
WEST VIRGINIA CODE CHAPTER 4

WV Legislature

§4-1-1. Interim committee and subcommittee meetings.

(a) Either house of the Legislature may, by resolution, direct any select committee unique to that house or any standing committee of that house and created by it by rule, motion or resolution to meet between regular sessions of the Legislature. The presiding officer of such house may designate subcommittees of such standing or select committees and shall designate the chairman and membership thereof. Such committees or subcommittees shall function according to the rules for committees of the house creating them.

Members of such committees or subcommittees under this subsection, performing duties as members thereof, shall receive travel expense reimbursement as provided in section six, article two-a, chapter four and interim expense reimbursement as provided in section eight, article two-a, chapter four. However, to be eligible to receive travel expense reimbursement and interim expense reimbursement, meetings of these select committees and subcommittees thereof must be authorized by the rules committee of such house. Expenses shall be paid from any appropriation to the use and benefit of the house adopting the resolution.

Such committees or subcommittees shall have such staff as may be directed by the presiding officer of that house from which its membership is drawn, which may be paid for from appropriations to the use and benefit of such house, as designated by the rules committee thereof.

(b) From the date of adjournment sine die of any regular session of the Legislature until the first day of the next succeeding regular session of the Legislature, the Legislature by concurrent resolution, or the Joint Committee on Government and Finance on its own motion, may appoint a joint standing committee or a joint select committee, or any joint subcommittee of such standing or select committee, to function under the supervision of the Joint Committee on Government and Finance. Any such committee or subcommittee shall be composed of the standing or select committees of the respective houses having similar titles or jurisdiction, and similarly constituted, and the membership thereof shall be composed of members of the respective standing or select committees of each house, or subcommittees thereof, or be designated by the presiding officer of each house: Provided, That the membership of such joint committee or subcommittee may be drawn from more than one such standing or select committee.

(c) Members of the Legislature performing interim duties as members of the Joint Committee on Government and Finance, the commission on interstate cooperation, the joint committee on government operations, the legislative commission on pensions and retirement, the legislative rule-making review committee, the commission on special investigations, standing committees of the Senate and of the House of Delegates, and authorized subcommittees of each of the above committees and commissions are authorized to meet between regular sessions of the Legislature, subject to the direction of the Joint Committee on Government and Finance. Members of the Legislature performing interim duties as a member of said committees or commissions, or subcommittees thereof, under

this subsection, shall receive interim compensation as provided in section five, article two-a, chapter four; travel expense reimbursement as provided in section six, article two-a, chapter four; and interim expense reimbursement as provided in section eight, article two-a, chapter four. However, to be eligible to receive the interim compensation, travel expense reimbursement and interim expense reimbursement, payment must be authorized by the Joint Committee on Government and Finance.

The Joint Committee on Government and Finance shall coordinate meetings, of said committees and commissions, and subcommittees thereof, between regular sessions of the Legislature.

§4-1-2. How appropriations made and applied.

No money shall be appropriated by resolution of either house, or by joint resolution of the Legislature; but when any money has been appropriated by law, the application of the same, in pursuance of the law, may be directed by resolution.

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§4-1-3. Suits against members of Legislature; exemption from arrest, trial, judgment and levy.

Any suit may be commenced and prosecuted against a member of the Legislature, if his person be not taken into custody or imprisoned. But no trial shall be had or judgment rendered in any such suit, nor shall any execution or attachment be levied upon the property of such member during the sessions of the Legislature or for ten days immediately before or immediately after session.

§4-1-4. Compelling members to attend.

Either house, or a less number than a quorum thereof, when assembled at the time and place of meeting, may, by order or resolution, direct such of its members as are absent without leave to be brought before the house. The order or resolution shall be executed by the sergeant-at-arms, or any messengers deputed by him, or appointed for the purpose by the officer presiding at the meeting; and a copy of such order or resolution, attested by the presiding officer or clerk, shall be a sufficient warrant. The sergeant or messengers shall thereupon forthwith arrest the members so absent, and bring them before the meeting, and each of them, as he is brought in, shall be heard, if he wishes it, in excuse of his absence. If any member so brought in do not render such an excuse for his absence as the house, or such of its members as are present, shall deem sufficient, he may be fined not exceeding \$6, censured, or discharged from custody, as the house, or such of its members as are present, shall order; and in either case shall pay the costs of the arrest. If the excuse be deemed sufficient, the costs of the arrest shall be certified by the presiding officer or clerk, and be paid out of the appropriation for the expenses of the Legislature.

§4-1-5. Authority to subpoena witnesses and documents; penalty for refusal to comply; applicability of whistle-blower law.

(a) When the Senate or House of Delegates, or a committee of either house, authorized to examine witnesses, by resolution or by rules of the Senate or of the House of Delegates, shall order the attendance of any witness, or the production of any books, papers, documents or records necessary for the Senate, House of Delegates or a committee thereof to perform its duties, a summons shall be issued accordingly, signed by the presiding officer or clerk of such house, or the chairman of such committee, directed to the sheriff or other proper officer of any county, or to the sergeant at arms of such house, or any person deputed by him. When a committee is appointed by each house under any joint or concurrent resolution, and directed to sit jointly, with authority to examine witnesses or send for persons or documents, the subpoena aforesaid may be signed by the chairman of the committee on the part of the Senate or the chairman of the committee on the part of the House of Delegates.

(b) If any witness subpoenaed to appear at any hearing or meeting pursuant to subsection (a) of this section shall refuse to appear or to answer inquiries there propounded, or shall fail or refuse to produce books, papers, documents or records within his or her control when the same are subpoenaed, the Senate, House of Delegates or a committee thereof, in its discretion may enforce obedience to its subpoena by attachment, fine or imprisonment, or it may report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court shall compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance.

Witnesses subpoenaed to attend such hearings or meetings, except officers or employees of the state, shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

(c) The provisions of article one, chapter six-c of this code are expressly applicable to persons testifying pursuant to the provisions of subsection (a) of this section.

§4-1-5a. When witness may be compelled to give evidence against himself or; immunity of witness from prosecution.

In any proceeding by a committee or commission of the Legislature, created by it by general law or any concurrent resolution, which has the authority to issue subpoenas or subpoenas duces tecum, no person shall be excused from testifying or from producing documentary or other evidence upon the ground that such testimony or evidence may incriminate or tend to incriminate him, if the committee or commission before which he is examined is of the opinion that the ends of justice may be promoted by compelling such testimony or evidence. If, but for this section, the person would have been excused from so testifying or from producing such evidence, then if the person is so compelled to testify or produce other evidence and if such testimony or evidence is self-incriminating, such self-incriminating testimony or evidence shall not be used or receivable in evidence against him in any proceeding against him thereafter taking place other than a prosecution for perjury in the giving of such evidence, and the person so compelled to testify or furnish evidence shall not be prosecuted for the offense in regard to which he is so compelled to testify or furnish evidence, and he shall have complete legal immunity in regard thereto.

§4-1-6. Administration of oaths to members of Legislature, officers and witnesses.

The presiding officer or clerk of either house may administer the oaths of office to any member or officer of such house, and the oath to any witness to be examined before such house or its committee, or before any joint committee.

When any committee of either house, or joint committee, is authorized to examine witnesses, or to send for persons and papers, the chairman of such committee, or in his absence any member thereof, may administer the oath to any witness produced to testify before it.

§4-1-6a. False swearing in a legislative proceeding; penalty.

(a) A person may not willfully swear falsely, under oath or affirmation lawfully administered, in a legislative proceeding concerning any matter or thing material or not material, or procure, or attempt to procure, another person to do so.

(b) A person who violates subsection (a) of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 and, in the discretion of the court, be confined in jail not more than one year.

(c) A person convicted of violating subsection (a) of this section is ineligible to hold any office or position of honor, trust or profit in this state, and to serve as a juror.

§4-1-7. Flags displayed during sessions.

The flag of the United States, and the flag of the State of West Virginia shall be flown over the state Capitol building year-round; and the POW-MIA flag shall be flown over the state Capitol building on Memorial Day, Armed Forces Day, Flag Day, Independence Day, National POW/MIA Recognition Day and Veteran's Day each year.

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§4-1-8. Officers and employees; tenure.

Each house of the Legislature shall, at the commencement of the regular session thereof assembled and held in odd-numbered years, elect a presiding officer, a clerk, a sergeant-at-arms and a doorkeeper, whose terms of office shall, unless sooner vacated by death, resignation or removal, be and continue until the regular meeting of the Legislature in the odd-numbered year next thereafter, and until their successors are elected and qualified. Any person who is an officer of any state, county, district or municipal political party executive committee shall not be eligible to serve as clerk of either house of the Legislature. The clerk of each house shall devote full time to his public duties to the exclusion of any other employment. At each session of the Legislature, there shall be appointed for each house such employees and technical assistants as may be authorized by law or by resolution of the respective houses. Any person so appointed may be removed by the appointing authority and another appointed in his stead: Provided, That nothing in this section shall be construed to prevent either house from removing any appointee.

§4-1-9. Assistant clerks; committee clerks to assist.

Whenever it may be necessary, the clerk of the Senate may appoint one assistant, and the Clerk of the House of Delegates not exceeding three assistants, and such clerks may from time to time remove any assistant from office and appoint another in his stead. Every such assistant, during his continuance in office, may discharge any of the official duties of his principal. And it shall be the duty of every committee clerk in each house, when not engaged in the actual discharge of his duties as such, to assist the clerk of either house in the discharge of any of his duties, whenever called upon by such clerk to do so.

§4-1-10. Powers and duties of officers.

The officers of each house shall respectively have such powers and perform such duties as are conferred upon or required of them by law, or by the rules or orders of their respective houses.

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§4-1-10a. Filling vacancies in the office of presiding officer of the two houses.

In case of a vacancy in the office of President of the Senate or Speaker of the House of Delegates, when the Legislature is not in session, resulting from death, resignation or any other cause, the Governor shall by proclamation convene the house in which the vacancy exists in session within ten days after such vacancy occurs for the purpose of choosing a presiding officer as provided by section twenty-four, article six of the Constitution of the State.

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§4-1-11. Vacancies in clerkships.

A vacancy in the office of clerk of the Senate or Clerk of the House of Delegates, happening when the Legislature is not in session, shall be filled by appointment by the President of the Senate for a vacancy occurring in the office of clerk of the Senate and by the Speaker of the House of Delegates for a vacancy occurring in the office of Clerk of the House of Delegates, to expire at the meeting of the next regular or extraordinary session of the Legislature. If any such vacancy happen when the Legislature is in session, it shall be filled in the same manner as is provided for the election of such officer at the commencement of each regular session.

§4-1-12. Custody of journals and documents; certified copies.

The journals, papers and documents of each house shall be in the custody of its clerk, and copies thereof may be certified by him.

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§4-1-13. Clerk of house to be keeper of rolls; compensation; duties as to acts; copies; fees; printing.

(a) The Clerk of the House of Delegates shall be the keeper of the rolls, and for his or her duties as such, the clerk shall receive \$300 in addition to his salary as clerk. After a bill or joint resolution has passed both houses, the clerk shall cause the same to be correctly recorded, in a legible manner, in a well-bound book, to be kept for that purpose exclusively, which recording shall be equivalent to enrollment. The clerk shall have custody of the acts and joint resolutions of the Legislature and shall make a certified copy of them for any person requiring the same. For a copy of an act or joint resolution, the clerk may demand of the person at whose request it was made, 50 cents, or, at the clerk's option, 3 cents for every 30 words contained therein. As soon as possible after the close of each session, the clerk shall prepare a well-arranged index to the acts and joint resolutions passed at such session, and shall furnish to the printer who has the contract for such printing the manuscript of such acts, resolutions, and index and all matter directed by law to be printed therewith, properly prepared and arranged for publication, and shall superintend the printing thereof.

(b) When two or more bills amending the same statute are passed during the same session of the Legislature, the form of the statute in the enrolled bill passed latest in time shall control.

§4-1-14. Copies of enrolled bills mailed to courts; effect.

The clerk of the Senate and the Clerk of the House of Delegates, acting jointly, shall mail, to the judges of the Supreme Court of Appeals and judges of the circuit, common pleas, intermediate and criminal courts of this state, copies of enrolled bills of a general nature, taking effect from their passage; and enrolled copies of municipal charters and acts of a local nature shall be furnished only to courts of the local jurisdiction. Copies of enrolled bills furnished in accordance with this section shall bear the stamp of the clerks of the two houses, showing the date that each act becomes effective, and the enrolled bills so furnished and attested shall be regarded by the courts of this state as having the same force and effect as any and all other laws.

§4-1-15. Fees of clerks for copying or recording.

For any copying or recording (other than that mentioned in section twelve of this article and such as he is required to do for the Legislature, or either house, or a committee thereof, in the discharge of his official duty) the clerk of either house may demand and receive of and from the person, at whose request it is done, a fee reasonably calculated to reimburse the clerk for the cost of such copying or recording.

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§4-1-16. Indexes to journals; printing; compensation for preparing.

The clerk of the Senate and House of Delegates shall each, at the end of every session of the Legislature, prepare indexes to their respective journals, and cause them to be printed and bound therewith. As a compensation therefor, the per diem of said clerks shall be extended ten days after the adjournment of the Legislature.

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§4-1-17. Priority of legislative business for members and designated employees.

(a) In accordance with the Constitutional separation of powers and principles of comity, it is the purpose of this section to provide that members of the Legislature and certain designated legislative employees are not required to attend to matters pending before tribunals of the executive and judicial branches of government when the timing of those matters may present conflicts with the discharge of the public duties and responsibilities that are incumbent upon members or employees of the Legislature. During legislative sessions or meetings and for reasonable time periods before and after, the judicial and executive branches should refrain from requiring the personal presence and attention of a legislator or designated employee who is engaged in conducting the business of the Legislature.

(b) For the purposes of this section, the words or terms defined in this subsection have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

(1) "Applicable time period" means and includes the following:

(A) The ten-day time period immediately before any regular or extraordinary session of the Legislature;

(B) The time period during any regular or extraordinary session of the Legislature;

(C) The thirty-day time period immediately following the adjournment sine die of any regular or extraordinary session of the Legislature;

(D) The four-day time period before any interim meetings of any committee of the Legislature or before any party caucus;

(E) The time period during any interim meetings of the Legislature or any party caucus; or

(F) The four-day time period following the conclusion of any interim meetings of any committee of the Legislature or party caucus.

(2) "Designated employee" means any legislative employee designated in writing by the Speaker of the West Virginia House of Delegates to the Clerk of the House of Delegates or by the President of the West Virginia Senate to the Clerk of the West Virginia Senate to be necessary to the operation of the Legislature, such that the legislative employee will be afforded the protections of this section.

(3) "Member" means a member of the West Virginia House of Delegates or the West Virginia Senate.

(4) "Tribunal" means a judicial or quasijudicial entity of the judicial or executive branch of government, or any legislative, judicial or quasijudicial entity of a political subdivision,

created or authorized under the Constitution or laws of this state.

(c) A notice filed with a tribunal pursuant to subsection (e) of this section operates as an automatic stay of a judicial or administrative action or proceeding commenced before or after the notice was filed. The automatic stay is in force for the applicable time period or periods described in the notice unless it is otherwise waived in accordance with the provisions of subsection (f) of this section. In the event a session or meeting of the Legislature is extended, the notice may be amended to reflect a longer applicable time period. The filing of the notice and the automatic stay do not prohibit the commencement of an action or proceeding, the issuance or employment of process or other preliminary procedures that do not require the presence or personal attention of the member or designated employee.

(d) During any applicable time period, a member or designated employee who does not otherwise consent to a waiver of the stay is not required to do any of the following:

- (1) Appear in any tribunal, whether as an attorney, party, witness or juror;
- (2) Respond in any tribunal to any complaint, petition, pleading, notice or motion that would require a personal appearance or the filing of a responsive pleading;
- (3) File in any tribunal any brief, memorandum or motion;
- (4) Respond to any motion for depositions upon oral examination or written questions;
- (5) Respond to any written interrogatories, request for production of documents or things, request for admissions or any other discovery procedure, whether or not denominated as such; or
- (6) Appear or respond to any other act or thing in the nature of those described in subdivision (1), (2), (3), (4) or (5) of this subsection; or
- (7) Make any other appearance before a tribunal or attend to any other matter pending in a tribunal that in the discretion of the member or designated employee would inhibit the member or designated employee in the exercise of the legislative duties and responsibilities owed to the public.

(e) A member or designated employee who desires to exercise the protections afforded by this section shall not be required to appear in any tribunal to assert the protections. In all cases, it shall be sufficient if the member or designated employee notifies the tribunal in question orally or in writing, stating that he or she is invoking the protections of this section, describing the action, proceeding or act to be stayed, and further identifying the applicable period or periods for which the notice will operate as a stay. An oral communication with the tribunal shall be followed by a written notice or facsimile transmission to the tribunal mailed or transmitted no later than two business days after the oral communication. From the time of the oral communication or the mailing or transmission of the written notice, whichever is

earlier, the notice operates as a stay of all proceedings in the pending matter until the applicable time periods have passed and expired.

(f) Notwithstanding the filing of a notice that operates as a stay, a member or designated employee may later consent to waive the stay and make an appearance or attend to a matter that would otherwise be stayed. However, a waiver as to a particular appearance or act does not terminate, annul, modify or condition the stay for any other purpose.

(g) The deference afforded by this section to members and designated employees who are serving a client in a representative capacity is also fully and completely extended to their clients, so that no person whose representative before a tribunal is a member or designated employee may be required, during any applicable time period, to do anything that his or her representative is not required to do under subsection (d) of this section.

(h) Unless the member or designated employee consents thereto, no cocounsel, partner, associate, spouse or employee of the member or designated employee may be required to make any appearance or do any act during any applicable time period in the place and stead of the member or designated employee.

(i) Any sentence, judgment, order, decree, finding, decision, recommendation or award made contrary to the provisions of this section in any action or proceeding in any tribunal, without the consent of the member or designated employee, is void.

