# WEST VIRGINIA CODE CHAPTER 6

WV Legislature

## §6-1-1. Members of Congress.

Every person elected or appointed a member of the United States Senate or of the House of Representatives in the Congress of the United States shall take the oath of office prescribed by, and at the time and in the manner provided by, the laws of the United States of America, effective at the time of the election of such person.

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## §6-1-2. Members of State Legislature.

Every person elected or appointed a member of the Senate, or a member of the House of Delegates, in the Legislature of this state, shall, before entering upon the discharge of his duties, take and subscribe the oath or affirmation prescribed by, and in the manner specified in, section 16 of article VI of the Constitution of the State.

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## §6-1-3. Other officers.

Except as provided in sections one and two of this article, every person elected or appointed to any office in this state, before proceeding to exercise the authority or discharge the duties of such office, shall take the oath or affirmation prescribed in section 5 of article IV of the Constitution of this state; but this section shall not be construed to require any executor, administrator, trustee, guardian, curator, committee, special commissioner, election officer, registration officer, or person authorized to celebrate the rites of matrimony, to take any oath other than that otherwise required of by law.

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## §6-1-4. Before whom taken.

Any oath of office may be taken in this state before any court of record or before any person having at the time authority to administer oaths. Any person residing out of this state, who shall be appointed to any office, agency or service to be performed out of this state, may take the oath required of before any person authorized to administer oaths in the jurisdiction in which such person resides, or in which the duties of the office, agency or service are to be performed.

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## §6-1-5. When taken.

The oaths required by section three of this article shall be taken after the person shall have been elected or appointed to the office, and before the date of the beginning of the term, if a regular term; but if to fill a vacancy, within ten days from the date of the election or appointment, and in any event before entering into or discharging any of the duties of the office.

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## §6-1-6. Where certificates of oaths filed and recorded; destruction of originals.

Certificates of the oaths of all magisterial district and county officers, and judges of courts of limited jurisdiction within any county, shall be filed, recorded and preserved in the office of the clerk of the county court of the county. Certificates of the oaths of members of boards of education and school officers of any district or independent school district shall be filed, recorded and preserved in the office of the secretary of such board, and certified copies thereof filed and recorded in the office of the clerk of the county court of the county of such district. Certificates of the oaths of all municipal officers shall be filed, recorded and preserved in the office of the clerk or recorder of such municipality, or other officer created or acting in lieu of such clerk or recorder, and certified copies thereof filed and recorded in the office of the clerk of the county court of the county in which such municipality is situated. Certificates of the official oaths of the members of the state Senate and House of Delegates shall be filed and recorded as provided in section 16 of article VI of the Constitution of this state. Certificates of the oaths of all other officers shall be filed and preserved in the office of the Secretary of State.

At any time after the expiration of the term of office for which the oath was taken, the original certificate or certified copy thereof, but not the record, may be destroyed, unless further preservation thereof shall be required by the order of some court, in which event the same may be destroyed when the preservation thereof is no longer required. It shall be the duty of every person who takes an oath of office to procure and file in the proper office the certified copies of his certificate of oath as provided in this section.

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## §6-1-7. Acting before taking oath.

No person elected or appointed to any office, civil or military, shall enter into the office, exercise any of the authority or discharge any of the duties pertaining thereto, or receive any compensation therefor, before taking the oath of office: Provided, That this section shall not apply to members of the Legislature of this state.

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## §6-1-8. List of county officers to be furnished Secretary of State.

The clerk of the county court of each county, within thirty days after the qualification of officers chosen at each general election in his county, shall transmit to the Secretary of State a certified list of all county officers, showing the name of the officer and the title of the office.

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## §6-2-1. When official bonds to be given.

Any person appointed or elected to any office or position in this state who is required by any statute to enter into or give bond, unless otherwise provided, shall give official bond within sixty days after has been appointed or duly declared elected; but if at the time of his appointment or election shall be absent from the state, circuit, county or district for which is appointed or chosen, shall give such bond within sixty days after notice of his appointment or election. If no term of the court or other tribunal authorized to take and approve such bond shall be held within sixty days after the appointment or declaration of the election of an officer required by law to give bond and qualify before such court or tribunal, or after the person, if absent from the state, county or district, is notified of his appointment or election, shall give bond at the first term of such court or other tribunal next thereafter held: Provided, That the state executive officers shall qualify on or before the first Monday after the second Wednesday of January next after their election: Provided further, That any person appointed or elected to fill a vacancy in any office shall give such bond within ten days after notice of such appointment or election, if the court or other tribunal authorized to take and approve such bond shall sit within said period; otherwise, at the first sitting of such court or other tribunal after notice of such appointment or election. No person shall enter into or discharge any of the duties of his office until shall have given the bond required of by law.

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## §6-2-2. How bonds made payable and proved; sureties.

Every official bond, and every bond required by law to be taken or approved by, or given before, any court, board or officer, shall, unless otherwise provided, be made payable to the State of West Virginia, and shall be signed by one or more sureties deemed sufficient by such court, board or officer, and be proved or acknowledged before, or approved by, such court, board or officer.

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## §6-2-3. Condition; liability.

Unless otherwise specially provided, every bond required by any statute of this state of any person undertaking an office or employment shall be conditioned upon the faithful discharge by the principal of the duties of his office or employment, and upon accounting for and paying over, as required by law, all moneys which may come into his possession by virtue of the office or employment. The liability of the principal and his sureties upon such bond shall extend to all moneys received by the principal by virtue of his office or employment under the laws in effect at the time of the execution of the bond, and to all money which shall come into his possession by virtue of his office or employment under the provisions of any law enacted during his continuance in such office or employment.

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## §6-2-4. Failure to give bond; penalty for acting without giving bond.

If any person elected or appointed to any office, or position, of whom an official bond is required, shall fail to give the bond within the time prescribed by law, the office or position shall be deemed vacant; and any person who shall enter into or discharge any of the duties pertaining to such office or position, before shall have given the bond required by law, shall forfeit not less than $50 nor more than $1,000.

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## §6-2-5. Bonds of officers appointed to fill vacancies.

The bond of any officer appointed to fill a vacancy until the ensuing general election, or for the unexpired term, shall be in the same penalty and contain like conditions as the bond required by law of an officer for the regular or full term, and shall be given before and approved by the same person, court or body authorized to take and approve the bond of a person elected or appointed to such office for the full term.

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## §6-2-6. Bonds of certain state officers.

The following officers shall give bonds to be approved by the Governor, in the penalties hereinafter named: Secretary of state, $25,000; Auditor, $50,000; treasurer, $500,000; state superintendent of free schools, $3,000; and commissioner of agriculture, $5,000.

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## §6-2-7. Approval of form and execution by Attorney General.

Every bond requiring the approval of the Governor, the board of public works, the state commissioner of public institutions, or any other state officer, board or commission, shall be first submitted to the Attorney General, and if be of opinion that the bond is in proper form and regularly executed, shall indorse thereon approval of its sufficiency in form and manner of execution.

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## §6-2-8. Bond of clerk of Supreme Court of Appeals.

The clerk of the Supreme Court of Appeals shall give bond, to be approved by said court, in a penalty of not less than $3,000 nor more than $10,000, as the court shall prescribe.

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## §6-2-9. Where bonds of clerk and state officers filed and recorded.

The bond of the clerk of the Supreme Court of Appeals, and the bond of any state officer or employee that is required to be approved by the Governor, the board of public works, the state commissioner of public institutions, or any other state officer, board or commission, except the bond of the Secretary of State, shall be filed and recorded in the office of the Secretary of State, and the bond of the Secretary of State shall be filed and recorded in the office of the Auditor and a certified copy thereof in the office of the Secretary of State.

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## §6-2-10. Bonds of county officers; required for deputy sheriffs.

Every commissioner of a county commission and every clerk of a circuit court shall give bond with good security, to be approved by the circuit court, or the judge thereof in vacation; and every sheriff, deputy sheriff, surveyor of lands, clerk of a county commission, assessor, county superintendent of schools, notary public and magistrate shall give bond with good security, to be approved, unless otherwise provided by law, by the county commission of the county in which such officer is to act. The penalty of the bond of each commissioner of a county commission shall be not less than $20,000 and not more than $200,000, the amount to be fixed by the circuit court of the county, or the judge thereof in vacation, by order entered of record on the proper order books of both the county and circuit courts; of the clerk of the circuit court, not less than $10,000 nor more than $50,000; of the sheriff, not less than $100,000 nor more than the aggregate amount of all state, county, district, school, municipal and other moneys which will probably come into his hands during any one year of his term of office; of the deputy sheriff, not less than $35,000 nor more than $100,000; of the surveyor of lands, not less than $1,000 nor more than $3,000; of the clerk of the county commission, not less than $10,000 nor more than $50,000; of the assessor, not less than $2,000 nor more than $5,000; of the county superintendent of schools, not less than $10,000 nor more than $50,000; of a notary public, not less than $250 nor more than $1,000. Any public body required to pay the premiums on official bonds may provide a blanket bond policy for two or more such official bonds: Provided, That the bond herein required to be given by a notary public may be given before the clerk of the county commission, in the vacation of said commission, and approved by it at its next regular session.

