professionally trained and credentialed library media specialists, have shown their
11 value in improving student performance; and

12 Whereas, There is no person responsible for ensuring that the valuable role of
13 public school libraries is appropriately represented in state level policy formation
14 and program development for improving education in the public schools; therefore,
15 be it

16 *Resolved by the Legislature of West Virginia:*

17 That the Department of Education is hereby requested to create a position in the
18 Department to coordinate, oversee and advocate for public school libraries.

HOUSE CONCURRENT RESOLUTION NO. 69

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

(By Mr. Speaker, Mr. Kiss, and Delegates Moore, Staton, Amores, Anderson, Argento, Armstead, Ashley, Azinger, Barker, Beach, Beane, Blair, Boggs, Border, Brown, Browning, Butcher, Campbell, Cann, Canterbury, Caputo, Carmichael, Craig, Crosier, DeLong, Doyle, Duke, Eldridge, Ellem, Ennis, Evans, Fragale, Frederick, Frich, Hall, Hamilton, Hartman, Hatfield, Houston, Howard, Hrutkay, Hunt, Iaquina, Komisar, Lane, Leach, Leggett, Long, Longstreth, Louisos, Mahan, Manchin, Marshall, Martin, Michael, Miley, Morgan, Overington, Palumbo, Paxton, Perdue, Perry, Pethtel, Pino, Poling, Porter, Proudfoot, Roberts, Romine, Rowan, Schadler, Schoen, Sobonya, Spencer, Stalnaker, Stemple, Stephens, Stevens, Sumner, Susman, Swartzmiller, Tabb, Talbott, Tansill, Rick Thompson, Ron Thompson, Trump, Tucker, Varner, Wakim, Walters, Webster, Wells, Gil White, H. K. White, Williams, Wysong and Yost)

[Introduced March 28, 2005.]

Recognizing the importance of the Health Sciences and Technology Academy (HSTA) and its significant contributions to African American and under represented high school students in West Virginia.