(j) Tribunals of the federal government and those of other states are requested to honor the spirit and purpose of this section pursuant to the doctrines of comity and federalism. Further, it is the policy of this state that tribunals of this state shall afford to legislators and staff personnel of the federal government and other states the protections afforded by the provisions of this section if the tribunals of the federal government and the other jurisdictions afford members or designated employees of the West Virginia Legislature the same protections in their tribunals.

§4-1-18.

Repealed.

Acts, 2006 Reg. Sess., Ch. 26.

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§4-1-19. Distribution of acts of the Legislature.

Free distribution of the acts and resolutions of each session of the Legislature, and other matter directed by law to be published therewith, shall be made as follows by the Clerk of the House of Delegates: One copy to the judge of each court in this state; one copy each to the judge, clerk and district attorney of every United States district court of this state; one copy to every prosecuting attorney, sheriff, assessor, county superintendent of free schools, president of the county court, circuit clerk, county clerk and justices of the peace; five copies to the Governor; six copies to the Attorney General; two copies each to the Secretary of State, Auditor, State Superintendent of free schools, Treasurer and Commissioner of Agriculture; four copies to the Public Service Commission; one copy to each executive department head, requesting the same; ten copies to the Clerk of the Senate, one for his own use, and the others to be kept in his office for the use of the Senate; ten copies to each member of the Legislature, one for his own use and others for distribution; ten copies to the college of law of West Virginia University; one copy to each public institution of the state; three copies to the Librarian of Congress, one for the library and one for each house of Congress; one copy to each senator and representative in Congress from this state; one copy to each county law library; and one copy to each college and university in the state. The clerk shall retain ten copies in his own office, one for his own use and the others to be kept in his office for the use of the house.

All of the copies named in this section shall be sent by mail, express or otherwise as the clerk may deem best. The acts to which officers of a county may be entitled shall be forwarded to the clerk of the county court thereof and shall be delivered by him to the officers entitled to receive the same. Upon receipt of such acts by him, the clerk of the county court shall forward his receipt therefor to the Clerk of the House of Delegates specifying the number received, and he shall require each person receiving a copy of such acts from him to sign a receipt therefor in a book to be kept by him for that purpose. The remaining copies of the acts shall be in the custody of the division of purchases, department of finance and administration, and be sold and disposed of as provided in section thirty-one, article three, chapter five-a of this code.

The clerk may cause a copy of such acts to be furnished to any officer, board, commission, institution or tribunal not named herein.

§4-1-20. Legislative findings; space in the capitol building for use by Legislature.

(a) The Legislature hereby recognizes that in December, one thousand nine hundred sixty-eight, the Citizens Advisory Commission on the Legislature of West Virginia concluded its study for strengthening the West Virginia Legislature; that such commission recommended that the capitol building be utilized primarily for the space needs of the Legislature and that certain executive department offices be moved outside of the capitol building as necessary to provide the Legislature with the space it requires; and that these recommendations were based upon the following observations and conclusions of such commission: (1) There are fifteen committees in the Senate which consider legislation and twelve committees in the House of Delegates which consider legislation, (2) the rules committee of the Senate meets in the office of the President of the Senate and rules committee of the House of Delegates meets in the office of the Speaker of the House of Delegates, (3) the remaining fourteen committees of the Senate share three permanent committee rooms, (4) the remaining eleven committees of the House of Delegates share five permanent committee rooms, (5) the Legislature does not have a hearing room or a committee room large enough to accommodate large public hearings, (6) when any large public hearing is held, the chamber of the Senate or the House of Delegates must be used, thereby eliminating the desks of the members on the floor of the chamber as work space for members not involved in the public hearing, (7) there are no rooms available in which individual members of the Legislature may talk with their constituents, (8) that at the very least offices should be provided for individual members of the Legislature to be used on a shared basis, (9) there is a pressing need for additional permanent committee rooms, with the view that in time all legislative committees which consider legislation would be assigned individual committee rooms, (10) that at least during legislative sessions, all committee chairmen should be provided, if possible, with a private office, and if not possible, with offices on a shared basis, (11) there should be adequate office space for the staff of the Senate and House of Delegates, and (12) the Legislature should have at least one hearing room, sufficiently large to seat one hundred fifty persons in addition to a legislative committee of twenty-five persons. The Legislature hereby determines and finds that the recommendations of the Citizens Advisory Commission on the Legislature of West Virginia with respect to the space needs of the Legislature and the observations and conclusions of such commission upon which such recommendations were based are correct and proper. The remainder of this section is enacted to implement the recommendations of the commission in this regard.

(b) The Legislature shall continue to have the exclusive use of all of the space in the main unit of the capitol building above the ground floor, the main unit being that portion of the capitol building connecting the east and west wings. In addition, the following space in the capitol building is assigned to and set aside for the exclusive use of the Legislature, with the use therefore to be determined by the Joint Committee on Government and Finance:

(1) All of the space on the second floor of the east wing of the capitol building; and

(2) All of the space on the second floor of the west wing of the capitol building, except that room designated and numbered W-212 and the large vault used and occupied by the land

division of the State Auditor's office, which said room W-212 and said vault shall continue to be used and occupied by the office of the State Auditor. The additional space for the Legislature provided for in subdivisions (1) and (2) of this subsection shall be made available to the Legislature as soon as possible, but shall in any event be made available for occupancy by the Legislature not later than July 1, one thousand nine hundred seventy-two.

(c) As soon as the additional space provided for in subsection (b) of this section is made available for occupancy by the Legislature, then (1) the rooms designated and numbered E-126, E-128, E-130, E-132, E-134, E-136 and E-138 on the ground floor of the east wing of the capitol building and the rooms designated and numbered E-140, 28, 30 and 32 on the ground floor of the main unit of the capitol building and occupied by the office of legislative services on the effective date of this section shall be relinquished by the Legislature for occupancy by the executive branch of the state government, and (2) as a substitute for the space on the second floor of the west wing vacated by the State Auditor, and in order to insure adequate space for the Office of the State Auditor, a constitutional officer, all of the ground floor of the west wing of the capitol building (except the rooms designated and numbered W-129, W-131, W-133, W-135, W-137, W-139, W-141, W-148, W-150, W-152, W-154, W-156 and W-158 and except for the space occupied on the effective date of this section by the Office of the Department of Public Institutions) shall be assigned to and set aside for the exclusive use of the State Auditor.

(d) If any provision of this section or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the section, and to this end the provisions of this section are declared to be severable.

§4-1-21. Prefiling of bills and resolutions.

1. Within the thirty-day period immediately preceding the convening of the Legislature for commencement of a regular session thereof, any proposed bill or resolution may be prefiled by any member of the Legislature or by any person who has been elected or appointed to serve as a member of the Legislature but who has not yet been administered the oath of office. Such proposed bills or resolutions shall be filed with the clerk of the house in which the member or person will serve during the following regular session not later than the day preceding the opening of such session: Provided, That nothing herein shall affect a member's right to introduce a bill or resolution in accord with the rules of the house of which he is a member.

(b) In addition to such number of copies of bills as may be required to be presented for introduction by the rules of the respective houses, all bills or resolutions prefiled shall have two additional copies appended. After numbering such bills or resolutions and editing and correcting them as to form, as may be required by the rules of the respective houses, the appropriate clerk shall make a tentative referral to the appropriate committee of the house, forwarding two copies thereof to the committee. Prior to making such tentative referral, the clerk shall confer with the presiding officer of the appropriate house if such presiding officer is available and make such referral as such presiding officer shall direct. Upon the commencement of the session of the Legislature, the clerk, upon ratification by the appropriate presiding officer of the tentative referral, shall proceed with the formal introduction of prefiled bills or resolutions according to the method of introducing bills as may be provided by the rules of the respective houses.

(c) Copies of prefiled bills and resolutions shall be mailed to any member and each member-elect of the Legislature requesting the same and reasonable quantities shall be made available to the public and the news media.

(d) Once a bill or resolution is prefiled as herein provided, it may not be withdrawn or amended prior to its formal introduction unless the rules of the house involved otherwise direct.

§4-1-22. "Next meeting of the Senate" defined.

The phrase "next meeting of the Senate" contained in article seven, section nine of the Constitution of West Virginia means any time the full Senate is convened and includes, but is not limited to, any regular session, any extraordinary session called during any recess or adjournment of the Legislature, during any impeachment proceeding or any time the Senate is convened pursuant to section ten-a of this article.

§4-1-23. Reports to be sent to the Legislative Librarian.

(a) Any state officer, person, office, agency, commission or board required by any section of this code to provide a report to the Legislature or any committee, commission or person employed or elected to the Legislature, shall submit an additional copy of the report to the Legislative Librarian transmitted electronically via the Internet or as otherwise required by the Legislative Manager.

(b) Failure to comply with this section is nonfeasance of office.

§4-1A-1. Purpose; legislative findings and declarations.

(a) The purpose of this article is to describe the scope and limitations of legislative immunity provided by:

- (1) English common law;
- (2) The Speech or Debate Clause of the United States Constitution, Article I, Section 6;
- (3) Decisions regarding legislative immunity as developed in federal common law by the federal judiciary in interpreting the Speech or Debate Clause of the United States Constitution, Article I, Section 6;
- (5) The Speech or Debate Clause of the West Virginia Constitution, Article VI, Section 17;
- (6) The Separation of Powers Doctrine and the system of checks and balances embodied in the United States Constitution; and
- (7) The Division of Powers set forth in the West Virginia Constitution, Article V, Section 1.

(b) The Legislature finds and declares as follows:

- (1) That the privilege of Speech or Debate has been recognized as an important protection of the independence and integrity of the Legislature.
- (2) That the ancestry of this privilege traces back to a clause in the English Bill of Rights of 1689 and the history traces even further back, almost to the beginning of the development of the English Parliament as an independent force.
- (3) That in the American governmental structure, privileges arising under the Speech or Debate Clause reinforce the Separation of Powers Doctrine and the system of checks and balances that was so deliberately established by the founding fathers and was carried over into the West Virginia Constitution.
- (4) That the protections provided by the Speech or Debate Clause and the Separation of Powers Doctrine were not written into the national and state Constitutions simply for the personal or private benefit of members of Congress, the State Legislatures and local governing bodies, but were intended to protect the integrity of the legislative process by insuring the independence of individual legislators.

§4-1A-2. Applicability of definitions.

For the purposes of this article, the words or terms defined in this article have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

WV Legislature

§4-1A-3. Legislative act defined.

"Legislative act" means an act that is generally to be performed by the Legislature in relation to the investigative, deliberative and decision-making business before it. A "legislative act":

- (1) Is an integral part of the processes by which members participate in proceedings that come before the Senate or House of Delegates or a committee thereof; and
- (2) Relates to the consideration and passage or rejection of proposed legislation; or
- (3) Relates to other matters that Constitutional law places within the jurisdiction of either the Senate, the House of Delegates or the legislative branch of state government as a whole.

§4-1A-4. Legislative sphere defined.

The "legislative sphere" includes all activities that are an integral part of the deliberative and communicative processes by which members of the Legislature participate in committee and house proceedings with respect to the consideration and passage or rejection of proposed legislation or with respect to other matters which the Constitution places within the jurisdiction of either house.

WV Legislature

§4-1A-5. Political act defined.

"Political act" means an act, nonetheless legitimate, that is political in nature rather than being a legislative act as defined in section three of this article.

WV Legislature

§4-1A-6. Scope of legislative immunity generally.

(a) Legislative immunity, affording protection under the Separation of Powers Doctrine and the Speech or Debate privilege, extends to all of a legislator's legislative acts, as defined in section three of this article.

(b) The Speech or Debate privilege, when it applies, is absolute and has two aspects:

(1) A member of the Legislature has immunity extending both to civil suits and criminal prosecutions for all actions within the legislative sphere, even though the conduct, if performed in other than a legislative context, would in itself be unconstitutional or otherwise contrary to criminal or civil statutes; and

(2) A member of the Legislature is provided a testimonial privilege that operates to protect those to whom it applies from being compelled to give testimony as to privileged matters and from being compelled to produce privileged documents.

§4-1A-7. Legislative immunity in specific instances.

The scope of legislative immunity includes, but is not limited to, the following legislative acts:

- (1) Introducing and voting for legislation;
- (2) Failing or refusing to vote or enact legislation;
- (3) Voting to seat or unseat a member;
- (4) Voting on the confirmation of an executive appointment;
- (5) Making speeches;
- (6) Enforcing the rules of the Senate or House of Delegates or the joint rules of the Legislature;
- (7) Serving as a member of a committee or subcommittee;
- (8) Conducting hearings and developing legislation;
- (9) Investigating the conduct of executive agencies;
- (10) Publishing and distributing reports;
- (11) Composing and sending letters;
- (12) Drafting memoranda and documents;
- (13) Lobbying other legislators to support or oppose legislation;
- (14) Abolishing personnel positions; and
- (15) Hiring and firing employees.

§4-1A-8. Actions taken without lawful authority are not immune.

Legislative immunity does not extend to activities by legislators that are without lawful authority under Constitutional law, statutory law or rules of the Legislature, including, but not limited to, the following:

- (1) Using an unconstitutional procedure to enact legislation;
- (2) Conducting an illegal investigation or an unlawful search or seizure;
- (3) Performing another otherwise valid legislative act without proper legislative authority;
- (4) Filing a false or incomplete report, disclosure or claim regarding an otherwise valid legislative act; or
- (5) Using legislative office for private gain in violation of the provisions of chapter six-b of this code that define and enforce governmental ethics.

§4-1A-9. Political acts are not privileged.

Legislative immunity does not extend to political acts, including, but not limited to, the following:

- (1) Communications to the press through letters, electronic mail, newsletters or news releases: Provided, That the release of pending legislation, committee reports, journals, acts and other official legislative reports and documents is a legitimate legislative activity;
- (2) Privately releasing a republication of a speech made within the legislative sphere;
- (3) Holding a press conference;
- (4) Making speeches or giving interviews outside of the legislative sphere; or
- (5) Assisting a constituent or supporter through constituent services, including, but not limited to, making appointments with government agencies, attempting to influence discretionary acts of a government officer or providing assistance in securing government contracts.

§4-1A-10. Administrative acts are not immune.

(a) Legislative immunity does not extend to activities by legislators that are administrative in nature rather than legislative. If the underlying facts on which a decision is based are legislative facts involving establishment of a general policy or state of affairs, then the decision is legislative. If the facts used in the decision making are more specific, such as those that relate to particular individuals or situations, then the decision is administrative.

(b) With regard to legislative personnel matters, whether a personnel decision regarding a legislative employee is shielded by legislative immunity depends upon the nature of the duties of the employee about whom the personnel decision is made. Personnel decisions regarding a legislative employee are afforded immunity if the employee's duties are directly related to the functioning of the legislative process and the duties:

(1) Involve work that significantly informs or influences the shaping of laws, such as when the employee has an opportunity for meaningful input into the legislative process; or

(2) Are peculiar to a legislator's work as a legislator or intimately cognate to the legislative process.

§4-1A-11. Certain offers of proof about legislative activities not prohibited.

- (a) Proof of a person's status as a member of the Legislature is not prohibited.
- (b) A member of the Legislature who chooses to offer evidence of legislative acts as a defense to a criminal prosecution has not been "questioned", even though the member thereby subjects himself or herself to cross-examination.

WV Legislature

§4-1A-12. Legislative acts of legislative staff, aides or assistants.

Legislative immunity extends to legislative staff, aides or assistants working on behalf of a legislator. Inquiry is prohibited into things done as a legislator's staff member, aide or assistant which would have been legislative acts if performed by the legislator personally.

WV Legislature

§4-1A-13. Legislative immunity from ultimate relief.

Legislative immunity may be invoked to shield a legislator from judicially ordered relief, including, but not limited to, the following:

- (1) Criminal prosecution for his or her legislative acts;
- (2) Liability for damages for his or her legislative acts;
- (3) Declaratory judgments with respect to his or her legislative acts;
- (4) Injunctive relief with respect to his or her legislative acts; and
- (5) Extraordinary writs with respect to his or her legislative acts.

§4-1A-14. Testimonial immunity.

- (a) Testimonial immunity is an aspect of legislative immunity that protects a legislator from questioning elsewhere than in the legislative forum.
- (b) When a legislator has been improperly questioned before a grand jury concerning legislative acts, the counts in a criminal indictment that are based on the testimony must be dismissed.
- (c) When a legislator is found to be immune from a civil complaint, the relief to be granted is to have the complaint dismissed or to have a writ of prohibition issued to stop further proceedings.
- (d) In the case of a subpoena that seeks to improperly question a legislator's conduct as to legislative acts, to depose a legislator or to seek disclosure as to any matters pertaining to the memoranda, documents or actions by a legislator which are or were in connection with the legislative process, the subpoenas may be quashed or the court may grant a motion for a protective order.

§4-1A-15. Right to interlocutory appeal.

Denial of a claim of legislative immunity is immediately appealable under the collateral order doctrine because the Speech or Debate Clause is designed to protect legislators not only from the consequences of litigation's results but also from the burden of defending themselves.

WV Legislature

§4-1A-16. Common law regarding legislative immunity not affected by the enactment of this article.

The Legislature of the State of West Virginia, in codifying certain elements and doctrines of the common law regarding legislative immunity through the enactment of this article, does not intend to narrow the common law definition of legislative immunity that is afforded the Legislature under the speech or debate privilege and the separation or division of powers, and does not, with the enactment of this article, otherwise revoke or abrogate any portion of the common law. This article shall not be construed so as to narrow, restrict, revoke or abrogate the common law.

§4-2-1. Purpose of article.

The purpose of this article is to provide for the more expeditious and efficient study and management of the financial problems which at each session confront the Legislature, and to provide a tighter and more economical control by the Legislature over the revenues and expenditures of the state.

WV Legislature

§4-2-2. Definitions.

For the purposes of this article: "Committee" means the Joint Committee on Government and Finance of the Senate and House of Delegates.

"Full performance evaluation" means to determine for an agency whether or not the agency is operating in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency, pursuant to the provisions of section ten, article ten of this chapter.

"Post audit" is the audit or review of governmental finances after they have been completed. The scope of a post audit includes audit or review of transactions pertaining to the financial operations of the various agencies of government on the state level, with verification of state revenues at the source and audit of expenditures all the way through the work to the recipient or beneficiary of the service.