For the purposes of this section, "deputy sheriff" shall mean a person appointed by a sheriff as his deputy whose primary duty as such deputy is within the scope of active, general law enforcement and as such is authorized to carry deadly weapons, patrol the highways, perform police functions, make arrests or safeguard prisoners.

The bond described in this section is not required for deputy sheriffs if a county purchases professional liability insurance pursuant to the provisions of section three, article fourteen-a, chapter seven of this code.

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## §6-2-10a. Additional bonds of county clerks.

The official bond provided for in section ten of this article, relating to county clerks, shall be deemed to apply only to collection of local fees. The State Auditor, on behalf of the general school fund, and the state conservation commissioner, on behalf of the state conservation commission, shall require from the county clerk of any county such additional bonds as are deemed necessary, and in such amounts as are deemed adequate to protect the general school funds and the state conservation funds in the hands of such clerk. The Auditor and the state conservation commissioner shall require corporate surety bonds and pay the necessary premiums from the said general school funds and the said state conservation fund on said additional bonds, but the amount of such additional bonds shall not exceed the amount of the state funds handled by such clerk during the preceding fiscal year.

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## §6-2-11. Bonds of municipal officers.

Every officer or employee of a municipality who handles public funds or property, and every other officer or employee of a municipality of whom it shall be required, shall, unless otherwise provided by law, give bond, with good security, to be approved by the council or other similar body of such municipality, and in such penalty as such council or other similar body shall prescribe, conditioned upon the faithful discharge of the duties of his office or employment and the faithful accounting for and paying over, as required by law, of any funds or property coming into his possession.

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## §6-2-12. Where certain bonds filed and recorded.

Every official bond given before, or approved by, the county court or the clerk thereof, and every bond executed in any proceeding before said court, including fiduciary bonds, and the bond of the clerk of the circuit court, shall be filed in the office of the clerk of the county court, and be recorded in a book kept by for the purpose, and labeled "Record of Bonds." Every official bond given before, or approved by, the council or other similar body of any municipality, and every official bond given before, or approved by, any Board of Education of any magisterial district or independent district, shall be filed and preserved in the office of the recorder or clerk of such municipality, or in the office of the clerk or secretary of such Board of Education, as the case may be, and be recorded in the records of such council or other similar body of the municipality, or of such Board of Education, respectively, and a certified copy of every such bond shall, by such recorder, clerk or secretary, be forthwith made and filed in the office of the clerk of the county court of the county of such municipality or Board of Education, and said last-mentioned clerk shall record such copy in the book to be kept by as aforesaid. Every bond given before, or approved by, the circuit court, or the judge thereof in vacation, or the clerk of such court, and every bond filed in any civil suit or proceeding in any circuit court, and the bond of the clerk of the county court, shall be filed in the office of the clerk of the circuit court, and be recorded in a book kept by for the purpose, and labeled "Record of Bonds." Any bond required of the clerk of any criminal, intermediate or other inferior court, shall be filed in the office of the clerk of the county court, and be recorded as other bonds in said office, and every bond taken in any proceeding in such criminal, intermediate or inferior court, shall be filed and recorded in the office of the clerk of such criminal, intermediate or inferior court: Provided, however, That where the bond of the clerk of any court is herein required to be filed and recorded in the office of the clerk of some other court, the clerk of the court in whose office such bond is filed shall make and deliver to the clerk filing the same a certified copy of the bond so filed, which certified copy shall be filed and recorded in the office of the clerk giving such bond

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## §6-2-13. Copies to be sent to the State Tax Commissioner; penalty for failure to send.

A copy of the official bond of every sheriff, assessor, clerk of the circuit court, clerk of the county court or other tribunal established in lieu thereof, clerk of the Supreme Court of Appeals, and notary public, shall be sent to the State Tax Commissioner by the officer in whose office the original is filed, within two months after the same is filed in office. If the officer whose duty it is so to send any such copy fail to do so within the time specified, shall forfeit $50.

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## §6-2-14. Requiring new or additional bonds; effect of failure to give.

Any court, board, or officer authorized to approve any official bond may at any time require from any officer by whom any such bond may have been given, a new bond, or an additional bond to that already given, to be approved by such court, board or officer. If the officer so required to give a new bond, or to give such additional bond, shall, after being notified of the requirement, fail to comply therewith within the time prescribed, his office shall be deemed vacant, unless the time for giving such new or additional bond be extended or the requirement withdrawn.

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## §6-2-15. How surety released from liability; requiring substitute bond.

When a surety in an official bond, or personal representative, shall have reason to believe that or the estate of decedent is likely to suffer pecuniary loss, in consequence of such suretyship, may file petition before the court, board or officer by whom such bond was approved, to be released therefrom. The petition shall state the ground upon which belief is founded, and shall be verified by affidavit. Upon the filing of such petition and proof that a notice of the time and place of filing the same has been served upon the principal in such bond at least ten days before the filing thereof, in the manner prescribed by law for the serving of notices, such court, board or officer shall require a new bond to be given. And if any officer, being so required, fail to give a new bond within the time required, office shall be deemed vacant, unless the time for giving such new bond be extended or the requirement withdrawn. And, except where otherwise provided, the surety in any bond, which is required to be approved by any court, board or officer, or the personal representative of any such surety, may be released from liability in like manner.

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## §6-2-16. Effect of new or additional bond.

Where it is provided by any section of this article, or any other section of this code, or shall be provided by any subsequent statute, that any new bond, or bonds in addition to one already given, may be required to be given by any officer, fiduciary, or any other person, if such new bond, when required, be given and accepted, the sureties in the former bond and their estates shall, except in cases where it is otherwise expressly provided, be discharged from all liability for any breach of duty committed by their principal after such new bond is given and accepted. If such additional bond, when required, be given and accepted, the former bond shall continue in force and have the same effect in all respects as if such additional bond had not been required, given, and accepted; except that in such case the sureties in the additional bond shall be jointly liable with the sureties in the former bond for any breach of duty committed by their principal after such additional bond was so given and accepted.

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## §6-2-17. Suits on bonds payable to state brought in name of state.

Upon any bond payable to the State of West Virginia, whether heretofore or hereafter taken, suits may be prosecuted from time to time in the name of the state, for the benefit of the state, or of any county, district, corporation or person injured by a breach of the condition of any such bond, until damages are recovered in the aggregate equal to the penalty thereof.

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## §6-2-18. Proceedings must show for whose benefit prosecuted; costs.

The proceedings in such suit must show for whose benefit it is prosecuted; and the party for whose benefit it is prosecuted shall be liable for costs if the judgment be for the defendant; and the court may, in its discretion, require security for costs from such party, according to the principles and usages of law.

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## §6-2-19. When bonds may be required of other officers and employees.

Any board, commission or officer who has authority by law to appoint to office, or to employ any person in behalf of the state, or to place any person in charge of any property belonging to the state, or to authorize such person to receive into his custody moneys, securities or property belonging to the state, and of whom a bond is not otherwise required by law, may require of such person a bond in such penalty as such board, commission or officer may prescribe, and conditioned and payable as official bonds.

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## §6-2-19a. Oaths and bonds of employees and deputies of Tax Commissioner's office.

The Tax Commissioner shall require every employee and deputy who collects fees or handles funds, or who has custody of equipment, supplies, and other property belonging to the state, to take the oath prescribed by section 5, article IV of the state Constitution; and shall require every employee and deputy to furnish, or shall himself obtain, a bond, insurance policy, indemnity contract, or other contract, protecting and indemnifying the state against any and all loss or damage that may be occasioned by the failure of the employee or deputy faithfully to perform the duties pertaining to his employment, and to account for, pay over and deliver to the proper officer or agent of the Tax Commissioner or state, all moneys and other property which may come into his custody or under his control by virtue of his employment. Such bond, insurance policy, indemnity contract, or other contract, shall be in such form, and in such sum, and with such security, as may be prescribed or approved by the Tax Commissioner, and may cover any one employee or deputy or any number of employees or deputies. The premiums for all such bonds, insurance policies, indemnity contracts, or other contracts, shall be paid by the Tax Commissioner.

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## §6-2-20. Premiums to be allowed on official bonds.

Every officer or employee who is paid a salary, and who is required to give an official bond by virtue of the provisions of this article, and who furnishes a surety company bond, shall be reimbursed by the state, county, municipality or Board of Education, as the case may be, for the actual premium paid to the surety company for such bond, in an amount not exceeding $7.50 per thousand per annum.

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## §6-2-21. Bonds taken for persons in custody.

No officer, by color of office, shall take any obligation, otherwise than is directed by law, of or for any person in custody. If does the same shall be void.