"Preliminary performance review" means to determine for an agency whether or not the agency is performing in an efficient and effective manner and to determine whether or not there is a demonstrable need for the continuation of the agency pursuant to the provisions of section eleven, article ten of this chapter.

"Spending unit" means any department, agency, board, commission, officer, authority, subdivision or institution of the state government for or to which an appropriation has been made, or is to be made by the Legislature.

§4-2-3. Appointment of Legislative Auditor; responsibility to Joint Committee on Government and Finance.

There is hereby created the position of Legislative Auditor who shall be appointed by the committee to serve at its will and pleasure. The Legislative Auditor shall be solely responsible to the committee.

WV Legislature

§4-2-4. Powers of Auditor; reports.

(a) The Legislative Auditor shall have the following powers, which he or she may exercise as directed by the President of the Senate or the Speaker of the House of Delegates:

(1) To compile fiscal information for the Senate and the House of Delegates;

(2) To make an audit and analysis of the state budget, revenues, and expenditures during and between sessions of the Legislature;

(3) To make post audits of the revenues and expenditures of the spending units of the state government;

(4) To report any misapplication of state funds or erroneous, extravagant, or unlawful expenditures by any spending unit; and

(5) To ascertain facts and make recommendations to the Legislature concerning post-audit findings, the revenues and expenditures of the state, and of the organization and functions of the state and its spending units.

(b) In the exercise of these powers, as directed by the President of the Senate or the Speaker of the House of Delegates, the Legislative Auditor shall have the authority, by such means as are necessary, to require any person holding office in the state government or employed by the state to allow the Legislative Auditor to inspect the properties, equipment, facilities, and records of the various spending units, either before or after estimates are submitted, and before, during, and after sessions of the Legislature. Refusal by any person or the state government entity to allow such inspection shall be reported by the Legislative Auditor to the committee, the President of the Senate, or the Speaker of the House of Delegates.

(c) The Legislative Auditor may collect, and the spending unit shall pay, any or all of the costs associated with conducting the post audits from the spending unit being audited, when necessary and desirable. The Legislative Auditor shall render to the spending unit liable for the costs a statement of the costs as soon after the costs were incurred as practicable, and it is the duty of the spending unit to pay promptly in the manner that other claims and accounts are paid. All money received by the Legislative Auditor from this source shall be expended only for the purpose of covering the costs associated with such services, unless otherwise directed by the Legislature.

(d) Upon completion of a post audit, the Legislative Auditor shall report his or her findings and recommendations to the Legislature's Post Audit Subcommittee and, after presentation, publish the report on the Post Audit Division website.

(e) The Legislative Auditor shall conduct all examinations and audits and may not use external auditing firms or entities to conduct them except as otherwise directed by the President of the Senate or the Speaker of the House of Delegates.

§4-2-5. Powers of Auditor.

[Repealed.]

WV Legislature

§4-2-6. Preparation of budgets and reports.

The Legislative Auditor shall compile revenue and budgetary reports, in such form and with such itemization and other information as the committee shall prescribe, at least 30 days prior to any legislative session, and submit them to the committee with appropriate recommendations, together with such other findings and reports deemed necessary or required by the committee. The Legislative Auditor shall also report to the committee any misapplication of state funds and any erroneous, extravagant, or unlawful expenditures by any spending unit, together with such other findings and reports as the committee shall require.

§4-2-7. Compensation and expenses of Auditor.

As compensation for his services the Legislative Auditor shall receive a sum to be fixed by the committee. He shall receive, in addition, the necessary traveling expenses incident to the performance of his duties.

WV Legislature

§4-2-8. Assistants and employees.

The Legislative Auditor may recommend that the committee employ such assistants or employees as the Legislative Auditor believes to be necessary for the efficient discharge of his or her tasks. The committee may, in its discretion, employ assistants and employees to aid the Legislative Auditor and fix their number and compensation.

WV Legislature

§4-2-9. Offices; working space.

The office of the Legislative Auditor shall be located at the state Capitol and shall be open at all reasonable times for the transaction of business.

All state departments, institutions or other agencies of the state government shall provide necessary comfortable space for the purpose of occupancy by employees of the office of the Legislative Auditor conducting post audits, full performance evaluations or preliminary performance reviews in the various departments, institutions or other agencies of the state, located conveniently at the state Capitol and at the several institutions or other agencies throughout the state.

§4-2-10. Payment of compensation and expenses.

All compensation and expenses of the Legislative Auditor and his assistants and employees shall be paid out of the funds of the committee, or out of such other appropriations as may be made by the Legislature therefor.

WV Legislature

§4-2-11. Statutory references; transfer of postaudit functions.

Whenever any statute of the state refers to an officer or agency of the state whose functions and duties are by this article transferred to another officer or agency of the state, the reference shall be understood to be made to the officer or agency, as the case may be, to which the functions and duties have been transferred.

WV Legislature

§4-2-12. Severability.

If any provision hereof or the application thereof to any person, department or circumstance is held invalid, such invalidation shall not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

WV Legislature

PART I. GENERAL.

§4-2A-1. Implementation of resolutions of citizens legislative compensation commission; definition.

The purpose of this article is to implement from time to time the resolutions submitted by the citizens legislative compensation commission created by section thirty-three, article six of the West Virginia Constitution. For the purposes of this article, the term "regular session" shall include any extension of a regular session of the Legislature.

§4-2A-2. Basic compensation for services; proration.

(a) Beginning in the calendar year 2025 and for each calendar year after that, each member of the Legislature shall receive as basic compensation for his or her services, per calendar year, the amount equal to 75 percent of the per capita income in West Virginia as reported by the US Census Bureau on June 30 of the prior year, rounded down to the nearest \$1,000, to be paid as provided in subsection (b) of this section. In addition to the basic compensation, members shall receive the additional compensations as are expressly provided in §4-2A-3, §4-2A-4, and §4-2A-5 of this code. All other increased amounts or new amounts in respect to the compensation of members of the Legislature, set forth in the resolution of the Citizens Legislative Compensation Commission, dated January 23, 2023, and implemented in this section, and §4-2A-4, §4-2A-6, and §4-2A-8 of this code providing for new amounts or amounts increased to new amounts greater than those in force and effect on January 1, 2023, become effective for calendar year 2025 and each calendar year after that: *Provided*, That increased amounts or new amounts in respect to the expenses of members of the Legislature, set forth in said resolution, and implemented in §4-2A-6, and §4-2A-8 of this code providing for new amounts or amounts increased to new amounts greater than those in force and effect on January 1, 2023, become effective for calendar year 2025 and each calendar year after that.

(b) The basic compensation is payable as follows:

(1) In the year 2025, and every fourth year after that:

(A) Six thousand dollars in each of February, March, and April, payable at least twice per month; and

(B) The remainder of the amount allowed by subsection (a) of this section split equally in each of January, May, June, July, August, September, October, and November, payable at least twice per month;

(2) Beginning in 2026, in all years except those described in subdivision (1) of this subsection:

(A) Six thousand dollars in each of January, February and March, payable at least twice per month; and

(B) The remainder of the amount allowed by subsection (a) of this section split equally in each of April, May, June, July, August, September, October, and November, payable at least twice per month.

(c) In the event of the death, resignation, or removal of a member of the Legislature and the appointment and qualification of his or her successor, the compensation provided in this section for the month in which the death, resignation, or removal of the member of the Legislature occurs shall be prorated between the original member and his or her successor

on the basis of the number of days served, including Saturdays and Sundays in the month.

WV Legislature

§4-2A-3. Compensation for members of the Legislature during any extension of regular session or during extraordinary session.

Each member of the Legislature shall receive, in addition to the basic compensation provided for in §4-2A-2 of this code, additional compensation of \$200 per day for each day of attendance in person upon any business of the Senate or House of Delegates, as the case may be, on each day upon which the Senate or House of Delegates is actually called to order during each extension of regular session or during extraordinary session of the Legislature. The additional compensation shall be paid, from time to time, during any extended session or extraordinary session, as prescribed by rules established by the Legislative Auditor.

§4-2A-4. Additional compensation for President of Senate, Speaker of House of Delegates, majority leaders, minority leaders, certain committee chairs and selected members of both houses.

(a) In addition to the basic and additional compensation provided in §4-2A-2 and §4-2A-3 of this code, the President of the Senate and the Speaker of the House of Delegates shall each receive additional compensation of:

(1) \$150 per day for each day actually served during any regular, extension of regular or extraordinary session as presiding officer, including Saturdays and Sundays; and

(2) \$200 per day for attending to legislative business when the Legislature is not in regular session: *Provided*, That no additional compensation shall be paid pursuant to this subdivision if the presiding officer is receiving compensation pursuant to §4-2A-3 or §4-2A-5 of this code.

(b) In addition to the basic and additional compensation provided in §4-2A-2 or §4-2A-3 of this code, the majority leaders and minority leaders of the Senate and of the House of Delegates shall each receive additional compensation of \$50 per day for each day actually served during any regular, extension of regular or during extraordinary session, including Saturdays and Sundays, as the selected legislative leaders of their respective political parties.

(c) The presiding officer and majority and minority leader compensation shall be paid, from time to time, during any such session or interim period, as the case may be, as may be prescribed by rules established by the Legislative Auditor.

(d) In addition to the basic and additional compensation provided in §4-2A-2 or §4-2A-3 of this code, the chairpersons of the committees on finance and committees on the judiciary of the respective houses and up to six additional persons from each house, to be named by the presiding officer, shall each receive an additional compensation of \$200 per day up to a maximum of 30 days for attending to legislative business when the Legislature is not in regular session: *Provided*, That no additional compensation shall be paid pursuant to this subdivision if the chairperson or additional person is receiving compensation pursuant to §4-2A-3 or §4-2A-5 of this code.

§4-2A-5. Interim compensation for members.

(a) In addition to the basic and any additional compensation provided for in §4-2A-2, §4-2A-3, and §4-2A-4 of this code, each member shall receive interim compensation of \$200 per day for each day actually engaged in the performance of interim duties *Provided*, That the total additional interim compensation payable to any member and his or her replacement, if any, on a committee or commission under the provisions of this subsection shall not exceed the sum of \$6,000 per calendar year.

(b) In addition to the basic and any additional compensation provided for in §4-2A-2, §4-2A-3, and §4-2A-4 of this code and subsection (a) of this section, each member shall receive interim compensation of \$200 per day for each day actually engaged in the performance of legislative duties at a meeting of any legislative committee which meets between regular sessions of the Legislature and outside of regular interim meetings when authorized by the committee co-chairs and approved by the President of the Senate and the Speaker of the House of Delegates, not to exceed 15 days per calendar year.

§4-2A-6. Travel expenses.

(a) Each member of the Legislature is entitled to be reimbursed, upon submission of an expense voucher, for expenses incurred incident to travel in the performance of his or her duties as a member of the Legislature or any committee of the Legislature, whether the committee is operating under general law or resolution, including, but not limited to, attendance at party caucuses held in advance of the date of the assembly of the Legislature in regular session in odd-numbered years for the purpose of selecting candidates for officers of the two houses, at a rate equal to that paid by the travel management office of the Department of Administration for the most direct usually traveled route, if travel is by private automobile, or for actual transportation costs for direct route travel, if travel is by public carrier, or for any combination of those means of transportation actually used, plus the cost of necessary taxi service, tolls and parking fees in connection with the travel, but during any regular, extension of regular or extraordinary session, travel expenses shall not be paid to any member for more than one round trip to and from the seat of government and to and from his or her place of residence for each week of the session.

(b) In addition to the travel expense in subsection (a) of this section, the President of the Senate and the Speaker of the House of Delegates are entitled to be reimbursed as provided in subsection (a) of this section, upon submission of an expense voucher, for expenses incurred incident to travel which is related to their duties as presiding officers of the respective houses of the Legislature, but which takes place when the Legislature is not in regular session.

(c) The rate paid for mileage pursuant to this section may change, from time to time, in accordance with changes in the reimbursement rates established by the travel management office of the Department of Administration, or its successor agency.

§4-2A-7. Reimbursement for expenses incurred during any session or interim assignment.

(a) Each member of the Legislature who does not commute daily shall receive the sum of \$175 per day as per diem allowance in connection with any regular, extended, extraordinary session, interim assignment or for any member authorized by the presiding officer. Any member of the Legislature who does commute daily shall receive the sum of \$75 per day as the per diem allowance and, in addition to the allowance, shall be reimbursed for overnight commuting expenses at the mileage rate equal to the amount paid by the travel management office of the Department of Administration for the most direct usually traveled route, if travel is by private automobile, or for actual transportation costs for direct route travel, if travel is by public carrier, or for any combination of the means of transportation actually used, plus the costs of necessary taxi service, tolls and parking fees in connection with the travel: *Provided*, That the total of this per diem allowance plus travel expense for a daily commuting member may not exceed \$175 per day. The amount for mileage paid pursuant to this subsection may change from time to time in accordance with changes in the level of reimbursement by the travel management office.

(b) The President of the Senate and the Speaker of the House of Delegates, the Chairman of the House Committee on Finance, the Chairman of the Senate Committee on Finance, the Chairman of the House Committee on the Judiciary, the Chairman of the Senate Committee on the Judiciary, and up to six additional persons from each house designated by the presiding officer pursuant to §4-2A-4 of this code, shall be reimbursed for travel at the rate established in subsection (a) of this section, and shall further receive the per diem allowance established in the subsection in connection with business which is related to their duties as officers at the times when the Legislature is not in regular session.

§4-2A-8. Out-of-state expenses.

In addition to reimbursement for travel expenses as authorized in section six of this article, each member of the Legislature traveling from West Virginia to an out-of-state point or points and returning incident to the performance of his or her duties as a member of the Legislature or any committee of the Legislature, whether the committee is operating under general law or resolution, where the travel has been duly authorized, is entitled to be reimbursed, upon submission of an expense voucher for the travel, for all reasonable and necessary expenses actually incurred incident to the travel, but the total of any and all reimbursed expenses, exclusive of reimbursement for travel expenses, shall not under any circumstances exceed the actual cost of housing at the least expensive available single rate and meal and miscellaneous expenses of \$55 per day. A receipt for the amount paid for housing and for travel by any public transportation to and from West Virginia shall be submitted with the expense voucher, but a receipt is not required to be submitted with any expense voucher for meal and miscellaneous expenses.

§4-2A-9.

Repealed.

Acts, 1994 Reg. Sess., Ch. 99.

WV Legislature

§4-2A-10. Affidavits required; approval by legislative Auditor of vouchers; travel and lodging expenses within Charleston not reimbursable; rules authorized.

Any expense voucher submitted pursuant to the provisions of sections six, seven, eight or nine of this article must be verified by the affidavit of the member incurring such expense and all such expense vouchers shall be approved by the Legislative Auditor prior to submission for payment.

Notwithstanding any other provisions of this article to the contrary, no member of the Legislature who resides within the corporate limits of the city of Charleston may be reimbursed under this article for any travel and lodging expenses incurred within such corporate limits.

The Legislative Auditor is hereby authorized to adopt, amend and repeal such rules as may be necessary to implement or effectuate the provisions of this article.

§4-2B-1. Job creation work groups.

[Repealed.]

WV Legislature

§4-2C-1. Judicial Compensation Commission established; membership.

(a) The Judicial Compensation Commission is hereby established as an advisory commission to the West Virginia Legislature. The commission shall be responsible for studying the compensation structure for justices of the Supreme Court of Appeals, circuit court judges, family court judges, magistrates and any other judicial officer subject to election and which office requires the judge to hold a professional license to serve in that position. The commission shall also be responsible for determining and making recommendation as to the adequate compensation for those positions to ensure that highly qualified persons will be attracted to serve on the bench.

(b) The commission shall be comprised of the following five members:

(1) The Dean of the West Virginia University College of Law;

(2) Two individuals appointed by the President of the Senate; and

(3) Two individuals appointed by the Speaker of the House of Delegates.

(c) Any person appointed to serve on the commission pursuant to subdivisions (2) and (3), subsection (b) of this section shall serve for four years: Provided, That no public employee, elected public official, person receiving a pension from the State of West Virginia, member of the West Virginia State Bar or officer of a state or county political party executive committee established pursuant to W.Va. Code §3-1-9 may be appointed pursuant to subdivision (2) or (3) subsection (b) of this section to serve on the commission. The initial appointments to the commission shall be made by July 1, 2016. Upon expiration of any term, the person previously appointed shall continue to serve until his or her successor is duly appointed and qualified to serve on the commission.

(d) A member of the commission is not eligible for appointment to a state judicial position as long as he or she is serving as a member of the commission.

(e) The members of the commission shall serve without compensation but shall be reimbursed by the Joint Committee on Government and Finance for reasonable expenses incurred in carrying out the responsibilities of the commission. Commission members shall be reimbursed at the same rate established for public employees.

(f) In the event of a vacancy on the commission, the unexpired term shall be filled in the same manner used to make the original appointment within sixty days of the vacancy.

§4-2C-2. Commission meetings; where held; how conducted.

(a) The commission shall meet in Charleston, West Virginia, at the place and time designated by the chairperson with at least ten days' written notice to the members of the commission.

(b) The commission shall meet at the call of the chairperson or at the request of a majority of the members.

(c) For purposes of calling the first meeting, the Dean of the West Virginia University College of Law shall serve as the initial chairperson. At its first meeting, the members of the commission will select a chairperson. In the event that the member selected to serve as chairperson ceases to be a member of the commission, the Dean of West Virginia University College of Law shall serve as the chairperson for purposes of calling the next meeting.

(d) A majority of the commission members shall constitute a quorum.

(e) The commission shall meet as often as is necessary to conduct a thorough review of judicial compensation and prepare the report and recommendations provided for in section three of this article.

(f) In furtherance of its duties, the commission may request staff assistance from the Joint Committee on Government and Finance. The Commission may additionally seek assistance and information from the administrative office of the Supreme Court of Appeals as may be necessary in the collection of data and research.

(g) All meetings of the commission and all business conducted by the commission shall be subject to the open meetings provisions of article nine-a, chapter six of this code.

§4-2C-3. Judicial Compensation Commission reports and recommendations; legislative action.