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## §6-3-1. Appointment of deputies and local conservators of the peace; powers and duties; compensation; vacating appointment of deputy sheriff; removal of conservators.

(a) (1) The clerk of the Supreme Court of Appeals, or of any circuit, criminal, common pleas, intermediate or county court, or of any tribunal established by law in lieu thereof, may, with the consent of the court, or such tribunal, duly entered of record, appoint any person or persons his deputy or deputies.

(2) A sheriff, surveyor of lands, or assessor may, with the consent of the county court duly entered of record, appoint any person or persons his deputy or deputies.

(3) A sheriff, when in the opinion of the judge of the circuit court the public interest requires it, may, with the assent of said court, duly entered of record, appoint any person or persons his deputy or deputies to perform any temporary service or duty.

(4) Each deputy so appointed shall take the same oath of office required of his principal, and may, during his continuance in office, perform and discharge any of the official duties of his principal, and any default or misfeasance in office of the deputy shall constitute a breach of the conditions of the official bond of his principal.

(5) A sheriff in any county in which there are more than four deputies shall devote his full time to the performance of the services or duties required by law of such sheriff, and he shall not receive any compensation or reimbursement, directly or indirectly, from any person, firm or corporation for the performance of any private or public services or duties: Provided, That any such sheriff may retain or make any investment and receive income therefrom, unless such investment is otherwise prohibited by law or will impair his independence of judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of, the services or duties of his office. A sheriff in any county in which there are four or fewer deputies, or a deputy sheriff in any county irrespective of the number of deputies, need not devote his full time to the services or duties of his office as sheriff or his employment as deputy sheriff, as the case may be; but any such sheriff or deputy sheriff shall not engage in any business or transaction, accept other employment or make any investment which is otherwise prohibited by law or which will impair his independence of judgment in the exercise of, or might reasonably tend to conflict with the proper discharge of, the services or duties of his office as sheriff or his employment as deputy sheriff, as the case may be. A sheriff and his deputies in any county, irrespective of the number of deputies, shall receive for the performance of their public services and duties no compensation or remuneration except such as may be regularly provided and paid out of public funds to the amount and in the manner provided by law. No sheriff or deputy sheriff in any county, irrespective of the number of deputies, may receive, directly or indirectly, any gift or donation from any person, firm or corporation.

(6) Except as hereinafter expressly provided by subsection (b) of this section no sheriff shall appoint or continue the appointment of any deputy contrary to the provisions hereof. Any

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sheriff or deputy sheriff who shall violate any of the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $500 nor more than $5,000, or confined in jail not to exceed one year, or both, in the discretion of the court.

(7) Circuit courts shall have jurisdiction in equity and mandamus, and the Supreme Court of Appeals shall have jurisdiction in mandamus, upon the filing of a petition by the prosecuting attorney, the Attorney General, or any three or more citizens of the county, to require any sheriff and the county court to vacate the appointment of any deputy, the appointment of which is made or continued in violation of the provisions hereof. Any such proceeding may be instituted and prosecuted by the Attorney General either in the circuit court of Kanawha county or in the county for which such appointment was made.

(b) (1) Any resident or group of residents of any unincorporated community, as hereinafter defined, may petition the sheriff for the appointment of a local conservator of the peace and such sheriff, when in his opinion the public interests require it, may with the assent of said county court and the judge of the circuit court duly entered of record, either in term or vacation of any such court, appoint any person or persons a local conservator or conservators of the peace to perform the duties of a conservator of the peace outside of any incorporated city, town or village. No person shall be appointed such local conservator of the peace who has not been a bona fide resident and taxpayer of the county for at least one year prior to his appointment. Such local conservator of the peace during his continuance in office, may perform and discharge any of the official duties of the sheriff, subject nevertheless to the provisions of this section. No local conservator so appointed shall be subject to the direction or control of any person other than his principal and he shall not perform any services or duties, either private or public, except the duties required by law of conservators of the peace pursuant to the provisions hereof, for any person, firm, or corporation. No such local conservator shall be entitled to collect or receive any fees provided by law to be paid to the sheriff or to a deputy sheriff, but all fees provided by law for the sheriff, when such duties and services are rendered by such local conservator, shall be paid to the sheriff as regular collections of the sheriff's office. The local conservator shall be paid for the public services performed by him a salary of not less than $75 per month out of the county treasury from a fund to be paid into such treasury by a resident or the residents of the community for which he is appointed, for the sole purpose of compensating such local conservator or conservators and no such local conservator shall receive any other compensation, directly or indirectly, from any person, firm, or corporation, for any private or public service, except the salary payable to him for his public services and duties and from such fund, except that he shall be entitled to witness and mileage fees when a witness in a court of record. Each local conservator so appointed shall take the same oath of office required of his principal and any default or misfeasance in the office of such local conservator shall constitute a breach of the conditions of the official bond of his principal.

(2) When the sheriff shall have been petitioned for the appointment of a local conservator and has determined that the appointment is proper, he shall select the person whom he proposes to have appointed such conservator and shall notify the county court of the community for which such conservator is to be appointed and the name of the person



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proposed for such appointment. The county court shall thereupon cause notice that the sheriff has recommended the appointment of the person named as conservator for the community named to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The notice shall designate a day not less than five days after the date of the last publication when the county court will act upon the petition and recommendation. Neither the county court nor the judge of the circuit court shall assent and approve the appointment of such local conservator until such publication has been made. The costs of the publication shall be paid by the person or persons petitioning for the appointment of the conservator.

No local conservator shall be appointed except it be made to appear to the satisfaction of the county court and the judge of the circuit court that because of the lack of sufficient funds, geographical location of the unincorporated community for which such conservator is to be appointed, or other good reason, the sheriff and his regular deputies and the constables of the county are not sufficient to afford proper local policing of such community and that the person or persons moving for the appointment of such local conservator have made satisfactory arrangements to compensate him for his services as such local conservator of the peace.

(3) Such local conservator of the peace shall have all the powers and duties of a regularly appointed deputy sheriff except that he shall not execute any civil process except such process as may be necessary to bring parties before the court in any action at law or suit in equity and subpoenas for witnesses within the unincorporated community for which he is appointed and within a distance of one mile outside the boundaries thereof, except as hereinafter expressly provided, but shall not participate in any strike, unemployment boycott, or other industrial or labor dispute, nor serve any court process of any character relating thereto. He shall act as such local conservator only in the unincorporated community for which he is appointed, and within a distance of one mile from the boundaries thereof as fixed by the county court: Provided, however, That the authority of one local conservator shall not extend into any other unincorporated community for which another local conservator is appointed and acting, except as otherwise expressly provided by subdivision (6) of this subsection, except that in fresh pursuit he may effect arrests anywhere in the county. He may also exercise the powers of a regularly appointed deputy anywhere in the county when required to guard or assist in guarding a payroll, or any other property of value in transit to or from the unincorporated community for which he is appointed. Any person arrested by such local conservator shall, with all convenient speed, be turned over to the sheriff, or one of his regular deputies, or to a regular constable of the county to be dealt with according to law, and his authority for that purpose shall be coextensive with the county.

(4) Any local conservator appointed to perform the duties of conservator of the peace shall be a public officer and the payment, or contribution to the payment of compensation of such local conservator shall not constitute the person, firm or corporation making such payment or contribution the employer of such local conservator and no person, firm or corporation



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paying, or contributing to the payment of compensation to such local conservator shall be answerable in law or in equity for any damages to person or property resulting from any official act of such local conservator.

(5) No person appointed such local conservator shall thereby be entitled to carry weapons, but such local conservator may carry weapons when he shall be duly licensed and shall have given bond as provided by section two, article seven, chapter sixty-one of the Code of West Virginia, 1931.

(6) Not more than one local conservator of the peace shall be appointed, to perform the duties of conservator of the peace, for each two thousand five hundred inhabitants of the county as ascertained by the last regular decennial census after deducting the number of inhabitants of the county residing in the incorporated cities, towns and villages in such county. Not more than one local conservator shall be appointed for any unincorporated community unless the population thereof exceed fifteen hundred people and in such case not more than two conservators shall be appointed for such community.

(7) The phrase "unincorporated community" within the meaning of this section shall mean any center of population wherein fifty or more persons reside within an area of not more than one square mile.

(8) The county court and the judge of the circuit court in approving the appointment of a local conservator shall enter of record an order making such appointment and shall show therein the necessity for the appointment, the person or persons on whose motion the appointment is made, the arrangement for the payment of compensation to such local conservator, the unincorporated community or communities, for which the appointment is made, including the general boundary of each unincorporated community for which he is appointed.

(9) No local conservator shall act as an election official or remain in, about or near any voting place or place of political convention, further than is necessary for him to promptly cast his vote and retire from the voting place.