(a) During any time it is convened, the commission shall study the compensation structure for justices of the Supreme Court of Appeals, circuit court judges, family court judges, magistrates and any other judicial officer subject to election and which office requires the judge to hold a professional license to serve in that position for purposes of making a recommendation concerning appropriate compensation for those judicial officers.

(b) In recommending the appropriate salaries of the state's judicial officers, the commission shall consider the following factors:

- (1) The skill and experience required of the particular judgeship at issue;
- (2) The value of comparable service performed by justices and judges, as determined by reference to judicial compensation in other states and in the federal government;
- (3) The value of comparable service performed in the private sector including, but not limited to, private judging, arbitration, and mediation;
- (4) The compensation of attorneys in the private sector;
- (5) The cost of living;
- (6) The compensation presently received by other public officials in the state;
- (7) The level of overall compensation adequate to attract the most highly qualified individuals in the state, from a diversity of life and professional experiences, to serve the judiciary without unreasonable hardship and with judicial independence unaffected by financial concerns; and
- (8) Any other information the commission may find relevant in its mission to determine the appropriate compensation for the state's judicial officers.

(c) The commission shall prepare and submit its first report containing its recommendations no later than September 1, 2017. The commission shall then prepare and submit subsequent reports on or before September 1 of each year thereafter, except during those years that the commission is adjourned pursuant to the provisions of subsection (f) of this section.

(d) The commission shall send a copy of its recommendations to the Governor, the Joint Committee on Government and Finance, the Chief Justice of the Supreme Court of Appeals and the Administrative Director of the Supreme Court of Appeals.

(e) In the immediate legislative session following the year in which a recommendation is received from the commission, a bill adopting the salary recommendations made by the commission may be introduced by the presiding officer in both the Senate and the House of

Delegates.

(f) The commission shall continue to meet and prepare updated recommendations in accordance with the following schedule:

(1) If the bill introduced pursuant to subsection (e) of this section is enacted adopting the complete recommendations of the commission, the commission shall then be adjourned for three years from the effective date of the increase.

(2) If the bill introduced pursuant to subsection (e) of this section is not enacted or, if that bill is enacted, but adopts salaries less than those which were recommended by the commission, the commission shall continue to meet annually to prepare updated recommendations to provide to the parties identified in subsection (d) of this section.

§4-3-1. Continued as statutory body; composition; appointment and terms of members.

The Joint Committee on Government and Finance, heretofore existing under a joint rule of the Senate and House of Delegates, is hereby continued as a statutory body. This committee shall be composed of seven members of the Senate, six of whom shall be appointed by the President of the Senate, and seven members of the House of Delegates, six of whom shall be appointed by the Speaker of the House of Delegates. The six members appointed by the President of the Senate shall include the majority leader of the Senate, the minority leader of the Senate, the chairman of the Senate committee on the judiciary and the chairman of the Senate committee on finance. The six members appointed by the Speaker of the House of Delegates shall include the majority leader of the House of Delegates, the minority leader of the House of Delegates, the chairman of the house committee on the judiciary and the chairman of the house committee on finance. The President of the Senate and the Speaker of the House of Delegates shall be members of the committee and cochairmen thereof. Not more than five members of the committee from each house shall be members of the same political party: Provided, That in the event the membership of a political party is less than fifteen percent in the House of Delegates or Senate, then the membership of that political party from the legislative house with less than fifteen percent membership may be one from that house. The members shall serve until their successors shall have been appointed as heretofore provided.

§4-3-2. Expenses of committee; compensation of members.

The expenses of the committee shall be paid from the contingent fund of the Senate and contingent fund of the House of Delegates in equal amounts. The members of the committee shall receive no remuneration for their services, other than actual expenses incurred in the discharge of their duties hereunder as approved by the committee.

WV Legislature

§4-3-3. Powers and duties generally; report to Legislature; office.

It shall be the duty of the committee to consider matters referred to it by legislative resolution, and to study and survey matters of government, finance, and claims against the state and to make a report of its studies, findings and such recommendations as it may deem proper and as well all expenditures of said committee to regular annual sessions of the Legislature. The committee is hereby vested with power and authority to employ and supervise the Legislative Auditor, as provided in article two of this chapter; and to employ other technical and clerical personnel as may from time to time be necessary; and to establish a legislative reference library. The committee shall be vested with and authorized to exercise all powers granted such committee by legislative resolution, and the statutes and Constitution of the State of West Virginia. The committee may function and exercise any power granted it either during the interim periods between sessions of the Legislature or while the Legislature is in session. The office of said committee shall be maintained at the state Capitol.

§4-3-3a. Interim powers and duties.

The Joint Committee on Government and Finance shall coordinate meetings between regular sessions of the Legislature of all legislative committees and legislative commissions established by and operating under general law and shall authorize interim meetings of said committees and commissions.

The Joint Committee on Government and Finance shall study and survey matters of government, finance and claims against the state as authorized by section three, article three, chapter four. In addition, the joint committee may make studies it was directed to make by concurrent resolutions heretofore adopted by the Legislature and continued for additional study by the joint committee by concurrent resolutions adopted by the Legislature. The joint committee may make these studies by creation of subcommittees.

The joint committee may commission studies to be made jointly by appropriate standing committees of each house of the Legislature between regular sessions of the Legislature.

§4-3-3b. Duty of the Joint Committee on Government and Finance with respect to the statewide reappraisal to be completed on the March 31, 1985.

[Repealed.]

WV Legislature

§4-3-3c. Reorganization of joint legislative agencies.

(a) The Joint Committee on Government and Finance has the authority over and direction of joint legislative agencies, personnel, and services, including, but not limited to, the following:

- (1) The Commission on Special Investigations provided for in §4-5-1 *et seq.* of this code;
- (2) The West Virginia Legislative Claims Commission provided for in §14-2-1 *et seq.* and crime victims compensation provided for in §14-2A-1 *et seq.* of this code;
- (3) The Legislative Auditor provided for in §4-2-1 *et seq.* of this code;
- (4) The Legislative Rule-Making Review Committee provided for in §29A-3-1 *et seq.* of this code;
- (5) The Legislative Reference Library provided for in §4-3-3 of this code;
- (6) The Legislative Automated Systems Division;
- (7) Legislative Services;
- (8) Public information; and
- (9) Joint services provided by one or more of the joint agencies set forth in this subsection. The following joint services are included:
 - (A) Bill drafting;
 - (B) Budget analysis;
 - (C) Duplicating;
 - (D) Financial, payroll, personnel, and purchasing for joint agencies and personnel;
 - (E) Fiscal analysis;
 - (F) Post audits, full performance evaluations, and preliminary performance reviews;
 - (G) Research; and
 - (H) Joint services to other joint legislative committees created and authorized by this code, to joint standing committees of the Senate and House of Delegates, to standing committees of the Senate and House of Delegates and to legislative interim committees.

(b) Notwithstanding any other provision of this chapter to the contrary, the Joint Committee on Government and Finance has the authority to reorganize and restructure the joint

legislative agencies, personnel, and services as provided in subsection (a) of this section for the purposes of improving their efficiency and the service they provide to the Legislature and to improve the management thereof by the joint committee. To accomplish these purposes, the joint committee may employ and terminate personnel; create divisions as it determines necessary; and transfer and assign the joint agencies, personnel, and services to the divisions. The divisions, joint agencies, personnel, and services shall operate under the direction and policies of the joint committee: *Provided*, That nothing in this section shall be construed to permit the joint committee to alter or redefine the powers, duties, and responsibilities vested in the Commission on Special Investigations pursuant to §4-5-1 *et seq.* of this code.

§4-3-4. Access to records of state agency or department; public hearings; meetings; administering oaths to persons testifying; compelling access to records and attendance of witnesses; production of evidence.

For the purpose of obtaining information in conjunction with the formulation of new laws or the revision of existing laws or in conjunction with any investigation or survey, the committee, or an employee duly authorized by the committee, shall have access to any and all records of every agency or department of the state.

In addition to its regular and special meetings, the committee, or any employee duly authorized by the committee, is empowered to hold public hearings in furtherance of the purposes authorized by this article, at such times and places within the state as may be desirable, and either cochairman or any member of the committee shall have the power to administer oaths to persons testifying at such hearings or meetings.

By subpoena, issued over the signature of either cochairman of the committee and served in the manner provided by law, the committee may summon and compel the attendance of witnesses and their examination under oath and the production of all books, papers, documents and records necessary or convenient to be examined and used by the committee in the performance of its duties. If any witness subpoenaed to appear at any hearing or meeting shall refuse to appear or to answer inquiries there propounded, or shall fail or refuse to produce books, papers, documents or records within his or her control when the same are demanded, the committee in its discretion may enforce obedience to its subpoena by attachment, fine or imprisonment, as provided in section five, article one of this chapter; or it may report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court shall compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance.

Witnesses subpoenaed to attend such hearings or meetings, except officers or employees of the state, shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

§4-3-5. Computer subscriber system.

(a) The Joint Committee on Government and Finance is authorized to provide information from portions of the Legislature's computer data to persons through the Internet, or through other means approved by the committee, for noncommercial use, with or without charge. The committee may charge and collect fees for providing or licensing portions of the data maintained in the Legislature's computer databases to persons requesting the data.

(b) The Joint Committee on Government and Finance shall, prior to January 12, 2000, consider how best to provide, through the Internet or other means, free public-access to appropriate information maintained in the Legislature's computer databases. The committee shall consider providing free public access through the Internet, or other appropriate means, to bill status information, the text of pending bills, the daily journals of the House of Delegates and the Senate, the West Virginia code, and any other information determined appropriate by the committee, all as maintained by the Legislature in its computer databases. In determining what information to which to provide free access, the committee shall consider how the access may affect the integrity, security and functionality of the Legislature's computer system and its primary use of supporting its legislative functions.

(c) No part of the information contained in the Legislature's computer system databases in its magnetic or electronic form is a public record as that term is defined in section two, article one, chapter twenty-nine-b of this code. Notwithstanding any provisions of section three, article one, chapter twenty-nine-b of this code to the contrary, the Legislature may not be required or compelled to allow access to all or a portion of its databases for inspection and copying and may not be required to make available copies of all or a portion of its databases on magnetic or electronic media.

§4-3-6. Authority to screen employees of the Legislature; background checks.

The Joint Committee on Government and Finance shall create and implement a background check program to facilitate the processing and analysis of the criminal history and background of applicants for employment by the Legislature. In the course of determining an applicant's eligibility for employment with the Legislature, the legislative manager shall request each applicant to submit a full set of fingerprints for the purpose of conducting a criminal history record check. Records shall be checked through the Criminal Identification Bureau of the West Virginia State Police and the United States Federal Bureau of Investigation for a national criminal history record check and the results shall be made available to the Director of the Division of Protective Services. If the results of the criminal history check reveal an offense or offenses, the Director of the Division of Protective Services shall advise the President of the Senate, the Speaker of the House of Delegates or the joint committee depending on the appropriate hiring authority for the position sought by the applicant.

§4-4-1 to 4-4-3.

Repealed.

Acts, 1991 Reg. Sess., Ch. 71.

WV Legislature

§4-5-1. Commission on Special Investigations continued; composition; appointment and terms of members.

The Commission on Special Investigations is continued. The commission shall continue to be composed of the President of the Senate and four members of the Senate, to be appointed by the President of the Senate, no more than two of whom shall be from the same political party; and the Speaker of the House of Delegates and four members of the House of Delegates, to be appointed by the Speaker of the House of Delegates, no more than two of whom shall be appointed from the same political party: Provided, That in the event the membership of a political party is less than 15 percent in the House of Delegates or Senate, then the membership of that political party from the legislative house with less than 15 percent membership may be one from that house. The commission shall be chaired by the President of the Senate and the Speaker of the House of Delegates. All members appointed to the commission by the commission chairs serve until their successors are appointed as provided in this section.

§4-5-2. Powers and duties generally.

(a) The Commission on Special Investigations may, by majority vote:

- (1) Conduct a comprehensive and detailed investigation into the purchasing practices and procedures of the state;
- (2) Determine if there is reason to believe that the laws or public policy of the state in connection with purchasing practices and procedures have been violated or are inadequate;
- (3) Determine if any criminal or civil statutes relating to the purchasing practices and procedures in this state are necessary to protect and control the expenditures of money by the state;
- (4) Investigate or examine any matter involving conflicts of interest, bribery of state officials, malfeasance, misfeasance, or nonfeasance in office by any employee or officer of the state;
- (5) Conduct comprehensive and detailed investigations to determine if any criminal or civil statutes have been violated at any level of state government;
- (6) Determine whether to recommend criminal prosecution or civil action for any violation, either criminal or civil, at any level of state government and, if it is determined that action is necessary, to make appropriate recommendation to the Attorney General, prosecuting attorney, or other authority empowered to act on the recommendation; and
- (7) Make written reports deemed advisable by the commission to the members of the Legislature between its sessions. On the first day of each regular session of the Legislature, the commission shall make an annual report on its activities to the Legislature containing recommendations for any proposed legislation which it considers necessary to carry the recommendations into effect.

(b) The commission may also:

- (1) Sit during any recess of the Senate and House of Delegates;
- (2) Recommend to the judge of any circuit court that a grand jury be convened pursuant to the provisions of §52-2-14 of this code to consider any matter which the commission considers in the public interest and, in support thereof, make available to the court and the grand jury the contents of any reports, files, transcripts of hearings, or other evidence pertinent to the matter;
- (3) Employ necessary legal, technical, investigative, clerical, stenographic, advisory, and other personnel and, within the appropriation specified in §4-5-4 of this code, fix reasonable compensation of any persons and firms that are employed. The commission's investigative staff may consist of a director, deputy director, senior investigators, and investigators as approved by the cochairs: Provided, That the commission may authorize certain employees

of the commission to administer oaths and take affidavits and depositions anywhere in the state;

(4) Consult and confer with all public and private persons and organizations, any entity of federal or state government or of any political subdivision of the state, that have information and data pertinent to an investigation; and all state agencies and state political subdivisions shall cooperate to the fullest extent with the commission;

(5) Call upon any entity of state government or of any political subdivision of the state for any services, information, and assistance the commission considers advisable;

(6) Refer appropriate matters to the office of the United States Attorney, or other appropriate state or federal law-enforcement entity, and cooperate with such office in the disposition of matters so referred; and

(7) Interview witnesses and require production from any entity of state government, or of any political subdivision of the state, of books, records, documents, papers, computers, laptops, computer hard drives, electronic records including, but not limited to, emails, electronic files, electronic documents and metadata, or any other thing, in any form in which it may exist, as the commission believes should be examined to make a complete investigation, except where the records, documents, data, or items are protected from disclosure by state or federal law or privilege recognized by state or federal courts: Provided, That a request for production pursuant to this subdivision may be in the form of a written letter from the director of the commission in lieu of a subpoena.

(c) Notwithstanding any provision of this code to the contrary, specific personnel may be designated by the commission to carry a firearm in the course of performing his or her official duties: Provided, That as a precondition of being authorized to carry a concealed weapon in the course of their official duties, any such designated personnel shall first successfully complete a firearms training and certification program which is equivalent to that which is required of members of the State Police. A person so designated shall also possess a license to carry a concealed deadly weapon in the manner prescribed in §61-7-1 et seq. of this code.

§4-5-3. Executive sessions; hearings; subpoena power; enforcement provisions.

The commission may conduct proceedings in a confidential executive session for the purpose of establishing business, establishing policy, reviewing investigations, and interrogating a witness or witnesses: Provided, That if a witness desires a public or open hearing the witness may demand an open hearing and shall not be heard otherwise: Provided, however, That if a witness desires a hearing in an executive session, the witness may so request and shall not be heard otherwise. However, members of the staff of the commission may be permitted to attend executive sessions.

All witnesses appearing before the commission shall testify under oath or affirmation, and any member of the commission or its staff may administer oaths or affirmations to such witnesses. To compel witnesses to attend a hearing or produce any books, records, documents, or papers, or any other tangible thing except where the records, documents, data, or items are protected from disclosure by state or federal law or privilege recognized by state or federal courts, the commission may issue subpoenas, signed by one of the cochairs: Provided, That the commission may specifically authorize or delegate the power to its director to sign subpoenas on its behalf. The subpoenas shall be served by any person authorized by law to serve and execute legal process, and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

If any person subpoenaed to appear at any hearing shall refuse to appear or to answer inquiries there propounded, or shall fail or refuse to produce books, records, documents, papers, or any other tangible thing within his or her control when the same are demanded, the commission shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court may compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance: Provided, That prior to seeking circuit court relief, the commission may, in its discretion, first demand the head of the public agency in which an employee has failed to appear or which has failed to produce requested or subpoenaed material to appear before the commission and address the basis for the failure to comply and whether compliance will be forthcoming.

§4-5-4. Compensation and expenses of members; other expenses; how paid.

The members of the commission shall receive travel, interim, and out-of-state expenses, as authorized in §4-2A-6 and §4-2A-8 of this code. Such expenses and all other expenses, including those incurred in the employment of legal, technical, investigative, clerical, stenographic, advisory, and other personnel, shall be paid from the appropriation for Joint Expenses.

WV Legislature

§4-5-5. Investigations exempt from public disclosure requirements.

(a) The investigations conducted by the commission and the materials, in any medium, including hard copy and electronic, placed in the custody of the commission as a result of any such investigation are exempt from public disclosure under the provisions of chapter 29B of this code.

(b) Notwithstanding any other provision of this code to the contrary, the commission may dispose of printed materials placed in its files upon a vote of the commission: Provided, That the commission shall save copies of materials filed on or after January 1, 2010, in electronic form prior to their disposal.

(c) When the commission receives information, in any form, from any office, agency, department, or branch of state or local government that is bound by state or federal law to maintain the confidentiality, privacy, or security of the information, that governmental body shall identify to the commission what information and materials are so protected and identify the law or laws governing the confidentiality, privacy, or security of the information. The commission shall protect the confidentiality, privacy, or security of the protected information in like manner and to the same level as is required of the governmental body providing the information to the commission. When the commission has completed an investigation and no longer has a need to maintain the confidential or protected information or materials, the commission shall notify the entity from whom the information was received and, unless requested to return the information or materials, shall destroy the same in a secure fashion and notify the entity from whom the information was received of this destruction.

§4-5-6. False statements to commission.