(10) Any local conservator violating any of the provisions of subdivisions (3) and (9) of this subsection shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $50 nor more than $300, or be confined in the county jail not more than six months, or both, in the discretion of the court; and it shall be the duty of the sheriff and the county court to forthwith revoke his appointment irrespective of any criminal prosecution. A proceeding in mandamus or injunction shall lie in the circuit court and a proceeding in mandamus shall lie in the Supreme Court of Appeals at the instance of the prosecuting attorney, the Attorney General, or of any three or more citizens of the community for which such conservator is appointed, to require the performance of such duty by the sheriff and the county court.

(11) Such local conservator shall serve during the joint will and pleasure of the sheriff and

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the county court and his appointment may be revoked by order entered of record by the county court either with or without the assignment of cause therefor.

A local conservator may be removed by the judge of the circuit court, either in term or vacation, for drunkenness, gross immorality, incompetence, neglect of duty, or other good cause, upon the petition of three or more residents of the community for which he has been appointed. The petition shall set forth the cause or causes for which such removal is asked and shall show that demand for removal has been made of the sheriff and the county court and that the sheriff and the county court have failed to remove the local conservator. At least three copies of the petition shall be filed, and upon the filing of the petition the judge shall fix a time and place for a hearing thereon, which time shall not be less than ten days after the filing of the petition, and shall cause a copy thereof to be served upon the sheriff and such local conservator at least ten days before the hearing thereon.

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**§6-3-1a. Deputy sheriff's reserve; purpose; appointment and qualifications of members; duties; equipment; attire; training; oath; bond; not employee of sheriff or county commission for certain purposes; limitation on liability.**

(a) The sheriff of any county may, for the purposes set forth in this section, designate and appoint a deputy sheriff's reserve, hereinafter referred to as "reserve" or "reserves." A reserve may not be designated or created without the prior approval of the county commission for the establishment of the reserve.

(b) Each sheriff may appoint as members of the reserve bona fide citizens of the county who are of good moral character and who have not been convicted of a felony or other crime involving moral turpitude. Any person appointed shall serve at the will and pleasure of the sheriff and is not subject to the provisions of §7-14-1 et seq. seven of this code. A member of the reserve may not engage in any political activity or campaign involving the office of sheriff or from which activity or campaign the sheriff or candidates for sheriff appointing the member would directly benefit.

(c) Members of the reserves shall not serve as law-enforcement officers, nor carry firearms, except that a member of the reserves may carry a firearm approved by the sheriff while acting in the capacity as a reserve deputy sheriff solely for purpose of defense of self or others, if that member has:

(1) Obtained the written authorization of the sheriff;

(2) Been determined not to be prohibited from possessing a firearm under state or federal law; and

(3) Successfully completed a firearms training and certification program equivalent to that provided to officers attending the entry level law-enforcement certification course provided at the West Virginia State Police Academy. The member must thereafter successfully complete an annual firearms qualification course equivalent to that required of certified law-enforcement officers as established by legislative rule. The department may reimburse the member for the cost of the training and requalification.

Members may carry other weapons, provided that the sheriff certifies in writing to the county commission that the reserve has met the special training requirements for the weapon as established by the Governor's Committee on Crime, Delinquency and Corrections. The Governor's Committee on Crime, Delinquency and Corrections may propose legislative rules for promulgation and emergency rules pursuant to the provisions of §29A-3-1 et seq. of this code to establish appropriate training standards. The reserves may be provided with radio communication equipment for the purpose of maintaining contact with the sheriff's department or other law-enforcement agencies. The duties of the reserves shall be limited to crowd control or traffic control and direction within the county. In addition, the reserves may perform any other duties of a nonlaw-enforcement nature designated by the sheriff or

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by a deputy sheriff designated and appointed by the sheriff for that purpose: Provided, That a member of the reserves may not aid or assist any law-enforcement officer in enforcing the statutes and laws of this state in any labor trouble or dispute between employer and employee.

(d) Members of the reserves may be uniformed; however, if uniformed, the uniforms shall clearly differentiate these members from other law-enforcement deputy sheriffs.

(e) After appointment to the reserves, but prior to service each member of the reserves shall receive appropriate training and instruction in his or her functions and authority as well as the limitations of authority. In addition, each member of the reserves shall annually receive in-service training.

(f) Each member of the reserve shall take the same oath as prescribed by section five, article IV of the Constitution of the State of West Virginia, but the taking of the oath does not serve to make the member a public officer.

(g) The county commission of each county shall provide for the bonding and liability insurance of each member of the reserve.

(h) A member of the reserve is not an employee of either the sheriff or of the county commission for any purpose or purposes, including, but not limited to, the purposes of workers' compensation, civil service, unemployment compensation, public employees retirement, public employees insurance, or for any other purpose. A member of the reserves may not receive any compensation or pay for any services performed as a member, nor may a member use the designated uniform for any other similar work performed.

(i) Neither the county commission nor the sheriff is liable for any of the acts of any member of the reserves except in the case of gross negligence on the part of the county commission or sheriff in the appointment of the member or in the case of gross negligence on the part of either the sheriff or any of his or her deputies in directing any action on the part of the member.

WV Legislature

## §6-3-2. Removal of deputies.

Any deputy appointed pursuant to section one of this article, may, at any time, be removed from office by his principal, or by the court, or other tribunal in lieu thereof, by and with the consent of which he was appointed: Provided, however, That nothing herein contained, or elsewhere in the laws of this state provided, except the procedure for removal of officers set forth in section seven article six, chapter six of the Code of West Virginia, 1931, shall empower or be construed to authorize the removal, or revocation of appointment and confirmation of any deputy sheriff by any tribunal, officer or body whatsoever, except by the sheriff by whom he was appointed, unless good cause be shown for such removal, dismissal or revocation of appointment.

WV Legislature

## §6-3-3. On death of principal, deputy to act; liability of principal's bond; removal and appointment of deputy; new or additional bond.

If any officer, having appointed a deputy or deputies, shall die during his term of office, his deputy or deputies in office at the time of his death shall continue to discharge the duties of the office in the name of the deceased principal, until his successor shall have been elected or appointed, and shall have qualified.

Any default or misfeasance in office of any deputy while so acting shall constitute a breach of the condition of the official bond of the principal, notwithstanding the death of the principal; but the personal representative of the deceased principal shall have the same right to remove any deputy from office and to appoint another that was possessed by the principal while living.

The sureties on the bond of any deceased principal, or any of them, may require a new or additional bond to be given by the personal representative of such deceased principal, in the same manner and with like effect as if such new or additional bond had been required to be given by such principal in his lifetime; and all the provisions of this chapter in relation to such new or additional bond shall be applicable to proceedings under this section.

WV Legislature

## §6-3-4. Judgment on motion against officer or deputy and sureties.

If any officer or his deputy shall make such return upon any order, warrant, or process issued by a court, or the judge or clerk thereof, as entitles any person to recover money from such officer by action, the court to which, or to the clerk's office of which, such return is made, may, on a motion on behalf of such person, give judgment against such officer and his sureties, and against his and their personal representatives, for so much principal and interest as would, at the time such return ought to have been made, be recoverable by such action, with interest thereon at the rate of not less than six nor more than fifteen percent per annum (as the court may deem proper) from that time until payment. Where such return is by deputy, there may also be a like motion and judgment against such deputy and his sureties, and against his and their personal representatives.

WV Legislature

## §6-3-5. Judgment on motion by officer against deputy and sureties.

Where any deputy of a sheriff or collector shall commit any default or misconduct in office for which his principal, or the personal representative of such principal, is liable, for which a judgment or decree shall be rendered against either, such principal, or his personal representative, may, on motion, obtain a judgment against such deputy and his sureties, and their personal representatives, for the full amount for which such principal, or his personal representatives, may be so liable, or for which such judgment or decree may have been rendered. But no judgment shall be rendered by virtue of this section for money, for which any other judgment or decree has been previously rendered, against such deputy or his sureties or their personal representatives.

WV Legislature

## §6-3-6. Payment by officer or sureties of judgment for default of deputy; remedies.

When any judgment or decree shall be obtained against a sheriff or collector, or his sureties, or their personal representatives, for or on account of the default or misconduct of any such deputy, and shall be paid in whole or in part by any defendant therein, he or his personal representative may, on motion, obtain a judgment or decree against such deputy and his sureties, and their personal representatives for the amount so paid, with interest thereon from the time of such payment, and five percent damages on such amount.

WV Legislature

## §6-3-7. Jurisdiction of motion against deputy.

Any motion, under either of the two preceding sections, may be made in the circuit court of the county in which the default or misconduct of the deputy occurred or was committed.

WV Legislature

## §6-4-1. United States senators, representatives, and presidential electors.

The Governor shall, whenever requested, give a certificate under his hand and the great seal of the state, to each person elected a senator or member of the House of Representatives in the Congress of the United States, or an elector of president and vice-president of the United States, which certificates, respectively, shall be substantially in the following forms:

(SENATOR)

State of West Virginia, to-wit:

I, ....., Governor of said State, pursuant to the laws in such case made and provided, do hereby certify that ....., of the county of ....., was duly chosen a member of the Senate in the Congress of the United States for the State of West Virginia, on the ..... day of ....., ....., for the term commencing on March 4, next ensuing (or for the unexpired term ending on March 3, ....., as the case may be).