(a) A person is guilty of making a false statement to the Commission on Special Investigations when:

(1) Such person, with the intent to impede the commission or to impede an investigator of the commission acting in the lawful exercise of his or her official duties, knowingly and willfully makes any false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry;

(2) Such statement, representation, writing or document is made or given to the commission or an investigator of the commission acting in the lawful exercise of his or her official duties; and

(3) The misrepresentation is material.

(b) The provisions of subsection (a) of this section are not applicable to a person in the relation of husband and wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity, of an individual who is the subject of an investigation by the commission.

(c) Any person who violates the provisions of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000, or confined in jail for not more than one year, or both, in the discretion of the court.

§4-5-7. Impersonation or obstruction of commission member or staff.

(a) A person is guilty of impersonating a member or employee of the Commission on Special Investigations when he or she does one of the following:

- (1) Falsely represents himself or herself to be a member or employee of the commission;
- (2) Falsely represents himself or herself to be acting under the order or direction, or to have the authority, of the commission or its staff; or
- (3) Falsely presents a badge, credentials, other insignia or likeness thereof, used by the commission for identification as a member of the commission or its staff.

(b) Any person who, by threats, menaces, or acts, or who forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a Commission on Special Investigations member or employee acting in his or her official capacity, is guilty of obstruction: Provided, That failure to produce information or records at the request of a member or employee of the commission is not obstruction when such disclosure is prohibited by state or federal law.

(c) Any person who violates any provision of this section is guilty of a misdemeanor and upon conviction thereof, shall be fined not less than \$500 nor more than \$2,500, or confined in jail for not more than one year, or both fined and confined.

§4-5-8. Award of duty weapon upon retirement; disposal of other weapons used by staff.

(a) Upon the retirement of a member of the commission's investigative staff, the cochairs of the commission shall award to the retiring employee a duty weapon used by the employee when that employee retires honorably after having served:

(1) At least 20 years of actual service on the commission's investigative staff;

(2) At least 20 years in law enforcement and an additional 10 years of service on the commission's investigative staff; or

(3) Any period of service on the commission's investigative staff and retires due to total physical disability resulting from his or her service to the commission.

(b) The award of the duty weapon shall be without charge to the employee or other condition: Provided, That the cochairs shall not award a duty weapon to any retiring employee whom the cochairs find to be mentally incapacitated or to be a danger to any person or to the community.

(c) The commission has the sole authority to determine the manner of disposition of duty weapons of members of the commission's investigative staff when replaced due to age or routine wear. The commission may offer these surplus weapons for sale at fair market value to any active or retired member of the commission's investigative staff who has been designated to carry a firearm in the course of duties with the commission, with the proceeds of any sales to be used to offset the cost of new weapons. Surplus duty weapons may also be included as trade-ins toward the purchase of new weapons.

§4-6-1.

Expired May 15, 1976.

WV Legislature

§4-6-2.

Expired May 15, 1976.

WV Legislature

§4-6-3.

Expired May 15, 1976.

WV Legislature

§4-6-4.

Expired May 15, 1976.

WV Legislature

§4-6-5.

Expired May 15, 1976.

WV Legislature

§4-6-6.

Expired May 15, 1976.

WV Legislature

§4-6-7.

Expired May 15, 1976.

WV Legislature

§4-7-1. Definitions.

[Repealed.]

WV Legislature

§4-7-2. Legislative building commission created; its composition; appointment of members; vacancies; election of officers; compensation and expenses of members.

[Repealed.]

WV Legislature

§4-7-3. Powers and duties of commission generally.

[Repealed.]

WV Legislature

§4-7-4. Commission granted power of eminent domain.

[Repealed.]

WV Legislature

§4-7-5. Funds and expenditures of commission.

[Repealed.]

WV Legislature

§4-7-6. Deposit and disbursement of funds of commission; security for deposits; audits.

[Repealed.]

WV Legislature

§4-7-7. Contracts for construction of state legislative building, etc.; to be secured by bond; competitive bids required for contracts exceeding \$2,000; procedure.

[Repealed.]

WV Legislature

§4-7-8. Management and control of state legislative building.

[Repealed.]

WV Legislature

§4-7-9. Article not authority to create state debt.

[Repealed.]

WV Legislature

§4-7-10. This article, article six, chapter five, and the state Constitution are only restrictions on construction, etc., of building.

[Repealed.]

WV Legislature

§4-7-11. Severability.

[Repealed.]

WV Legislature

§4-8-1. Creation; composition; qualifications.

(a) The Capitol Building Commission is continued, and is composed of nine members, five of which are appointed by the Governor, with the advice and consent of the Senate.

(b) One member is appointed by the President of the Senate, one member is appointed by the Speaker of the House of Delegates, one member is appointed by the Supreme Court of Appeals, plus the Secretary of the Department of Administration, who are all nonvoting members.

(c) Of the members appointed by the Governor, no more than three members may be of the same political party. One member shall be an architect selected from three persons recommended by the board of Architects, one member shall be a registered professional engineer selected from three persons recommended by the board of Engineers, one member is the Commissioner of the Division of Culture and History, who is the chairperson of the commission. Two members shall be selected from the public at large.

§4-8-2. Terms of members; vacancies; meetings; decisions of commission.

Members shall be appointed for terms of four years and may be reappointed at the expiration of their terms. In the event of a vacancy, an appointment shall be made to fill the unexpired term. Whenever the approval of the commission is requested, as required by sections four and five of this article, the commission shall meet and render its decision, in writing, within ninety days of the filing with the commission of such request.

WV Legislature

§4-8-3. Officers; expenses.

The capitol building commission shall organize by electing a chairman, a vice chairman and a secretary from among the members of the commission. The members of the commission shall serve without compensation and shall be reimbursed for such necessary travel expenses, subsistence and other reasonable expenses as may be actually incurred by them in the performance of their duties, all to be paid by the Joint Committee on Government and Finance.

WV Legislature

§4-8-4. Powers and duties generally.

The Capitol Building Commission shall review and approve or reject all plans recommending substantial physical changes inside or outside the state capitol building or surrounding complex, which affect the appearance thereof. In all instances constituting a substantial physical change, the approval of the commission is mandatory before a contract may be let or before changes are started if the work is not done under a contract or before work on a change order in excess of \$40,000 is begun and includes all areas occupied by the Legislature, the Governor, and the Supreme Court of Appeals. As used in this article, the surrounding complex shall include the Governor's Mansion and other buildings used by the Governor as part of his or her residence, the state science and cultural center, all state office buildings located in the immediate vicinity of the state capitol, and the roadways, structures and facilities which are incidental to such buildings. As used in this article, substantial physical change shall include, but not be limited to, permanent physical changes that alter the appearance of all areas of the capitol building and surrounding complex. The secretary of the Department of Administration shall promulgate rules and regulations, pursuant to the provisions of §29A-1-1 et seq. of this code, which rules and regulations shall be subject to the approval of the Capitol Building Commission, to implement the provisions of this article.

§4-8-5. Contracts and changes requiring commission approval.

No contract or contracts which will result in physical changes to the capitol building or any approaches, structures or facilities incidental thereto shall be let, nor shall any physical changes be made not requiring a contract, until approval of the commission has been obtained.

WV Legislature

§4-8-6.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§4-9-1.

Repealed.

Acts, 1993 Reg. Sess., Ch. 86.

WV Legislature

§4-9-2.

Repealed.

Acts, 1993 Reg. Sess., Ch. 86.

WV Legislature

§4-9-3.

Repealed.

Acts, 1993 Reg. Sess., Ch. 86.

WV Legislature

§4-9-4.

Repealed.

Acts, 1993 Reg. Sess., Ch. 86.

WV Legislature

§4-9-5.

Repealed.

Acts, 1993 Reg. Sess., Ch. 86.

WV Legislature

§4-9-6.

Repealed.

Acts, 1993 Reg. Sess., Ch. 86.

WV Legislature

§4-9-7.

Repealed.

Acts, 1993 Reg. Sess., Ch. 86.

WV Legislature

§4-9-8.

Repealed.

Acts, 1993 Reg. Sess., Ch. 86.

WV Legislature

§4-10-1. Short title.

This article shall be known as and may be cited as the West Virginia Performance Review Act.

WV Legislature

§4-10-2. Legislative findings; performance review process authorized.

(a) The Legislature finds that:

- (1) State government has created many state agencies without sufficient Legislative Oversight, regulatory accountability or an effective system of checks and balances;
- (2) State agencies have been created without demonstrable evidence that their benefits to the public clearly justify their creation;
- (3) Once established, state agencies tend to acquire permanent status, often without regard for the condition that gave rise to their establishment;
- (4) State agencies have been allowed to establish rules and at times may acquire autonomy and authority inconsistent with principles of accountability;
- (5) Employees of state agencies are often beyond the effective control of elected officials and efforts to encourage modernization or to review performance become difficult;
- (6) Regulatory boards established pursuant to chapter thirty of this code need periodic review to ascertain the need for their continuation; and
- (7) By establishing a process for the objective review of state agencies and regulatory boards, their programs, functions and activities, the Legislature may evaluate the need for their continued existence, consolidation or termination and improve government efficiency, effectiveness and accountability.

(b) The Legislature hereby authorizes a process to review the operation and performance of state agencies and regulatory boards to determine the need for their continued existence, consolidation or termination.

§4-10-3. Definitions.

As used in this article, unless the context clearly indicates a different meaning:

"Agency" or "state agency" means a state governmental entity, including any bureau, department, division, commission, agency, committee, office, board, authority, subdivision, program, council, advisory body, cabinet, panel, system, task force, fund, compact, institution, survey, position, coalition or other entity in the state of West Virginia.

"Agency review" means a review performed on an agency at the direction of the President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint standing committee pursuant to the provisions of this article.

"Committee" means the Joint Standing Committee on Government Organization.

"Compliance review" means a review for compliance with recommendations contained in a previous agency review or regulatory board review conducted pursuant to the provisions of this article and may include further inquiry of other issues as directed by the President, the Speaker, the committee, or the Joint Committee on Government and Finance.

"Department" means the departments created within the executive branch, headed by a secretary appointed by the Governor, as authorized by the Code of West Virginia.

"Department presentation" means a presentation by a department pursuant to the provisions of this article made at the direction of the President of the Senate or the Speaker of the House of Delegates.

"Division" means the Performance Evaluation and Research Division, the Post Audit Division, or any division of the Legislative Auditor's Office.

"Privatize" means a contract to procure the services of a private vendor to provide a service that is similar to, or in lieu of, a service provided by a state agency.

"Regulatory Board" means a board that regulates professions and occupations, created under the provisions of chapter 30 of this code.

"Regulatory Board Review" means a review performed on a regulatory board pursuant to the provisions of this article.

§4-10-4. Joint Committee on Government Operations.

[Repealed.]

WV Legislature

§4-10-4a.

Repealed.

Acts, 2007 Reg. Sess., Ch. 200.

WV Legislature

§4-10-5. Powers and duties of the committee.

- (a) To carry out the duties set forth in this article, the committee, any authorized employee of the committee, the Legislative Auditor or any employee of the division working at the direction of the committee, shall have access, including copying, to all records of every state agency in West Virginia.
- (b) When furnishing information, agencies shall provide the information in the format in which it is requested, if the request is specific as to a preferred format.
- (c) The committee may hold public hearings in furtherance of the purposes of this article, at such times and places within the state as desired. A member of the committee may administer oaths to persons testifying at such hearings or meetings.
- (d) The committee may issue a subpoena, with the signature of either cochair of the committee and served in the manner provided by law, to summon and compel the attendance of witnesses and their examination under oath and the production of all books, papers, documents and records necessary or convenient to be examined and used by the committee in the performance of its duties.
- (e) If any witness subpoenaed to appear at any hearing or meeting refuses or fails to appear or to answer questions put to him or her, or refuses or fails to produce books, papers, documents or records within his or her control when the same are demanded, the committee, in its discretion, may enforce obedience to its subpoena by attachment, fine or imprisonment, as provided in article one of this chapter, or may report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and the court shall compel obedience to the subpoena as though it had been issued by the court.
- (f) Witnesses subpoenaed to attend hearings or meetings pursuant to the provisions of this article, except officers or employees of the state, shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury.
- (g) The committee, subject to the approval of the Joint Committee on Government and Finance, may employ such persons as it considers necessary to carry out the duties and responsibilities under this article and may contract for outside expertise in conducting reviews.
- (h) The committee may collect, and the agency or regulatory board shall promptly pay, the costs associated with conducting the reviews performed under this article, upon presentation of a statement for the costs incurred. All money received by the committee from this source shall be expended only for the purpose of covering the costs associated with such services, unless otherwise directed by the Legislature.

§4-10-5a.

Repealed.

Acts, 2007 Reg. Sess., Ch. 200.

WV Legislature

§4-10-5b.

Repealed.

Acts, 2007 Reg. Sess., Ch. 200.

WV Legislature

§4-10-6. Department presentation; timing and scope.

(a) At the direction of the President of the Senate or the Speaker of the House of Delegates, and upon notification from the division, a department shall prepare and make a presentation to the committee. The purpose of the presentation is to inform the Legislature as to the programs, activities, and financial situation of the department and to update and amend any information previously presented to the committee pursuant to this section. The presentation shall include:

- (1) A departmental chart designating each agency under the purview of the department;
- (2) An analysis of the department's internal performance measures and self-assessment systems; and
- (3) For each agency under the purview of the department, the following:
 - (A) The mission, goals, and functions of the agency;
 - (B) The statutory or other legal authority under which the agency operates;
 - (C) The number of employees of the agency for the immediate past 10 years;
 - (D) The budget for the agency for the immediate past 10 years;
 - (E) Any potential or actual loss of revenue due to operations, changes in law, or any other reason;
 - (F) The extent to which the agency has operated in the public interest;
 - (G) The extent to which the agency has complied with state personnel practices, including affirmative action requirements;
 - (H) The extent to which the agency has encouraged public participation in the making of its rules and decisions and has encouraged interested persons to report to it on the impact of its rules and decisions on the effectiveness, economy, and availability of services that it has provided;
 - (I) The efficiency with which public inquiries or complaints regarding the activities of the agency have been processed and resolved;
 - (J) The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency to better serve the interests of the public and to comply with the factors enumerated in this subsection; and
 - (K) A recommendation as to whether the agency should be continued, consolidated, or terminated.

§4-10-6a.

Repealed.

Acts, 2007 Reg. Sess., Ch. 200.

WV Legislature

§4-10-7. Agency review.

(a) The division shall conduct agency reviews of one or more state agencies each year. An agency review shall be conducted of each state agency at least once every 15 years. An agency review may be conducted more frequently than once in 15 years and may be conducted in the discretion, and at the direction, of the President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint standing committee.

(b) The agency review may include, but is not limited to:

- (1) An identification and description of the agency under review;
- (2) The number of employees of the agency for the immediate past 10 years;
- (3) The budget for the agency for the immediate past 10 years;
- (4) Whether the agency is effectively and efficiently carrying out its statutory duties or exercising its legal authority;
- (5) Whether the activities of the agency duplicate or overlap with those of other agencies and, if so, how these activities could be consolidated;
- (6) A cost-benefit analysis, as described in subsection (d) of this section, on state services that are privatized or contemplated to be privatized;
- (7) An assessment of the utilization of information technology systems within the agency, including interagency and intra-agency communications;
- (8) An analysis of any issues raised by any presentation by the department under whose purview the agency falls made pursuant to the provisions of this article;
- (9) An analysis of any other issues as the committee, the President of the Senate, or the Speaker of the House of Delegates may direct; and
- (10) A recommendation as to whether the agency under review should be continued, consolidated, or terminated.

(c) An agency may be subject to a compliance review pursuant to the provisions of this article.

(d) A cost-benefit analysis authorized by this section may include:

- (1) The tangible benefits of privatizing the service;
- (2) Any legal impediments that may limit or prevent privatization of the service;
- (3) The availability of multiple qualified and competitive private vendors; and

(4) A cost comparison, including total fixed and variable, direct and indirect, costs of the current governmental operation and the private vendor contract.

WV Legislature

§4-10-8. Schedule of departments for agency review.

[Repealed.]

WV Legislature

§4-10-9. Regulatory board review.

(a) The division shall conduct regulatory board reviews on each regulatory board to ascertain if there is a need for the continuation, consolidation, or termination of the regulatory board as one of its duties.

(b) A regulatory board review shall be performed on each regulatory board at least once every 12 years. A regulatory board may be subject to a compliance review pursuant to the provisions of this article.

(c) When a new regulatory board is created, a date for a regulatory board review shall be included in the act that creates the board, within 12 years of the effective date of the act.

(d) The regulatory board review may include:

(1) Whether the board complies with the policies and provisions of chapter 30 of this code and other applicable laws and rules;

(2) Whether the board follows a disciplinary procedure which observes due process rights and protects the public interest;

(3) Whether the basis or facts that necessitated the initial licensing or regulation of a profession or occupation have changed, or other conditions have arisen that would warrant increased or decreased regulation;

(4) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates;

(5) Whether statutory changes are necessary to improve board operations to enhance the public interest;

(6) An analysis of any other issues the committee, the President of the Senate, the Speaker of the House of Delegates, or by recommendation of the joint standing committee.

(7) A recommendation as to whether the regulatory board under review should be continued, consolidated, or terminated.

§4-10-10. Regulatory board review schedule.

- (a) A regulatory board review is required for all regulatory boards.
- (b) A regulatory board review shall be performed on each regulatory board at least once every 12 years.
- (c) A regulatory board review may be conducted more frequently than once in 12 years and may be conducted in the discretion, and at the direction, of the President of the Senate or the Speaker of the House of Delegates.

§4-10-10a.

Repealed.

Acts, 2007 Reg. Sess., Ch. 200.

WV Legislature

§4-10-11. Compliance review.

(a) After an agency review or a regulatory board review, if the committee finds that an agency or a regulatory board needs further review, then the committee may request a compliance review.

(b) If the committee requests a compliance review for an agency or a regulatory board, then it must state, in writing, the specific reasons for the compliance review and its expected completion date.

§4-10-11a.

Repealed.

Acts, 2007 Reg. Sess., Ch. 200.

WV Legislature

§4-10-12. Termination of an agency or regulatory board; reestablishment of terminated agency or regulatory board.

(a) If the Legislature terminates an agency or regulatory board, then the agency or regulatory board shall continue in existence until July 1, of the next succeeding year for the purpose of winding up its affairs. Upon the expiration of one year after termination, the agency or regulatory board shall cease all activities.

(b) During the wind-up year, the impending termination may not reduce nor otherwise limit the powers or authority of that terminated agency or regulatory board.

(c) An agency that has been terminated pursuant to the provisions of this article may be reestablished by the Legislature. If the agency is reestablished by the Legislature during the wind-up year with substantially the same powers, duties or functions, then the agency is considered continued.

(d) If a regulatory board is reestablished by the Legislature during the wind-up year with substantially the same powers, duties or functions, then the regulatory board is considered continued. If a regulatory board is not reestablished by the Legislature during the wind-up year, then the regulatory board is considered terminated and the profession or occupation must apply for regulation through the sunrise process, under the provisions of this code, to be reestablished.

§4-10-13. Disposition of agency or regulatory board assets, equipment and records after termination.

- (a) On or before June 30 of the wind-up year, the terminated agency or regulatory board shall file a written statement with the Secretary of the Department of Administration and the division describing the disposition of its funds, assets, equipment and records.
- (b) The division shall review the statement of the terminated agency or regulatory board and report the results of its review to the committee.
- (c) Any unexpended funds of the terminated agency or regulatory board shall revert to the fund from which they were appropriated or, if that fund is abolished, to the General Revenue Fund.
- (d) All remaining assets and equipment of a terminated agency or regulatory board shall be transferred to the secretary of the department of which it was a part or to the state agency for surplus property in the Department of Administration.
- (e) The records of a terminated agency or regulatory board shall be deposited with the Department of Administration.

§4-10-14. Provision for other reviews; consolidation, termination and reorganization of agencies or programs.

(a) The specifications of schedules for, and the scope of, agency and regulatory board reviews in this article shall not preclude a legislative review or reevaluation of any agency or program at other times. The joint standing committee may request a review of the performance, purpose, efficiency and effectiveness of any agency or program any time that circumstances may require, including, but not limited to, the following:

- (1) Expressed or implied statutory expiration of an agency or program;
- (2) Creation of new, or the amendment of existing, federal law affecting the agency or program;
- (3) Redundant purposes or functions in more than one agency or program or within an agency;
- (4) Completion or satisfaction of agency or program objectives;
- (5) Persistent inefficiencies in the delivery of services or in the accomplishment, or lack thereof, of statutory objectives;
- (6) Fiscal constraints requiring changes in staffing, resources or goals; and
- (7) Changes in legislative policy or direction.

(b) Following the completion of a review by the division and the joint standing committee, with responses and comment from the subject agency or regulatory board, the joint standing committee may recommend or propose the consolidation, termination or reassignment of the agency, program or regulatory board reviewed.

(c) Nothing in this article shall be construed as limiting or interfering with the right of any member of the Legislature to introduce, or of the Legislature to enact, any bill that would terminate, consolidate or reorganize one or more state agencies or programs without a review conducted under the terms of this article.

§4-11-1. Legislative findings and purpose.

The Legislature finds and declares that in order to carry out its responsibility for the enactment of all appropriations needed for the operation of state government, the Legislature needs continuous and accurate accounts of the amounts and purposes of all federal funds being requested, received or expended by the various agencies and departments of the state. The Legislature further finds and declares that the increased availability of and reliance on federal financial assistance has a substantial impact upon the programs, priorities and fiscal affairs of the state. It is the purpose of this article to clarify and specify the role of the Legislature in appropriating federal funds received by the state in all events, including public emergencies, and in prescribing, by general law, the required form and detail of the itemization and classification of proposed appropriations to assure that state purposes are served and legislative priorities are adhered to by the acceptance and use of such funds.

§4-11-2. Definitions.

As used in this article:

“Federal funds” means any financial assistance made to a spending unit by the United States government, whether a loan, grant, block grant, subsidy, augmentation, reimbursement or any other form of such assistance, including “federal-matching funds”;

“Federal-matching funds” means federal funds of a specified amount or proportion for which a specified outlay of state contributions, including funds, property or services, are required as a condition for receipt or expenditure;

“Spending unit” means the State of West Virginia and all agencies, offices, departments, divisions, boards, commissions, councils, committees or other entities of the state government for which an appropriation is requested or to which an appropriation is made by the Legislature. “Spending unit” does not mean any county, city, township, public service district or other political subdivision of the state; and

“State-matching funds” means state contributions, including funds, property or services that are required by the federal government, by law or regulation, as a condition for receipt or expenditure of federal funds.

§4-11-3. Receipt of federal funds and required deposit in state treasury.

Unless contrary to federal law, all federal funds received by a spending unit shall be deposited in and credited to special fund accounts as provided by §12-2-2 of this code and shall be available for appropriation by the Legislature as part of the state budget in accordance with Article X of the Constitution of this state.

WV Legislature

§4-11-4. Inclusion of federal funds in state budget and the budget bill.

Pursuant to article §5-1A-1 *et seq.*, and §11B-2-1 *et seq.* of this code, the Governor shall itemize in the state budget and in the budget bill, on a line-item basis, separately, for each spending unit, the amount and purpose of all federal funds received or anticipated for expenditure, with a reference to the account number, line item and amount of any state funds required for such purpose: *Provided*, That all federal block grant funds shall be so itemized in a separate section of the state budget and the budget bill devoted exclusively to proposed appropriations from the block grant funds.

§4-11-5. Legislative appropriation authority.

- (a) No spending unit may make expenditures of any federal funds, whether such funds are advanced prior to expenditure or as reimbursement, unless such expenditures are made pursuant to specific appropriations by the Legislature, except as may be hereinafter provided.
- (b) To the extent not precluded by the terms and conditions under which federal funds are made available to the spending unit by the United States government, the spending unit shall use federal funds in accordance with any purposes, policies or priorities the Legislature may have established for the activity being assisted or for the use of state, federal and other fiscal resources in a particular fiscal year.
- (c) If the federal funds received by a spending unit for a specific purpose are greater than the amount of such funds contained in the appropriation by the Legislature for such purpose, the total appropriation of federal funds and any state matching funds for such purpose shall remain at the level appropriated, except as hereinafter provided.
- (d) If federal funds become available to the spending unit for expenditure while the Legislature is not in session and the availability of such funds could not reasonably have been anticipated and included in the budget approved by the Legislature for the next fiscal year, the treasurer may accept such funds on behalf of the spending unit and the Governor may authorize, in writing, the expenditure of such funds by the spending unit during that fiscal year as authorized by federal law and pursuant to the provisions of §11B-2-1 *et seq.* of this code and upon the filing of a proper expenditure schedule: *Provided*, That the Governor may not authorize the expenditure of such funds received for the creation of a new program or for a significant alteration of an existing program. For purposes of this article, a mere new source of funding of federal moneys for a program which has been prior approved by legislative appropriation is not a “new program” or a “significant alteration of an existing program” and the Governor may authorize the expenditure of such funds as herein provided, subject to the limitations under subsection (e) of this section. Should a question arise concerning whether such expenditures would constitute a new program or significant alteration of an existing program, while the Legislature is not in session, the Governor shall seek the recommendation of the council of finance and administration, as created and existing pursuant to the provisions of §5A-1-4 of this code. Upon application to the federal government for such funds and upon receipt of such funds, the Governor shall submit to the Legislative Auditor two copies of a statement:
- (1) Describing the proposed expenditure of such funds in the same manner as it would be described in the state budget; and
 - (2) Explaining why the availability of such federal funds and why the necessity of their expenditure could not have been anticipated in time for such expenditures to have been approved as part of the adopted budget for that particular fiscal year.

(e) Notwithstanding the provisions of subsection (d) of this section, no amount of such unanticipated federal funds for an existing program, for a significant alteration of an existing program, or for the creation of a new program made available to the state for costs and damages resulting from an emergency including, but not limited to, flooding, forest fires, earthquakes, storms or similar natural disasters, civil disobedience, human-caused disasters, infectious disease outbreaks, or similar public health or safety emergencies that occur and are received while the Legislature is not in session and that are declared by the Governor as a state of emergency in excess of \$150 million for any part or the whole of the declared emergency may be expended without appropriation by the Legislature enacted following receipt of the funds. No provision of this code or any appropriations act in effect upon the receipt of unanticipated federal funds made available to the state for costs and damages resulting from an emergency including, but not limited to, flooding, forest fires, earthquakes, storms or similar natural disasters, civil disobedience, human-caused disasters, infectious disease outbreaks, or similar public health or safety emergencies that occur and are received while the Legislature is not in session and that are declared by the Governor as a state of emergency may be construed to authorize the appropriation of those funds, except as provided in this subsection.

(f)(1) If federal funds become available to a spending unit and the funds were not included in the budget approved by the Legislature for the next fiscal year but are authorized to be expended while the Legislature is not in session under subsection (d) of this section, the Governor shall submit reports in writing to the President of the Senate, the Speaker of the House of Delegates, the chairs of the respective committees on finance of the two houses of the Legislature, and the Legislative Auditor as follows:

(A) On or before the first day of each month following the receipt of the funds until the funds are expended in their entirety, the reports shall include the following:

(i) The purposes for which funds were made available, the identification of any federal and state laws governing the expenditure of the funds and a general itemization of the Governor's plan of expenditure for the whole of the funds;

(ii) A detailed schedule setting forth the Governor's proposed expenditures of the funds for the month, including, but not limited to, as to each proposed expenditure, the amount and purpose of the expenditure; the spending unit responsible for making the expenditure; and the anticipated recipient or recipients of the expenditure; and

(iii) An explanation of any changes made from the prior month's general itemization of the Governor's plan of expenditure for the whole of the funds and of any changes the prior month's schedule of proposed expenditures made by the actual expenditures made during that month;

(B) On or before the 15th day of the month following month in which the funds were expended in their entirety, the report shall set forth a complete itemized report of each expenditure of the funds; and

(C) The Governor shall also include in each report such additional information as may be requested the Legislative Auditor.

(2) The Legislative Auditor shall provide a copy of each report to the Joint Committee on Government and Finance.

WV Legislature

§4-11-6. Exclusions.

The following are excluded from the provisions of this article:

- (1) Federal funds received by state institutions of higher education or by students or faculty members of such institutions for instructional or research purposes and federal funds received for student scholarships or grants-in-aid;
- (2) Federal nondiscretionary pass-through funds which are earmarked in specified amounts or proportions for transmittal to local political subdivisions or to designated classes of organizations and individuals which do not require state-matching funds and do not permit discretion in their distribution by the receiving state spending unit; and
- (3) All federal funds received by the West Virginia department of highways or the West Virginia commissioner of highways.

§4-11-7. Conflict with other statutory provisions.

If there is any conflict between the provisions of this article and any other provision of law, including this code, relating to receiving or expending federal funds, the provisions of this article shall govern and control.

WV Legislature

§4-11A-1. Legislative findings and purpose.

(a) On November 23, 1998, tobacco product manufacturers entered into a settlement agreement with the state. This master settlement agreement releases those manufacturers from past, present and specific future claims against them in return for payment of annual sums of money to the state, obligates the manufacturers to change their advertising and marketing practices and requires the establishment by the manufacturers of a national foundation for the interests of public health.

(b) The revenues received pursuant to the master settlement agreement are directly related to the past, present and future costs incurred by the state for the treatment of tobacco-related illnesses. The receipt of revenues in the future is subject to the ongoing risk of litigation against manufacturers or other events that may adversely affect the financial strength of the manufacturers. The purpose of this article is to preserve the revenues received from the settlement.

(c) The receipt of funds in accordance with the master settlement agreement shall be deposited only in accordance with the provisions of this article.

(d) The state receives revenue each year under the terms of the master settlement agreement with the tobacco manufacturers. This revenue is used to fund programs of vital importance to the people of West Virginia and the Legislature finds that it is in the best interest of the people of this state to protect these revenues by the sale of the state's share to the Tobacco Settlement Finance Authority created in section six of this article.

§4-11A-1a. Legislative findings related to securitization of moneys received pursuant to master settlement agreement and previously dedicated to the Workers' Compensation Debt Reduction Fund.

(a) In December, 2005, the Governor issued a proclamation regarding the privatization of the workers' compensation system pursuant to section eleven, article two-c, chapter twenty-three of this code, thereby proclaiming that a revenue source had been secured to satisfy the Old Fund liabilities as they occur;

(b) A portion of the revenue source secured to satisfy the Old Fund liabilities as they occur was the first \$30 million received pursuant to section IX(c)(1) of the master settlement agreement and the anticipated strategic compensation payments to be received pursuant to section IX(c)(2) of the master settlement agreement;

(c) For purposes of the proclamation, it was assumed that the first \$30 million received pursuant to section IX(c)(1) of the master settlement agreement and the anticipated strategic compensation payments to be received pursuant to section IX(c)(2) of the master settlement agreement as calculated pursuant to subsection (a), section twelve of this article would on a calendar year basis provide a maximum of \$45 million per year to satisfy the Old Fund liabilities as they occur;

(d) The Legislature finds and declares that replacing the first \$30 million received pursuant to section IX(c)(1) of the master settlement agreement and the anticipated strategic compensation payments to be received pursuant to section IX(c)(2) of the master settlement agreement with \$50,400,000 pursuant to section eighteen of this article for the benefit of the Old Fund, in combination with the remaining portions of the revenue sources secured for the unfunded liabilities of the Old Fund as established in Enrolled Senate Bill No. 1004 during the first extraordinary session of the Legislature, 2005, will ensure that a revenue source has been and will continue to remain secured to satisfy the Old Fund liabilities as they occur; and thus all conditions precedent to the issuance of the proclamation by the Governor remain in effect.

§4-11A-2. Receipt of settlement funds and required deposit in West Virginia Tobacco Settlement Medical Trust Fund until June 1, 2005, then to Workers' Compensation Debt Reduction Fund; deposit of strategic compensation payments; transfer of trust fund moneys.

(a) The Legislature finds and declares that certain dedicated revenues should be preserved in trust for the purpose of stabilizing the state's health-related programs and delivery systems. It further finds and declares that these dedicated revenues should be preserved in trust for the purpose of educating the public about the health risks associated with tobacco usage and establishing a program designed to reduce and stop the use of tobacco by the citizens of this state and in particular by teenagers.

(b) There is hereby created a special account in the state Treasury, designated the West Virginia Tobacco Settlement Medical Trust Fund, which shall be an interest-bearing account and may be invested in the manner permitted by section nine, article six, chapter twelve of this code, with the interest income a proper credit to the fund. Unless contrary to federal law, fifty percent of all revenues received pursuant to the master settlement agreement shall be deposited in this fund. Funds paid into the account may also be derived from the following sources:

- (1) All interest or return on investment accruing to the fund;
- (2) Any gifts, grants, bequests, transfers or donations which may be received from any governmental entity or unit or any person, firm, foundation or corporation;
- (3) Any appropriations by the Legislature which may be made for this purpose; and
- (4) Any funds or accrued interest remaining in the board of Risk and Insurance Management Physicians' Mutual Insurance Company account created pursuant to section seven, article twenty-f, chapter thirty-three of this code on or after July 1, 2004.

(c) (1) The moneys from the principal in the trust fund may not be expended for any purpose, except that on April 1, 2003, the Treasurer shall transfer to the board of Risk and Insurance Management Physicians' Mutual Insurance Company account created by section seven, article twenty-f, chapter thirty-three of this code, \$24 million from the West Virginia Tobacco Settlement Medical Trust Fund for use as the initial capital and surplus of the Physicians' Mutual Insurance Company created pursuant to said article. The remaining moneys in the trust fund resulting from interest earned on the moneys in the fund and the return on investments of the moneys in the fund shall be available only upon appropriation by the Legislature as part of the state budget and expended in accordance with the provisions of section three of this article.

(2) Notwithstanding any other provision of this code to the contrary, on the effective date of the amendment and reenactment of this section during the regular session of the Legislature in 2006, all moneys in the trust fund and any interest or other return earned thereon shall be

transferred to the revenue shortfall reserve fund - Part B created in section twenty, article two, chapter eleven-b of this code and the trust fund shall be closed. No provisions of the amendments made to this section during the regular session of the Legislature in 2006 may be construed to change the requirements of this section for the deposit of revenues received pursuant to the master settlement agreement into the Workers' Compensation Debt Reduction Fund.

(d) Notwithstanding the preceding subsections to the contrary, the first \$30 million of all revenues received after June 30, 2005, pursuant to section IX(c)(1) of the master settlement agreement shall in the fiscal year beginning July 1, 2005, and each fiscal year thereafter, be deposited in the Workers' Compensation Debt Reduction Fund established in the state Treasury in section five, article two-d, chapter twenty-three of this code. Receipts in excess of \$30 million shall be deposited into the tobacco settlement fund provided in section three of this article.

(e) Notwithstanding anything in this code to the contrary, strategic compensation payments received pursuant to section IX(c)(2) of the master settlement agreement, beginning in 2008, shall be deposited in their entirety in the Workers' Compensation Debt Reduction Fund.

(f) Notwithstanding anything in this code to the contrary, on the effective date of the sale of the state's share to the authority as authorized in this article, the deposits and transfers provided in this section shall cease and no longer be required.

§4-11A-3. Receipt of settlement funds and required deposit in the West Virginia Tobacco Settlement Fund.

(a) There is hereby created in the state Treasury a special revenue account, designated the Tobacco Settlement Fund, which shall be an interest-bearing account and may be invested in the manner permitted by the provisions of article six, chapter twelve of this code, with the interest income a proper credit to the fund. Unless contrary to federal law, fifty percent of all revenues received pursuant to the master settlement agreement shall be deposited in this fund. These funds shall be available only upon appropriation by the Legislature as part of the state budget: Provided, That for the fiscal year 2000, the first \$5 million received into the fund shall be transferred to the Public Employees Insurance Reserve Fund created in article two, chapter five-a of this code.