Given under my hand and the great seal of the State of West Virginia, on this the ..... day of ....., .....

(MEMBER OF HOUSE OF REPRESENTATIVES)

State of West Virginia, to-wit:

I, ....., Governor of the said State, pursuant to the laws in such case made and provided, do hereby certify that ....., of the county of ....., was duly chosen a member of the House of Representatives in the Congress of the United States on the ..... day of ....., ....., for the ..... congressional district of this state composed of the counties of ....., for the term commencing on March 4, next ensuing (or for the unexpired term ending on March 3, ....., as the case may be).

Given under my hand and the great seal of the State of West Virginia, on this the ..... day of ....., .....

(PRESIDENTIAL ELECTORS)

State of West Virginia, to-wit:

I, ....., Governor of said State pursuant to the laws in such case made and provided, do hereby certify that ....., of the county of ....., was duly appointed by this State at an election held therein on the ..... day of November, ....., an elector of president and vice-president of the United States.

Given under my hand and the great seal of the State of West Virginia, on this the ..... day of ....., .....

WV Legislature

## §6-4-2. United States senator appointed to fill vacancy.

When a vacancy shall occur in the representation of this state in the Senate of the United States, and the same shall be filled by the Governor by appointment under the provisions of chapter three, he shall, when requested, deliver to the person so appointed a certificate under his hand and the great seal of the state, which shall be substantially in the following form: State of West Virginia, to-wit:

Whereas, ....., who was duly chosen a senator of the United States in the manner provided by law, for the term ending on March 3, in the year ....., having (died, resigned, been removed, or otherwise ceased to be a senator, as the case may be):

Therefore, I, ....., Governor of the State of West Virginia, pursuant to the authority vested in me by law, do appoint ....., of the county of ....., a senator from this state in the Senate of the United States, until the general election next to be hereafter held in the State of West Virginia, and until his successor shall have been chosen and shall have qualified.

Given under my hand and the great seal of the State of West Virginia, on the ..... day of ....., .....

WV Legislature

## §6-4-3. Judges and appointive officers.

The credentials of the judges of the Supreme Court of Appeals, the circuit, intermediate, criminal, common pleas, and other inferior courts, and of all persons appointed to office by the Governor, shall consist of a certificate or commission issued by the Governor under the great seal of the state, showing the election or appointment of such person to the office.

WV Legislature

## §6-4-4. County and district officers and deputies.

The credentials of any county or district officer shall consist of the certificate of the county court issued as a canvassing board under the provisions of article five, chapter three of this code. The credentials of any deputy officer shall consist of the order of the court, or tribunal in lieu thereof, authorizing or assenting to the appointment of such deputy.

WV Legislature

## §6-5-1. When terms of office to begin.

The terms of officers, except when elected or appointed to fill vacancies, shall begin respectively as follows: That of Governor, Secretary of State, State Superintendent of Free Schools, Treasurer, Auditor, Attorney General and Commissioner of Agriculture, on the first Monday after the second Wednesday of January next after their election; that of a member of the Legislature, on December 1, next after his or her election; and that of the justices of the Supreme Court of Appeals, the judges of the Intermediate Court of Appeals, the judges of the several circuit courts, the judges of the family and other inferior courts, the county commissioners, prosecuting attorneys, surveyors of land, assessors, sheriffs, clerks of the circuit, or other inferior courts, clerks of the county commissions, magistrates, on January 1, next after their election.

Whenever a person is elected or appointed to fill a vacancy, his or her term shall be as prescribed by chapter three of this code.

WV Legislature

## §6-5-2. Continuance until successor qualified.

The term of every officer shall continue (unless the office be vacated by death, resignation, removal from office, or otherwise) until his successor is elected or appointed, and shall have qualified.

WV Legislature

## §6-5-2a. Appointments to state boards, agencies, commissions and committees affected by changes in congressional districts.

Any amendment of section three, article two, chapter one of this the code relating to congressional districts shall not affect the qualification or tenure of office of any person who was appointed a member of any state board, agency, commission or committee prior to the effective date of such amendment; however, all appointments made after the effective date of such amendment to any state board, agency, commission or committee on which membership is affected by congressional district requirements shall be made in accordance with the congressional district arrangement provided by said amendment.

If the total number of members prescribed by law on any board, agency, commission or committee, on which membership is affected by congressional district requirements, shall exceed the members from congressional districts, the excess members shall be appointed at large, unless otherwise provided for in this code.

WV Legislature

## §6-5-3. Validity of acts of officers de facto.

All judgments given and all acts done by any person, by authority or color of any office, or the deputation thereof, under the restored government of Virginia or of this state, before his removal therefrom, shall be valid, though it afterwards may have been or may be decided or adjudged that he was not lawfully elected or appointed, or was disqualified to hold the office, or that the same had been forfeited or vacated.

WV Legislature

## §6-5-4. Residence of officers.

The Governor, Secretary of State, state superintendent of free schools, Auditor, Treasurer, Attorney General and Commissioner of Agriculture, shall reside at the seat of government during their term of office, and keep there the public records, books and papers pertaining to their respective offices. Every judge of a circuit court shall, during his continuance in office, reside in the circuit for which he was chosen. Every county and district officer, except the prosecuting attorney, shall, during his continuance in office, reside in the county or district for which he was elected. And the removal by any such officer from the state, circuit, county or district for which he was elected or chosen shall vacate his office.

WV Legislature

## §6-5-5. Disqualification by conviction of treason, felony, or bribery.

No person convicted of treason, felony, or bribery in any election, before any court in or out of this state, shall, while such conviction remains unreversed, be elected or appointed to any office under the laws of this state; and, if any person, while holding such office, be so convicted, the office shall be thereby vacated.

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## §6-5-6. Disqualification by sale or farming of office or sharing of emoluments.

If any person holding, or expecting to hold, any office under the laws of this state, shall sell the same, or let it to farm, or share with another person the emoluments of the office, either in whole or in part, or contract to do so, such person and the person who may buy or take to farm, or share in the emoluments, or contract to do so, shall be thereby disqualified from holding such office.

WV Legislature

## §6-5-7. Disqualification by duelling.

Any citizen of this state who shall, either in or out of the state, fight a duel with deadly weapons, or send or accept a challenge so to do, or who shall act as a second, or knowingly aid or assist in such duel, shall ever thereafter be incapable of holding any office of honor, trust or profit in this state.

WV Legislature

## §6-5-8. Disqualification of justice who accepts office as deputy sheriff.

A justice of the peace who accepts the office of deputy sheriff and qualifies as such, or continues the duties of such office where he has already qualified, shall thereby vacate his office as a justice of the peace.

WV Legislature

## §6-5-9. Office property to be delivered to successor.

All acts of the Legislature, codes, forms, reports, blank books, dockets and other property of whatever kind furnished to any officer by authority of law, are declared to be the property of the office, and shall be delivered by the retiring officer to his successor within ten days after the latter shall have entered upon the duties of his office.

WV Legislature

**§6-5-10. Procedure on failure to deliver property to successor; penalty.**

If the predecessor of any officer fail to comply with any of the requirements of the preceding section, it shall be the duty of such officer to notify the prosecuting attorney of the county of such failure, who shall forthwith proceed to recover the property, if it can be found, and to place the official bond of such delinquent party in suit, and there shall be a recovery on his official bond of the value of all property not delivered as required by the preceding section or recovered, and, unless it appear that such failure was through no fault of the party complained of, a penalty of $100, and the costs of the suit, including an attorney's fee of $10. The penalty recovered in the suit on the bond shall be paid into the general school fund of the state.

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## §6-5-11. Members of Legislature not to be discriminated against in connection with seniority rights; pension coverage or benefits or insurance coverage or benefits provided by employer.

In order to encourage dedicated public service, it shall be unlawful for any private employer to discriminate against an employee who is a member of the Legislature, in connection with any employee seniority rights, employee pension coverage or benefits or employee insurance coverage or benefits, because of such employee's absence from work to attend regular or extraordinary sessions of the Legislature: Provided, That such employee continues to contribute his share of the costs for any such coverage or benefits when such contribution is required by his employer. An employee shall have a cause of action against his employer for violation of the provisions of this section and such cause of action may be enforced in a civil action for such purpose.

WV Legislature

## §6-5-12. Leave of absence for public officials for performing public duties.

Any persons elected to a part-time public office or appointed to a part-time elected public office shall be entitled to a leave of absence from his or her private employment except when such employment is with an employer employing five or fewer persons on a full-time basis on the days or portion of any day during which he or she is engaged in performing the duties of his or her public office. The leave of absence shall not result in any penalty being imposed upon the persons entitled to the leave of absence: Provided, That such leave of absence may be without pay by the private employer.