(b) Appropriations from the Tobacco Settlement Fund are limited to expenditures for the following purposes:

(1) Reserve funds for continued support of the programs offered by the Public Employees Insurance Agency established in article sixteen, chapter five of this code;

(2) Funding for expansion of the federal-state Medicaid program as authorized by the Legislature or mandated by the federal government;

(3) Funding for public health programs, services and agencies; and

(4) Funding for any state-owned or -operated health facilities.

(c) Notwithstanding anything in this code to the contrary, on the effective date of the sale of the state's share to the authority as authorized in this article, the deposits and transfers provided in this section shall cease and no longer be required.

§4-11A-4. Limitation on appeal bond.

The bond that any appellant who is a signatory or a successor to a signatory of the master settlement agreement or who controls or is under common control with a signatory of the master settlement agreement may be required to post to stay execution on a judgment during an appeal in any cause of action shall be set in accordance with the provisions of section fourteen, article five, chapter fifty-eight of this code and the West Virginia rules of civil procedure: Provided, That an appeal bond may not exceed \$100 million for compensatory damages and all other portions of a judgment other than punitive damages and \$100 million for punitive damages unless the appellee proves by a preponderance of the evidence that the appellant or appellants are purposefully dissipating or diverting assets outside of the ordinary course of its business to the effect that the ability to pay the ultimate judgment is impaired. For purposes of this section, multiple judgments resulting from cases that have been consolidated or aggregated for purposes of trial proceedings shall be treated as a single judgment.

§4-11A-5. Applicability.

The provisions of section four of this article, as originally passed or later amended, apply to all actions pending in the courts of this state on the effective date of this section and to any action filed in this state on or after the effective date: Provided, That the provisions of section four of this article providing for the maximum amount of an appeal bond shall not apply in any action brought by any signatory to the master settlement agreement seeking to enforce compliance with the terms of the master settlement agreement or for a breach of the master settlement agreement.

§4-11A-6. Creation of Tobacco Settlement Finance Authority.

(a) The Tobacco Settlement Finance Authority is hereby created and constitutes a body corporate and politic, constituting a public corporation and government instrumentality of the state and the exercise of its powers pursuant to this article is an essential governmental function.

(b) The authority shall not create any obligation of this state or any political subdivision of this state within the meaning of any Constitutional or statutory debt limitation.

(c) The authority shall not pledge the credit or taxing power of the state or any political subdivision of this state, or make its debts payable out of any moneys except those of the authority specifically pledged for their payment.

§4-11A-7. Definitions.

Unless the context clearly indicates otherwise, as used in this article:

- (a) "Authority" means the Tobacco Settlement Finance Authority created in this article.
- (b) "Board" means the governing board of the authority.
- (c) "Bonds" means bonds, notes and other obligations and financing arrangements issued or entered into by the authority pursuant to this article.
- (d) "Complementary legislation" means article nine-d, chapter sixteen of this code.
- (e) "Interest rate agreement" means an interest rate swap or exchange agreement, an agreement establishing an interest rate floor or ceiling or both, or any similar agreement. Any agreement may include the option to enter into or cancel the agreement or to reverse or extend the agreement.
- (f) "Master settlement agreement" means the master settlement agreement as defined in section one of this article.
- (g) "Net proceeds" means the amount of proceeds remaining following each sale of bonds which are not required by the authority to establish and fund reserve funds, to fund an operating expense reserve for the authority, to fund capitalized interest, if any, and to pay the costs of issuance and other expenses and fees related to the authorization and issuance of bonds.
- (h) "Notes" means notes, warrants, loan agreements and all other forms of evidence of indebtedness authorized under this article.
- (i) "Qualified investments" means investments of the authority authorized pursuant to this article as established by the authority pursuant to subdivision (11), subsection (a), section eleven of this article.
- (j) "Qualifying statute" has the meaning given that term in the master settlement agreement, constituting article nine-b, chapter sixteen of this code.
- (k) "Sales agreement" means any agreement authorized pursuant to this article in which the state provides for the sale of all or a portion of the state's share to the authority.
- (l) "State's share" means all of the following:
 - (1) All payments required to be made by tobacco product manufacturers to the state, and the state's rights to receive the payments, under the master settlement agreement.
 - (2) The state's rights in any collateral securing or otherwise assuring the receipt of the

moneys.

WV Legislature

§4-11A-8. Governing board.

(a) The powers of the authority are vested in and shall be exercised by a board of five individuals, consisting of the Secretary of the Department of Administration, who shall act as chairperson, the Treasurer of the State of West Virginia, and three individuals, each appointed by the Governor, who shall have skill and experience in finance.

(b) Three members of the board constitute a quorum.

(c) The members shall elect a vice chairperson and secretary, annually, and other officers as the members determine necessary.

(d) Meetings of the board shall be held at the call of the chairperson or when a majority of the members request a meeting.

(e) The members of the board shall not receive compensation by reason of their membership on the board.

(f) Of the initial appointments made by the Governor to the authority, two shall be for a term of two years and two shall be for a term of three years. Members appointed to the authority subsequent to the initial appointments shall serve for terms of four years. Any member whose term has expired shall serve until his or her successor has been duly appointed and qualified. Any person appointed to fill a vacancy shall serve only for the unexpired term.

§4-11A-9. Staff; assistance by state officers, agencies and departments.

(a) The Secretary of the Department of Administration shall furnish to the authority any secretarial, clerical, technical, research and other services that are necessary to the conduct of the business of the authority.

(b) State officers, agencies and departments may render services to the authority within their respective functions, as requested by the authority.

WV Legislature

§4-11A-10. Limitation of liability.

Members of the board and persons acting on the authority's behalf, while acting within the scope of their employment or agency, are not subject to personal liability resulting from carrying out the powers and duties conferred on them under this article.

WV Legislature

§4-11A-11. General powers.

(a) The authority has all the general powers necessary to carry out its purposes and duties and to exercise its specific powers, including, but not limited to, the power to:

(1) Enter into sales agreements and acquire by purchase, grant, lease, gift or otherwise from the state its right, title and interest in and to the state's share, including, without limitation, the rights of the state to receive the moneys due to it under this article and the rights in any collateral securing or otherwise assuring the receipt of the moneys;

(2) Sell, pledge or assign, as security or consideration, the state's share sold to the authority pursuant to one or more sales agreements, to provide for and secure the issuance and repayment of its bonds or to implement alternative funding options;

(3) Issue and sell one or more series or classes of bonds, notes or other obligations through public bidding, private placement or negotiated underwriting to finance the acquisition referred to in this article;

(4) Refund and refinance the authority's debts and obligations and to manage its funds, obligations and investments as necessary and if consistent with its purpose;

(5) Enter into funding options consistent with this article, including refunding and refinancing its debt and obligations;

(6) Enter into credit enhancements, liquidity agreements or interest rate agreements;

(7) Have perpetual succession as a public instrumentality and agency of the state, until dissolved in accordance with this article;

(8) Sue and be sued in its own name;

(9) Make and execute agreements, contracts and other instruments with any public or private person, in accordance with this chapter;

(10) Retain or employ counsel, Auditors, investment bankers, trustees, economic experts and any other private consultants and advisors, on a contract basis or otherwise, necessary or desirable for rendering legal, banking, financial or other professional, management or technical services or advice in connection with the acquisition and financing referred to in this article and pay for all of the services from the proceeds of the bonds;

(11) Establish investment guidelines, designate qualified investments and invest funds;

(12) Procure insurance, other credit enhancements, liquidity agreements and other financing arrangements and to execute instruments and contracts and to enter into agreements convenient or necessary to facilitate financing arrangements of the authority; and to fulfill the purposes of the authority under this article, including, but not limited to, any

arrangements, instruments, contracts and agreements as municipal bond insurance, liquidity facilities, interest rate agreements and letters of credit;

(13) Determine, in connection with the issuance of bonds, and subject to the sales agreement, the terms, documentation and other details of the financing;

(14) Hold, use, sell, convey, mortgage, pledge, exchange or otherwise dispose of the state's share and any proceeds or further rights associated with the state's share;

(15) Establish a trust which is entitled to receive revenues and bond proceeds of the authority that are in excess of the authority's expenses, debt service and contractual obligations and to transfer its ownership interest in the trust to the state as the noncash portion of the purchase price for the state's share; and

(16) Include in its agreements with the holders of the bonds the nonimpairment pledge as described in subdivision (8), subsection (c), section twelve of this article.

(b) Other than the payments of debt service on its bonds, the authority may not make payments or distributions to private interests or private individuals unless those payments are reasonable in amount and paid in exchange for the performance of services.

§4-11A-12. Authorization of the sale of rights in the master settlement agreement.

(a) The sale of the state's share shall be authorized by an executive order issued by the Governor as authorized in this section. The executive order shall be received by the Secretary of State and filed in the state Register pursuant to section three, article two, chapter twenty-nine-a of this code: Provided, That the Governor shall not issue the executive order unless the aggregate collective amount of net sale proceeds received by the state from the sale of the state's share is more than \$800 million.

(b) The Governor may sell and assign all or a portion of the state's share to the authority pursuant to one or more sales agreements for the purpose of securitization of the amounts received by the state under the master settlement agreement.

(c) The terms and conditions of the sale established in any sales agreement shall include the following:

(1) A requirement that the state enforce its right to collect all moneys due from the participating tobacco manufacturers pursuant to the provisions of the master settlement agreement, including, without limitation, the state's share that has been sold to the authority under a sales agreement, and, in addition, that the state shall diligently enforce the qualifying statute as contemplated in section IX (d)(2)(b) of the master settlement agreement and the complementary legislation against all tobacco product manufacturers selling tobacco products in the state and that are not in compliance with the qualifying statute or the complementary legislation, in each case in the manner and to the extent considered necessary in the judgment of the Attorney General of the state;

(2) A requirement that the state not agree to any amendment of the master settlement agreement, the qualifying statute, the complementary legislation, this article or the sales agreement that materially and adversely affects the authority's ability or rights to receive the state's share that has been sold to the authority or the authority's rights and powers under this article and the sales agreement;

(3) An agreement that the anticipated use by the state of sale proceeds received pursuant to the sales agreement shall be for the purposes set forth in this article;

(4) A requirement that the aggregate collective amount of net sale proceeds received by the state from the sale of the state's share shall not be less than \$800 million;

(5) A requirement that the proceeds received by the state from the sale of the state's share be applied by the state upon receipt to the Consolidated Public Retirement Board for deposit into the state Teachers Retirement System to redeem a portion of the unfunded actuarial accrued liability;

(6) A requirement that the state may receive from the authority, as the purchase price for the sale, any combination of cash, securities and direct or beneficial ownership interests in

property, including, but not limited to, the allocable beneficial interest in the residual state's share cash flows not needed to meet the bond debt service allocable to the state's share purchased by the authority from the state, whether by an initial sale or sales of the authority's bonds;

(7) A requirement that the cost of issuance excluding fees for bond insurance, credit enhancements, liquidity facilities and rating agency fees, plus underwriter's discount and any other costs associated with the issuance shall not exceed, in the aggregate, the sum of one percent of the aggregate principal amount of the bonds issued; and

(8) A requirement that the state will pledge to and agree with the holders of the authority's bonds and with any person or entity that contracts with the authority in connection with the issuance of the bonds that the state will not alter, limit or impair: (i) The rights vested in the authority to receive the state's share, to exercise its powers, or the ability to fulfill the terms of any contract entered into with the holders of the authority's bonds or any person or entity with reference to the authority's bonds; and (ii) the rights and remedies of the holders of any of the authority's bonds. The state's pledge and agreement shall continue in full force and effect until the authority's legal commitments with respect to the authority's bonds and contracts have been discharged in full.

(d) Any sale made under this section shall be irrevocable. Any sale shall constitute and be treated as a true and absolute sale and absolute transfer of the property transferred and not as a pledge or other security interest for any borrowing.

(e) On or after the effective date of any sale, the state shall not have any right, title or interest in the portion of the state's share sold, and the portion of the state's share sold shall be the property of the authority and not the state. None of the property sold by the state pursuant to this section shall be subject to garnishment, levy, execution, attachment or other process, or remedy in connection with the assertion or enforcement of any debt, claim, settlement or judgment against the state.

(f) On or before the effective date of any sale, the state shall notify the escrow agent under the master settlement agreement of the sale and shall irrevocably direct the escrow agent under the master settlement agreement that, subsequent to that date, all payments constituting the state's share or a portion thereof shall be made directly to the authority or its designee.

§4-11A-13. Authorization of bonds of the authority.

(a) The authority may issue bonds in more than one series and, if bonds are issued, shall use the net proceeds to purchase the state's share pursuant to the sales agreement to be applied as set forth in section twelve of this article. In connection with the issuance of bonds and subject to the terms of the sales agreement, the authority shall determine the terms and other details of the financing. Bonds issued pursuant to this section may be secured by a pledge of the state's share purchased by the authority. The authority may also issue refunding bonds, including advance refunding bonds, for the purpose of refunding previously issued bonds, and may issue other types of bonds, notes or other debt obligations and financing arrangements necessary to fulfill its purposes or the purposes of this article.

(b) The authority may issue its bonds in principal amounts which, in the opinion of the authority, are necessary to provide sufficient funds for achievement of its purposes, the payment of interest on its bonds, the establishment of reserves to secure the bonds, the costs of issuance of its bonds and all other expenditures of the authority incident to and necessary to carry out its purposes or powers. The bonds are investment securities and negotiable instruments within the meaning of and for the purposes of article eight, chapter forty-six of this code, subject only to the provisions of the notes or bonds for registration, unless otherwise provided by resolution of the authority.

(c) Bonds issued by the authority are payable solely and only out of the moneys, assets or revenues pledged by the authority and are not a general obligation or indebtedness of the authority or an obligation or indebtedness of the state or any subdivision of the state. The authority shall not pledge the credit or taxing power of the state or any political subdivision of the state, or create a debt or obligation of the state, or make its debts payable out of any moneys except those of the authority.

(d) Bonds of the authority shall state on their face that they are payable both as to principal and interest solely out of the assets of the authority pledged for their purpose and do not constitute an indebtedness of the state or any political subdivision of the state; are secured solely by and payable solely from assets of the authority pledged for such purpose; constitute neither a general, legal nor moral obligation of the state or any of its political subdivisions; and that the state has no obligation or intention to satisfy any deficiency or default of any payment of the bonds.

(e) Any amount pledged by the authority to be received under any sales agreement is valid and binding at the time the pledge is made. Amounts pledged and then or thereafter received by the authority are immediately subject to the lien of the pledge without any physical delivery thereof or further act. The lien of any pledge is valid and binding as against all parties having claims of any kind against the authority whether the parties have notice of the lien or not. Notwithstanding any other provision of law, the pledge is not subject to article nine, chapter forty-six of this code. Notwithstanding any other provision to the contrary, the resolution of the authority or any other instrument by which a pledge is created need not be recorded or filed to perfect the pledge.

(f) The proceeds of bonds issued by the authority may be invested in any security or obligation approved by the board and specified in the trust indenture or resolution pursuant to which the bonds must be issued, notwithstanding any other provision to the contrary provided that any sales proceeds derived from tax exempt bonds are invested in a manner prescribed by the board so as to maintain the tax exempt status of the bonds.

(g) The exercise of the powers granted to the authority by this article will be in all respects an essential governmental function and for the benefit of the people of the state and is a public purpose. The authority, its property, income and all bonds and all interest and income thereon are exempt from all taxation by this state and any county, municipality, political subdivision or agency thereof.

(h) Bonds of the authority shall comply with all of the following:

(1) The bonds may be issued in one or more series and shall be in a form, issued in denominations, carry such registration privileges and payable over terms and with rights of redemption as the board prescribes in the trust indenture or resolution authorizing their issuance;

(2) The bonds shall be fully negotiable instruments under the laws of this state and may be sold at prices, at public or private sale, and in a manner as prescribed by the board; and

(3) The bonds are subject to the terms, conditions and covenants providing for the payment of the principal, redemption premiums, if any, interest which may be fixed or variable, including, but not limited to, zero coupon bonds and capital appreciation bonds, during any period the bonds are outstanding, and other terms, conditions, covenants and protective provisions safeguarding payment as determined by the trust indenture or resolution of the board authorizing their issuance.

(i) The bonds issued under this article are securities in which insurance companies and associations and other persons engaged in the business of insurance; banks, trust companies, savings associations, savings and loan associations and investment companies; administrators, guardians, executors, trustees and other fiduciaries; and other persons authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital, in their control or belonging to them.

(j) Bonds must be authorized by a resolution of the board. A resolution authorizing the issuance of bonds may delegate to an officer of the authority the power to negotiate and fix the details of an issue of bonds and of their sale by an appropriate certificate of the authorized officer or by execution and delivery of a trust indenture or bond purchase agreement. The bonds and notes shall be executed by the chairperson and secretary of the authority, both of whom may use facsimile signatures. In case any officer whose signature, or a facsimile of whose signature, appears on any bonds or notes ceases to be an officer before delivery of the bonds or notes, the signature or facsimile is nevertheless sufficient for all purposes the same as if he or she had remained in office until the delivery.

(k) The authority may issue one or more series of bonds at any time or times so that interest on the bonds may be or remain exempt from federal taxation or to comply with the purposes specified in this article: Provided, That the state shall covenant and agree to invest any funds received from the sales agreement which were derived from tax exempt bonds issued by the authority in a manner prescribed from the authority.

(l) In connection with the issuance of any bonds authorized and issued pursuant to this section, and in addition to the funds and accounts established elsewhere in this article, the board may, under the trust indenture or resolution pursuant to which the bonds are issued, establish any other accounts, subaccounts or reserves determined necessary by the board.

(m) While bonds of the authority are outstanding, the state shall not agree to any amendment of the master settlement agreement, the qualifying statute, the complementary legislation, this article or the sales agreement that materially and adversely affects the authority's ability or rights to receive the state's share that has been sold to the authority or the authority's rights and powers under this article and the sales agreement. The provision of this section shall be part of the contractual obligation owed to the holders of the authority's bonds.

§4-11A-14. Exemption from purchasing provisions.

The provisions of article three, chapter five-a of this code shall not apply to the authority with respect to contracts entered into by the authority in carrying out the public and essential governmental functions set forth in this article and are exempt from the laws of the state which provide for competitive bids and hearings in connection with contracts and for review as to the form of contracts by the office of the Attorney General of the state.

WV Legislature

§4-11A-15. Bankruptcy.

Notwithstanding any other provision of law, the authority is not authorized, and no governmental officer or organization shall authorize the authority to become a debtor in a case under the United States bankruptcy code, Title 11 of the United States Code, to make an assignment for the benefit of creditors or to become the subject of any similar case or proceeding. The provisions of this section shall be part of any contractual obligation owed to holders of any bonds issued pursuant to this article and shall not be modified by the state prior to the date which is three hundred sixty-six days after which the authority no longer has any bonds outstanding.

§4-11A-16. Dissolution of the authority; distribution of assets.

The authority shall dissolve not sooner than three hundred sixty-six days after it no longer has any bonds outstanding and no later than two years from the date of final payment of all outstanding bonds and the satisfaction of all outstanding obligations of the authority, except to the extent necessary to remain in existence to fulfill any outstanding covenants or provisions with bondholders or third parties made in accordance with this article. Upon dissolution of the authority, all assets of the authority shall be transferred to the state, and the authority shall execute any necessary assignments or instruments, including any assignment of any right, title or ownership to the state for receipt of payments under the master settlement agreement. In no event shall the authority dissolve while any bonds of the authority are outstanding.

§4-11A-17. Construction.

This article, being considered necessary for the welfare of the state and its people, shall be liberally construed to affect its purpose.

WV Legislature

§4-11A-18. Dedication of personal income tax proceeds as replacement moneys for anticipated tobacco master settlement agreement proceeds to the Old Fund.

(a) There is hereby dedicated an annual amount of \$50,400,000 from annual collections of the tax imposed by article twenty-one, chapter eleven of this code as a portion of the revenue source dedicated to satisfy the Old Fund liabilities as they occur to provide a dollar for dollar replacement of the first \$30 million received pursuant to section IX(c)(1) of the master settlement agreement and the anticipated strategic compensation payments to be received pursuant to section IX(c)(2) of the master settlement agreement as previously dedicated to the Old Fund prior to the sale of state's share to the Tobacco Settlement Finance Authority. No portion of this amount may be pledged for payment of debt service on revenue bonds issued pursuant to article two-d, chapter twenty-three of this code.

(b) Notwithstanding any other provision of this code to the contrary, beginning immediately after the sale of the state's share to the Tobacco Settlement Finance Authority, \$50,400,000 from collections of the tax imposed by article twenty-one, chapter eleven of this code shall be deposited each calendar year to the credit of the Old Fund created in article two-d, chapter twenty-three of this code in accordance with the following schedule. Each calendar month, except for July, August and September each year, \$5,600,000 shall be transferred, on or before the twenty-eighth day of the month, to the Workers' Compensation Debt Reduction Fund created in article two-d, chapter twenty-three of this code. The transfers pursuant to this section are in addition to the transfers pursuant to section ninety-six, article twenty-one, chapter eleven of this code.

(c) Expiration. —

The transfers required by this section shall cease on and after February 1, 2016. No transfer pursuant to this section shall be made thereafter.

§4-12-1. Authority of Legislature to establish West Virginia law institute.

The West Virginia Legislature creates and establishes a state law institute, to be known as the "West Virginia Law Institute," as an official advisory law revision and law reform agency of the State of West Virginia and to be located at the West Virginia University college of law.

WV Legislature

§4-12-2. Purposes and duties.

The general purposes of the West Virginia law institute are to promote and encourage the clarification and simplification of the law of West Virginia, to improve the better administration of justice and to conduct scholarly legal research and scientific legal work. To that end it shall be the duty of the West Virginia law institute to:

- (a) Consider needed improvements in both substantive and procedural law and to make recommendations concerning the same to the Legislature;
- (b) Examine and study the law of West Virginia to discover defects and inequities and of recommending needed reforms;
- (c) Receive and consider suggestions from judges, justices, public officials, lawyers and the public generally as to defects and anachronisms in the law;
- (d) Recommend from time to time such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law;
- (e) Render annual reports to the Legislature and, if it deems so advisable, accompany its reports with proposed bills to carry out any of its recommendations;
- (f) Recommend the repeal of obsolete statutes and suggest needed amendments, additions and deletions; and
- (g) Organize and conduct an annual meeting within the state for scholarly discussions of current problems in West Virginia law, bringing together representatives of the Legislature, practicing attorneys, members of the judiciary and West Virginia State Bar and representatives of the law teaching profession.

§4-12-3. Governing council and members.

(a) The institute shall have such members and committees as the governing body of the West Virginia law institute may direct. The governing body shall also elect a president, secretary and any other officers as it determines necessary.

(b) The governing body of the institute shall be a council composed of ex officio members and elected members as follows:

- (1) One justice of the West Virginia Supreme Court of Appeals to be selected by the justices thereof;
- (2) One circuit court judge, selected by the West Virginia judicial association;
- (3) One federal judge residing in West Virginia, selected by the federal judges residing in West Virginia;
- (4) The Attorney General of the State of West Virginia;
- (5) One legal counsel to the Governor of the State of West Virginia;
- (6) The chairperson of the judiciary committees of the Senate and the House of Delegates of the West Virginia Legislature or an attorney member of the respective committees appointed by the chairperson of the committee;
- (7) One member each from the majority and minority parties of the Senate and the House of Delegates of the West Virginia Legislature to be selected by the President of the Senate and the Speaker of the House of Delegates, respectively;
- (8) The director of West Virginia Legislative Services;
- (9) The chairperson of the West Virginia commission on uniform state laws;
- (10) The president and first vice president of the West Virginia State Bar;
- (11) The chairperson of the young lawyers section of the West Virginia State Bar;
- (12) The dean of the West Virginia University college of law;
- (13) Two attorneys appointed by the Governor of the State of West Virginia for terms to run concurrently with the term of the Governor;
- (14) The director of the continuing legal education program sponsored by the West Virginia State Bar and the West Virginia University college of law; and
- (15) The editor-in-chief of the West Virginia law review.

(c) The elected membership shall consist of two faculty members who shall be elected from the members of the faculty of the West Virginia University college of law and four practicing attorneys from each of the congressional districts in the state who shall be selected by the board of Governors of the West Virginia State Bar.

(d) All ex officio members of the council shall hold their positions during their respective terms of office. The term of office of the elected members of the council shall be four years. The terms of office of the first elected practicing attorney members shall be appointed by the board of Governors of the West Virginia State Bar such that four shall be appointed for two years, four for three years and four for four years. Thereafter, appointments shall be for four years. Elected members of the council shall be eligible for reelection.

(e) Vacancies in the elected membership created by death, resignation or otherwise than by the expiration of the terms of office shall be filled by the council under such rules as it may adopt.

§4-12-4. Compensation of members of the council of the West Virginia law institute, director and assistants.

The members of the council of the West Virginia law institute shall serve without any compensation for services as such. The council may employ and fix and pay reasonable compensation to the director of the institute and the director's assistants, and may pay honoraria to members of the council who perform professional services for the institute, as authorized by the council. The compensation provided for in this section shall come from private funding and no state funds are to be provided for this institute.

§4-12-5. Adoption of membership plan.

The council of the West Virginia law institute shall adopt a plan or plans of membership in the West Virginia law institute so designated as to encourage and invite the cooperation of all members of the legal profession in the work of the institute.

WV Legislature

§4-12-6. Institute to act in advisory capacity only; distribution of reports, studies, and recommended publications.

The West Virginia law institute, in submitting reports to the Legislature, shall act solely in an advisory capacity. Its reports, studies and recommended publications shall be printed and shall be distributed by the institute in a manner as directed by the council.

WV Legislature

**§4-13-1. Findings; West Virginia Sesquicentennial of the American Civil War
Commission established; purpose.**

[Repealed.]

WV Legislature

§4-13-2. Membership; terms; filling vacancies; election of chair and vice chair.

[Repealed.]

WV Legislature

§4-13-3. Expense reimbursement.

[Repealed.]

WV Legislature

§4-13-4. Quorum; meetings.

[Repealed.]

WV Legislature

§4-13-5. Advisory council.

[Repealed.]

WV Legislature

§4-13-6. Powers; duties; limitation on duration of contracts.

[Repealed.]

WV Legislature

§4-13-7. Termination of the commission.

[Repealed.]

WV Legislature

§4-13A-1. Findings; West Virginia Semiquincentennial Commission established; purpose.

(a) The Legislature finds that the 250th anniversary of our nation's founding is of such historical significance as to warrant its commemoration.

(b) There is hereby created the West Virginia Semiquincentennial Commission.

(c) The purpose of the commission is to prepare for and commemorate the semiquincentennial of our nation's founding.

§4-13A-2. Membership; terms; filling vacancies; election of chair and vice chair.

(a) The Governor shall appoint 10 members as follows:

(1) Three academic historians;

(2) Five citizens members, no more than one of whom may be from any one state senatorial district;

(3) A member of the National Society of the Sons of the American Revolution;

(4) A member of the National Society of the Daughters of the American Revolution;

(b) The following shall serve as ex-officio voting members;

(1) The State Superintendent of Schools, or a designee;

(2) The Cabinet Secretary of Commerce, or a designee;

(3) The Cabinet Secretary of Economic Development, or a designee;

(4) The Curator of the Department of Arts, Culture, and History, or a designee;

(5) The Secretary of the Department of Tourism, or a designee;

(6) The Executive Director of the Herbert Henderson Minority Affairs Office, or a designee;

(7) The West Virginia State Archivist;

(8) The Director of the West Virginia State Museums;

(9) One member of the House of Delegates, to be appointed by the Speaker of the House of Delegates, who shall serve as an ex officio nonvoting member of the commission; and

(10) One member of the State Senate, to be appointed by the President of the Senate, who shall serve as an ex officio nonvoting member of the commission;

(11) Members of the United States Senate from the State of West Virginia, or their designees shall serve as ex officio nonvoting members of the commission;

(12) Members of the United States House of Representatives from the State of West Virginia, or their designees shall serve as ex officio nonvoting members of the commission;

(c) All appointed members shall serve at the will and pleasure of the Governor;

(d) Appointments to fill vacancies shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

(e) The curator of the West Virginia Department of Arts, Culture and History shall serve as the chair of the commission. The commission shall elect a vice chair and secretary from among its members.

WV Legislature

§4-13A-3. Expense reimbursement.

(a) Members shall serve without compensation.

(b) The commission may reimburse members for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a commission member, in a manner consistent with the guidelines of the travel management office of the Department of Administration, subject to availability of funds received pursuant to §4-13A-6(a)(1). No provision of this section may be construed to require any appropriation of funds by the Legislature.

§4-13A-4. Quorum; meetings.

(a) A simple majority of the members serving on the board at a given time constitutes a quorum for the transaction of business.

(b) Meetings shall be held in accordance with the provisions of §6-9A-1 *et seq.*, of this code.

WV Legislature

§4-13A-5. Advisory council.

The commission may establish an advisory council composed of citizens at large who have knowledge of American history and interest in its semiquincentennial celebration to assist the commission in its work.

WV Legislature

§4-13A-6. Powers; duties; limitation on duration of contracts.

The commission may:

- (1) Solicit, accept, use, and dispose of gifts, grants, donations, bequests, or other funds or real or personal property for the purpose of aiding or facilitating the work of the commission, upon compliance with the provisions of §12-2-2 of this code;
- (2) Procure supplies, services, and property and make or enter into contracts, leases, or other legal agreement as necessary to carry out its duties: *Provided*, That no contract, lease or other legal agreement may be entered into by the commission with terms which would extend beyond the termination date of the commission;
- (3) Plan, develop and carry out programs and activities appropriate to commemorate the semiquincentennial of the founding of our nation;
- (4) Encourage civic, historical, educational, economic, and other organizations throughout West Virginia to organize and participate in activities to expand the understanding and appreciation of the United States of America;
- (5) Provide technical assistance to localities and nonprofit organizations to further the commemoration of the semiquincentennial of the founding of our nation;
- (6) Develop programs and facilities to ensure that the semiquincentennial commemoration of the founding of our nation results in a positive legacy and long-term public benefit; and
- (7) Encourage the development and conduct of programs designed to involve all citizens in activities that commemorate the semiquincentennial of the founding of our nation.

§4-13A-7. Termination of the commission.

The commission shall terminate on June 30, 2027.

WV Legislature

§4-14-1. Findings, purpose and intent.

(a) The Legislature finds that:

(1) Investment in infrastructure is crucial to the well-being of West Virginians and West Virginia businesses;

(2) The state must spend funds wisely on infrastructure in order to get the best return on investment and must make long-term plans for investment;

(3) The federal government is an unpredictable and unreliable partner in providing consistent funding for infrastructure investment;

(4) The Legislature directed a Division of Highways performance and efficiency audit in 2015; and

(5) In order to maintain proper oversight to ensure that sufficient transportation planning is made, funds are spent wisely and efficiently, and the Department of Transportation is functioning appropriately, it shall report to the Legislative Oversight Commission on Department of Transportation Accountability.

(b) It is the intent of the Legislature that all actions taken pursuant to the provisions of this article by the Legislature and the Department of Transportation serve the following core set of principles:

(1) That all Department of Transportation infrastructure investments be coordinated to maximize efficiencies and minimize cost thereby addressing the needs of the citizens more effectively;

(2) That communication be facilitated among the various agencies within the Department of Transportation and between the department and the Legislature;

(3) That policy changes, not made by legislative rule, be discussed with the commission for purposes of coordinating those policies with stated goals;

(4) That programs or policies implemented in accordance with federal mandates be communicated to the commission;

(5) That in developing and implementing programs with private or federal grant moneys, the various agencies communicate their efforts to the commission to ensure and facilitate future state funding; and

(6) That any Department of Transportation agencies exempted from rule-making review by federal or state statutes advise the commission of program changes which may affect infrastructure investment in West Virginia.

§4-14-2. Definitions.

As used in this article:

- (1) "Agency" means each agency, authority, board, committee, commission or division of the Department of Transportation;
- (2) "Commission" means the Legislative Oversight Commission on Transportation Accountability; and
- (3) "Department" means the Department of Transportation.

§4-14-3. Creation of a Legislative Oversight Commission on Department of Transportation Accountability.

(a) There is hereby created a joint commission of the Legislature known as the Legislative Oversight Commission on Department of Transportation Accountability. The commission shall be composed of an equal number of senators and delegates, as appointed by the President of the Senate and the Speaker of the House of Delegates.

(b) Members of the commission shall receive such compensation and expenses as provided in article two-a, chapter four of this code, subject to the approval by the Joint Committee on Government and Finance.

§4-14-4. Powers and duties of commission.

(a) The powers, duties and responsibilities of the commission include the following:

(1) Make a continuing investigation, study and review of the practices, policies and procedures of the department;

(2) Make a continuing investigation, study and review of all matters related to transportation policy in the state;

(3) Review long-term plans by the various agencies of the Department of Transportation and how they impact the citizens of West Virginia;

(4) Conduct studies on:

(A) The amount of state, federal and other funds expended in infrastructure investment in the state and the plan for future funds;

(B) The costs associated with failure to invest in the infrastructure of this state to citizens and businesses;

(C) The extent to which the state is maximizing available federal programs and other moneys in providing transportation investment to the citizens of this state;

(D) The operation of the Department of Transportation as a whole or its individual agencies; and

(E) The roles of the public, private and private nonprofit sectors in collaborating for improved infrastructure investment;

(5) Review and study the funding mechanisms for the State Road Fund and review any plans to adjust funding to ensure the necessary investment is made;

(6) Review and study the feasibility and financial impact upon the state of the long-term transportation plans in place in the department and its agencies; and

(7) Review and study the feasibility and financial impact upon the state of the establishment of alternative long-term transportation plans and alternative funding sources.

(b) The commission shall make annual reports to the Legislature regarding the results of all investigations, studies and reviews pursuant to the provisions of section five of this article.

(c) Limited subpoena power: —

(1) For purposes of carrying out its duties, the commission is hereby empowered and authorized to examine witnesses and to subpoena such persons and books, records, documents, papers or any other tangible things as it believes should be examined to make a

complete investigation.

(2) All witnesses appearing before the commission under subpoena shall testify under oath or affirmation. Any member of the commission may administer oaths or affirmations to such witnesses.

(3) To compel the attendance of witnesses at such hearings or the production of any books, records, documents, papers or any other tangible thing, the commission is hereby empowered and authorized to issue subpoenas, signed by one of the co-chairs, in accordance with section five, article one, chapter four of this code. Such subpoenas shall be served by any person authorized by law to serve and execute legal process and service shall be made without charge. Witnesses subpoenaed to attend hearings shall be allowed the same mileage and per diem as is allowed witnesses before any petit jury in this state.

(4) If any person subpoenaed to appear at any hearing refuses to appear or to answer inquiries there propounded, or fails or refuses to produce books, records, documents, papers or any other tangible thing within his or her control when the same are demanded, the commission shall report the facts to the circuit court of Kanawha County or any other court of competent jurisdiction and such court may compel obedience to the subpoena as though such subpoena had been issued by such court in the first instance.

§4-14-5. Legislative reports.

(a) The department shall report to the commission annually on or before December 31 of each year and provide detailed reports as directed by the commission. The commission shall describe to the department, in writing, the criteria to be addressed in each report. Reports required by this subsection may be provided in a format as directed by the commission.

(b) The commission shall submit annual reports to the Legislature, as required by the provisions of section four of this article, which such reports shall describe and evaluate in a concise manner:

(1) The major activities of the Department of Transportation and its agencies for the fiscal year immediately past, including important policy decisions reached on initiatives undertaken during that year, especially as such activities, decisions and initiatives relate to infrastructure investment, long-term planning for infrastructure investment, use of federal funds and any public-private partnerships for infrastructure investment.

(2) Other information considered by the commission to be important, including recommendations for statutory, fiscal or policy reforms and reasons for such recommendations.

(c) The reports may specify in what manner any practice, policy or procedure may or should be modified to satisfy the goal of efficient and effective delivery of infrastructure investment and to improve the quality of roads, bridges and other transportation infrastructure in the state.

§4-15-1. Establishing a Joint Legislative Committee on Flooding.

[Repealed.]

WV Legislature