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## §6-6-1. Definitions.

(a) The term “official misconduct”, as used in this article, means conviction of a felony during the officer’s present term of office or any willful unlawful behavior by a public officer in the course of his or her performance of the duties of the public office.

(b) The term “neglect of duty”, as used in this article, means the knowing refusal or willful failure of a public officer to perform an essential act or duty of the office required by law.

(c) The term “incompetence”, as used in this article, may include the following acts or adjudications committed or arising during the challenged officer’s term of office: The waste or misappropriation of public funds by any officer when the officer knew, or should have known, that such use of funds was inappropriate or inconsistent with the lawful duties of the office; conviction of a misdemeanor involving dishonesty or gross immorality, having been the subject of a determination of incapacity, as defined and governed by section seven, article thirty, chapter sixteen of this code; or other conduct affecting the officer’s ability to perform the essential official duties of his or her office including but not limited to habitual drunkenness or addiction to the use of narcotic drugs.

(d) The term “qualified petitioner”, as used in this article, means a person who was registered to vote in the election in which the officer was chosen which next preceded the filing of the petition.

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## §6-6-2. Retirement of incapacitated justices, judges and magistrates; expulsion of members of Legislature.

Any justice, judge, or magistrate may be retired from office because of advancing years and attendant physical or mental incapacity, in the manner prescribed in section eight of article eight of the Constitution of this state, and by rules prescribed, adopted, promulgated and amended pursuant thereto.

The Senate or House of Delegates may expel a member of the body in the manner prescribed in section twenty-five of article six of the Constitution.

WV Legislature

## §6-6-3. Impeachment.

Any officer of the state or any judge may be impeached and removed from office for maladministration, corruption, incompetency, gross immorality, neglect of duty, or any high crime or misdemeanor, in the manner prescribed in section 9 of article IV of the Constitution of this state.

WV Legislature

## §6-6-4. Removal by Governor of appointee.

Any person who has been, or may hereafter be appointed by the Governor to any office or position of trust under the laws of this state, whether his tenure of office is fixed by law or not, may be removed by the Governor at his will and pleasure. In removing such officer, appointee, or employee, it shall not be necessary for the Governor to assign any cause for such removal.

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## §6-6-5. Removal by Governor of state elective officer -- Grounds.

Any state officer holding any elective office (except the Governor, any judge, or a member of the Legislature of this state) may be removed from office, by the Governor, in the manner provided in the following section: (a) When disqualified from holding the office under any provision of the Constitution of this state, or any law now in force, or which may hereafter be enacted, whether such disqualification arose before or after his induction into office; (b) for official misconduct, malfeasance in office, incompetence, neglect of duty, or gross immorality.

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**§6-6-6. Removal by Governor of state elective officer -- Procedure; appeal.**

The charges on which the removal of any officer mentioned in the preceding section is sought shall be reduced to writing and signed by a citizen or citizens of this state, and verified by the affidavit of one or more of the signers; or, in case the removal is sought of an officer entrusted by law with the collection, custody and expenditure of public moneys, because of any misapplication, misappropriation, or embezzlement of such moneys, the charges may be signed and verified as aforesaid, or be signed by the chief inspector and supervisor of public offices of the state. If, on examination of the charges by the Governor, it shall appear that the officer should be removed, if the charges be true, he shall cause a summons thereupon to be issued containing a copy of the charges, requiring the officer named therein to appear and answer the same on the day and at a place named therein, and cause the same to be served upon such officer at least twenty days before the return day thereof, which summons may be served in the same manner as a summons commencing a civil suit. On the return day of the summons, at the place therein named, the Governor shall proceed to hear proof of the charges made, and may adjourn the hearing from time to time and from place to place.

In all such hearings before the Governor, the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing by the Governor, at his own instance or at the instance of such officer against whom charges may have been brought as aforesaid; and in case of disobedience to a subpoena or other process of the Governor, the Governor, or such officer, against whom charges may have been brought as aforesaid, may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, books and documents, and such court, in case of a refusal to obey the subpoena issued to any person, shall issue an order requiring such person to appear before the Governor and produce all books and papers, if deemed proper, and give evidence touching the matter in question. Any failure to obey such order of the court may be punished by such court as a contempt thereof. A claim that any such testimony or evidence may tend to incriminate the person giving the same shall not excuse such witness from testifying, but such witness shall never be prosecuted or suffer any penalty or forfeiture for any offense concerning which he is compelled to furnish information or testify. A written record shall be kept of all testimony and other proceedings before the Governor.

At the close of the hearing, if the charges are sustained by satisfactory proof, the Governor shall remove such officer from the discharge of the duties of his office, and place the records, papers and property pertaining to the office in the possession of some other officer for safekeeping. The order of removal shall become final at the expiration of thirty days from the date thereof, unless appealed from, as hereinafter provided. In the event an appeal is taken from the order of removal, it shall not become final until decided by the Supreme Court of Appeals.

The vacancy in the office shall not be filled until the order of removal becomes final. The Governor shall designate some person as deputy of the officer removed, who, in the name of his principal, shall exercise the duties of the office from the date of the order of removal



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until the suspension thereof, if suspended, and if the order be not suspended, until the same shall be affirmed or vacated; or, if no appeal be taken, until the order becomes final.

Any such officer against whom charges may have been brought as aforesaid, feeling aggrieved by his removal from office by the Governor, may present his petition in writing to the Supreme Court of Appeals, or to a judge thereof in vacation, within thirty days after such removal from office by the Governor, praying for the suspension, setting aside or vacating of such order of removal. The court, or the judge, shall fix a time for the hearing on the application, but such hearing shall not be held sooner than five days, unless by agreement of the parties, after the presentation of the petition. Notice of the time and place of such hearing shall be forthwith given to the Governor, or, in case of his absence from the state or from his office, such notice may be given to him by leaving, or causing to be left, a copy thereof at his office in the state Capitol. If the court, or the judge, after such hearing, be of the opinion that a suspending order should issue, the court in its, or the judge in his, discretion, may suspend such removal, and may require bond upon such conditions and in such penalty, and impose such terms and conditions upon the petitioner, as are just and reasonable; and the court, or the judge, shall fix a time for the final hearing on the application. The hearing of the matter shall take precedence over all other matters before the court, except contested elections of Secretary of State, Auditor, treasurer, Attorney General, state superintendent of free schools, commissioner of agriculture, or of a judge of any court. For such final hearing, and before the day fixed therefor, the Governor shall file with the clerk of the Supreme Court of Appeals all papers, documents, testimony, evidence and records, or certified copies thereof, introduced or offered at the hearing resulting in such removal; and shall also file with said clerk a written statement of the cause, and his reasons for making such removal. After argument by counsel, the court shall decide the matter in controversy, both as to the law and evidence, as may seem to it to be just and right, and may affirm the order of removal, or may permanently suspend, set aside and vacate such removal and restore such officer to his office; and in case such removal be not suspended, set aside or vacated by the Supreme Court of Appeals, the Governor shall fill the vacancy caused by the removal of such officer.

The supreme court shall consider and decide the appeal upon the original papers and documents, without requiring the same to be printed, and shall enforce its findings by proper writ.

In any case in which the charges are signed and filed by the chief inspector and supervisor of public offices, the proceedings under this section shall be conducted and prosecuted by the Attorney General of the state.

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## §6-6-7. Procedure for removal of county, school district and municipal officers having fixed terms; appeal; grounds; cost.

(a) Any person holding any county, school district or municipal office, including the office of a member of a board of education and the office of magistrate, the term or tenure of which office is fixed by law, whether the office be elective or appointive, except judges of the circuit courts, may be removed from such office in the manner provided in this section for official misconduct, neglect of duty, incompetence or for any of the causes or on any of the grounds provided by any other statute.

(b) Charges may be proffered:

(1) In the case of any county officer, member of a board of education or magistrate:

(A) By a duly enacted resolution of the county commission which sets forth therein the name and office of the challenged officer, the alleged wrongful acts, the dates the alleged acts occurred and the grounds for removal as provided in this article;

(B) By the prosecuting attorney of the county; or

(C) By petition of a number of qualified petitioners, which number shall be:

(i) In a county with a population in excess of fifty thousand; the lesser of two thousand or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition;

(ii) In a county with a population in excess of ten thousand but not in excess of fifty thousand, the lesser of five hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition; and

(iii) In a county with a population not in excess of ten thousand, the lesser of one hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition.

Such petition shall set forth therein the name and office of the challenged officer, the alleged wrongful acts and the grounds for removal.

(2) In the case of any municipal officer:

(A) By a duly enacted resolution of the governing body of the municipality which sets forth therein the name and office of the challenged officer, the alleged wrongful acts, the dates the alleged acts occurred and the grounds for removal as provided in this article;

(B) By the prosecuting attorney of the county wherein such municipality, or the greater portion thereof, is located; or

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(C) By petition of a number of qualified petitioners, which number shall be:

(i) In a Class I city, the lesser of two thousand or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition;

(ii) In a Class II city, the lesser of five hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition;

(iii) In a Class III city, the lesser of one hundred or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition; and

(iv) In a Class IV town or village, the lesser of fifty or ten percent of the number of registered voters who participated in the particular election in which the challenged officer was chosen which next preceded the filing of the petition.

Such petition shall set forth therein the name and office of the challenged officer, the alleged wrongful acts and the grounds for removal.

(3) By the chief inspector and supervisor of public offices of the state where the person sought to be removed is entrusted by law with the collection, custody and expenditure of public moneys because of any intentional or unlawful misapplication, misappropriation or embezzlement of such moneys.

(c) When removal is proffered by a duly enacted resolution of a county commission or municipal governing body, a certified copy of the resolution shall be served by the clerk of the commission or municipal governing body upon the circuit court in whose jurisdiction the officer serves within five business days of adoption of the resolution. The proffering county commission or municipal governing body shall be responsible for the prosecution of the removal resolution.

(d) When removal is proffered by the prosecuting attorney, the charges shall be reduced to writing and the charges shall be served upon the circuit court in whose jurisdiction the officer serves, and the prosecuting attorney shall be responsible for the prosecution of the removal action.

(e) When removal is proffered by petition, the charges shall be reduced to writing and each page on which signatures are affixed shall include the name and office of the challenged officer, the charges or grounds for removal, which may be achieved by attachment to each signature page, and an informed acknowledgement of an agreement with the charges. At least one of the persons bringing the petition shall serve the original petition upon the circuit court in whose jurisdiction the officer serves, and shall be responsible for the prosecution of the removal action.

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(f) Any resolution or petition submitted pursuant to this section shall be received and entered of record by the court, or the judge thereof in vacation, and a summons shall thereupon be issued by the clerk of such court, together with a copy of the resolution or petition, requiring the officer or person named therein, or legal counsel therefor, to appear before the court for a preliminary hearing, at the courthouse of the county where such officer resides, for the purpose of a judicial determination as to the validity of the resolution or petition, the clerk having ascertained whether such signatures are the signatures of eligible residents, and to hear any related objections or motions that may be presented. The summons shall be served in the manner by which a summons commencing a civil suit may be served within five business days of the receipt of the resolution or petition by the court.

(g) The court, or judge thereof in vacation, or in the case of any multi-judge circuit, the chief judge thereof, shall have authority to evaluate any resolution or petition for any procedural defect, and to consider all the allegations made in the resolution or petition in light of the applicable case law and the required strict construction of the grounds asserted, and conclude whether or not the allegations asserted would be sufficient, if proven by clear and convincing evidence, to warrant the removal of the officer from office. In the case of a petition, the court may require that the clerk responsible for the maintenance of voting records for the governing body for whom the officer serves provide an affidavit verifying the number of qualified petitioner signatures and the applicable total number of registered voters.

If the court finds, after consideration of any motions or objections, or in the court's discretion provided for herein, that the resolution or petition is defective or the allegations stated therein do not meet the standards for removal set forth herein, the resolution or petition shall be dismissed by the court. If the court finds that the resolution or petition is sufficient under the standards for removal set forth herein to proceed to a hearing before a three-judge court, the court shall forward a copy of the resolution or petition to the Supreme Court of Appeals.

Upon receipt of said resolution or petition, the chief justice of the Supreme Court of Appeals shall, not fewer than twenty days from the date of the receipt of the resolution or petition, designate and appoint three circuit judges within the state, not more than one of whom shall be from the same circuit in which the resolution or petition was filed and, in the order of such appointment, shall require that the three-judge court designate the date, time and place for the hearing of the resolution or petition forthwith.

Such three-judge court shall, without a jury, hear the charges, any motions filed by either party and all evidence offered in support thereof or in opposition thereto, and upon satisfactory proof of the charges by clear and convincing evidence, shall remove any such officer from office and place the records, papers and property of his office in the possession of some other officer or person for safekeeping or in the possession of the person appointed as hereinafter provided to fill the office temporarily. Any final order either removing or refusing to remove any such person from office shall contain such findings of fact and conclusions of law as the three-judge court shall deem sufficient to support its decision of all

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issues presented to it in the matter.

(h) An appeal from an order of such three-judge court removing or refusing to remove any person from office pursuant to this section may be taken to the Supreme Court of Appeals within thirty days from the date of entry of the order from which the appeal is taken. The Supreme Court of Appeals shall consider and decide the appeal upon the original papers and documents, without requiring the same to be printed and shall enforce its findings by proper writ. From the date of any order of the three-judge court removing an officer under this section until the expiration of thirty days thereafter, and, if an appeal be taken, until the date of suspension of such order, if suspended by the three-judge court and if not suspended, until the final adjudication of the matter by the Supreme Court of Appeals, the officer, commission or body having power to fill a vacancy in such office may fill the same by a temporary appointment until a final decision of the matter, and when a final decision is made by the Supreme Court of Appeals shall fill the vacancy in the manner provided by law for such office.

(i) In any case wherein the charges are  proffered by the chief inspector and supervisor of public offices against the county commission or any member thereof or any county, school district or municipal officer, the proceedings under this section shall be conducted and prosecuted in the same manner set forth herein for removal by resolution or petition by the prosecuting attorney of the county in which the officer proceeded against resides, and on any appeal from the order of the three-judge court in any such case, the Attorney General of the state shall represent the people. When any municipal officer is proceeded against the solicitor or municipal attorney for such municipality may assist in the prosecution of the charges.

(j) If a judicial proceeding under this section is dismissed or otherwise resolved in favor of the challenged officer who has been found to be acting in good faith, the political subdivision for which the officer serves shall be responsible for the court costs and reasonable attorney fees for the officer.

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## §6-6-8. Removal of appointive county, district or municipal officers without fixed terms.

The court, board, body or officer authorized by law to appoint any person to any county, magisterial district, independent school district, or municipal office, the term or tenure of which is not fixed by law, may remove any person appointed to any office by such court, board, body or officer, with or without cause, whenever such removal shall be deemed by it, them or for the good of the public service, and the removal of any such person from office shall be final.

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## §6-6-9. Forfeiture of office on conviction of offense.

Any person holding any office, convicted in any court of any offense, the punishment or penalty for which, under any provision of the Constitution of the State, or any law now in effect, or which may hereafter become effective, entails a forfeiture of the office held by the person convicted, shall be removed from office by the judgment of the court, entered upon such conviction.

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## §6-7-1. State officials, officers and employees to be paid at least twice per month; new employees paid in arrears; effective date.

All full-time and part-time salaried and hourly officials, officers and employees of the state, state institutions of higher education and the Higher Education Policy Commission shall be paid at least twice per month, and under the same procedures and in the same manner as the State Auditor currently pays agencies: Provided, That on and after July 1, 2002, all new officials, officers and employees of the state, a state institution of higher education and the Higher Education Policy Commission, statutory officials, contract educators with higher education and any exempt official who does not earn annual and sick leave, except elected officials, shall be paid one pay cycle in arrears. The term "new employee" does not include an employee who transfers from one state agency, a state institution of higher education or the Higher Education Policy Commission to another state agency, another state institution of higher education or the Higher Education Policy Commission without a break in service: Provided, however, That, after July 1, 2014, all state employees paid on a current basis will be converted to payment in arrears. For accounting purposes only, any payments received by such employees at the end of the pay cycle of the conversion pay period will be accounted for as a credit due the state. Notwithstanding any other code provision to the contrary, any such credit designation made for accounting of this conversion will be accounted for by the Auditor at the termination of an employee's employment and such accounting shall be documented in the employee's final wage payment. Nothing contained in this section is intended to increase or diminish the salary or wages of any official, officer or employee.

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**§6-7-2. Salaries of certain state officers.**

(a) Beginning in the calendar year 2005, and for each calendar year after that, salaries for each of the state Constitutional officers are as follows:

(1) The salary of the Governor is $95,000 per year;

(2) The salary of the Attorney General is $80,000 per year;

(3) The salary of the Auditor is $75,000 per year;

(4) The salary of the Secretary of State is $70,000 per year;

(5) The salary of the Commissioner of Agriculture is $75,000 per year; and

(6) The salary of the state Treasurer is $75,000 per year.

(b) Notwithstanding the provisions of subsection (a) of this section, beginning in the calendar year 2009, and for each calendar year thereafter, salaries for each of the state Constitutional officers shall be as follows:

(1) The salary of the Governor shall be $150,000 per year;

(2) The salary of the Attorney General shall be $95,000 per year;

(3) The salary of the Auditor shall be $95,000 per year;

(4) The salary of the Secretary of State shall be $95,000 per year;

(5) The salary of the Commissioner of Agriculture shall be $95,000 per year; and

(6) The salary of the state Treasurer shall be $95,000 per year.

(c) Notwithstanding the provisions of subsection (a) or subsection (b) of this section, beginning calendar year 2025, and beginning in the calendar year of each fourth year thereafter, the salary of the Governor shall be set by the Salary Table For Locality Pay Area of Rest of U.S. as published by the United States Office of Personnel Management. The salary of the Governor shall be equal to the amount set as Grade 15, Step 10 on the Salary Table For Locality Pay Area of Rest of U.S. at the beginning of that calendar year and shall not be increased or diminished for the duration of the four year term of office beginning in that calendar year.

(d) Notwithstanding the provisions of subsection (a) or subsection (b) of this section, beginning calendar year 2025, and beginning in the calendar year of each fourth year thereafter, the salary of the Attorney General, Auditor, Secretary of State, Commissioner of Agriculture, and the Treasurer shall be set by the Salary Table General Schedule Increase as published by the United States Office of Personnel Management. The salary of the Attorney

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General, Auditor, Secretary of State, Commissioner of Agriculture, and the Treasurer shall be equal to the amount set as Grade 15, Step 4 on the Salary Table General Schedule Increase at the beginning of that calendar year and shall not be increased or diminished for the duration of the four year terms of each of those offices beginning in that calendar year.

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**§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.**

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer is as follows:

Commissioner, Division of Highways, $92,500; Commissioner, Division of Corrections and Rehabilitation, $90,000; Director, Division of Natural Resources, $75,000; Superintendent, State Police, $85,000; Commissioner, Division of Financial Institutions, $75,000; Commissioner, Division of Culture and History, $65,000; Commissioner, Alcohol Beverage Control Commission, $75,000; Commissioner, Division of Motor Vehicles, $75,000; Director, Human Rights Commission, $55,000; Commissioner, Division of Labor, $70,000; Chairperson, Board of Parole, $55,000; members, Board of Parole, $50,000; members, Employment Security Review Board, $17,000; and Commissioner, Workforce West Virginia, $75,000. Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, $95,000: *Provided*, That effective July 1, 2013, the Secretary of the Department of Human Services, the Secretary of the Department of Health, and the Secretary of the Department of Health Facilities shall be paid an annual salary not to exceed $175,000; Transportation, $95,000: *Provided, however*, That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid $120,000; Revenue, $95,000; Military Affairs and Public Safety, $95,000; Administration, $95,000; Education and the Arts, $95,000; Commerce, $95,000; Veterans' Assistance, $95,000; and Environmental Protection, $95,000: *Provided further*, That any officer specified in this subsection whose salary is increased by more than $5,000 as a result of the amendment and reenactment of this section during the 2011 regular session of the Legislature shall be paid the salary increase in increments of $5,000 per fiscal year beginning July 1, 2011, up to the maximum salary provided in this subsection.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code and shall be paid an annual salary as follows:

Director, Board of Risk and Insurance Management, $80,000; Director, Division of Rehabilitation Services, $70,000; Director, Division of Personnel, $70,000; Executive Director, Educational Broadcasting Authority, $75,000; Secretary, Library Commission, $72,000; Director, Geological and Economic Survey, $75,000; Executive Director, Prosecuting Attorneys Institute, $80,000; Executive Director, Public Defender Services, $70,000; Commissioner, Bureau of Senior Services, $75,000; Executive Director, Women's

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Commission, $45,000; Director, Hospital Finance Authority, $35,000; member, Racing Commission, $12,000; Chairman, Public Service Commission, $85,000; members, Public Service Commission, $85,000; Director, Division of Forestry, $75,000; and Executive Director of the Health Care Authority, $80,000.

(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, $92,500; Insurance Commissioner, $92,500; Lottery Director, $110,000; Director, Division of Homeland Security and Emergency Management, $65,000; and Adjutant General, $125,000.

(d) No increase in the salary of any appointive state officer pursuant to this section may be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.

(e) The annual salary of each appointive state officer named in this section shall continue in the amount as set forth in this section from the effective date of the amendments to this section enacted in 2020, until the position held by the officer is vacated or until July 1, 2020, whichever occurs first. After the vacancy or after July 1, 2020, whichever occurs first, unless otherwise prohibited by law, the annual salary of each appointed state officer named in this section shall be fixed by the Governor within the current budget allocation. In the event the annual salary fixed by the Governor for an appointed state officer named in this section exceeds the amount set forth in this section for the appointed state officer, the amount of the annual salary for the appointed state officer shall be set forth in a line-item in the budget bill, and payment of an annual salary to the appointed state officer may not exceed that amount but may be lower than the salary approved in the budget bill or established in this section. The salary of a newly appointed state officer named in this section shall be included in the appointment letter for the position.

The amendment and reenactment of this section in the third extraordinary session of the Legislature, 2021, shall not operate to reduce the salary of any appointive state officer whose salary has been increased pursuant to this subsection since July 1, 2020.

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## §6-7-3. Provision for clerical assistance, stationery, offices, traveling expenses and contingent fund.

It shall be the duty of the Governor to ascertain and report to the Legislature at each regular session the amount deemed necessary to provide each of the officers mentioned in section two of this article with sufficient clerical and office assistance, stationery and equipment for the proper discharge of the duties of the office, and, where offices are not furnished in the capitol building, with proper offices and light, heat and janitor's services for the same; and where any such officer is required in the proper discharge of the duties of his office to travel or journey from place to place, the amount necessary to provide for such purpose; and, where the circumstances may warrant it, the amount necessary to provide for a contingent fund to cover stationery, blank books, blanks, advertising, printing, fuel, lights, postage, express charges, office supplies, furniture, and any other necessary article that may not be otherwise specially provided for.

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## §6-7-3a. How and by whom compensation of other officers, assistants and employees fixed.

The compensation of officers, assistants, and employees in state departments, agencies or institutions whose salary is not otherwise fixed by law, shall be determined in accordance with personnel classifications and uniform salary schedules established as provided by law. Subject to such classifications and schedules the amount of the compensation shall be fixed as follows:

1. The salary of an officer in the state government who is appointed by the Governor shall be fixed by the Governor.

2. The compensation to be received by a subordinate officer, assistant, or employee in the state government shall be fixed by the person who appoints or employs the subordinate officer, assistant or employee.

3. The compensation to be received by persons employed in state institutions under the control of the board of Governors of West Virginia University shall be fixed by such board of Governors.

4. The compensation to be received by persons employed in state institutions under the control of the state Board of Education shall be fixed by the state Board of Education.

5. The compensation to be received by persons employed in state institutions under the control of the state commissioner of public institutions shall be fixed by the state commissioner of public institutions.

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**§6-7-4.**

Repealed.

Acts, 1973 Reg. Sess., Ch. 30

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## §6-7-5. Mileage and expenses of judges.

[Repealed.]

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## §6-7-6. Allowance to circuit judges for stationery, postage and stenographic help.

Each judge of the circuit court shall, in accordance with the rules of the Supreme Court of Appeals, be allowed stenographic help necessary in the discharge of the duties of his office, and each judge shall be allowed necessary stationery, payment of postage, and necessary supplies for his office. The judge shall be reimbursed for the actual amounts expended by for stationery, supplies and postage. Payment for stenographic help shall be made directly to the person performing the stenographic work. Such amounts shall be paid monthly out of the state Treasury, but not until the judge submits an itemized statement covering the same.

WV Legislature

## §6-7-7. No extra compensation; salaries not to be increased or diminished during term.

No extra compensation shall be granted or allowed to any public officer, agent, servant or contractor, after the services shall have been rendered, nor shall the salary of any public officer be increased or diminished during his term of office.

WV Legislature

## §6-7-8. Public carriage for state officials and employees and the university of West Virginia board of trustees and the board of directors of the state college system.

State law-enforcement officials, including, but not limited to, the director of the division of public safety, the Adjutant General of the West Virginia National Guard, the director of the Office of Emergency Services, the director of the Division of Natural Resources, the director of the Division of Environmental Protection, the commissioner of the Division of Corrections, the state Fire Marshal, state fire administrator and officials of the university of West Virginia board of trustees and the board of directors of the state college system at the discretion of the respective chancellor thereof, have the authority to use, and permit and allow or disallow their designated employees to use, publicly provided carriage to travel from their residences to their workplace and return: Provided, That such usage is subject to the supervision of such official and is directly connected with and required by the nature and in the performance of such official's or designated employee's duties and responsibilities.

WV Legislature

## §6-8-1. Settlements for public funds.

Every public officer, whether state, county, magisterial district, independent school district, or municipal, who is authorized to receive, or who is charged with the collection, custody, or disbursement of, any public moneys, shall, within thirty days after June 30 of each year, or within thirty days after the close of his term of office, whenever the same expires, make settlement of his accounts. For all moneys belonging to or for the use of the state, such settlement shall be made with the Auditor of the state, and the entry thereof on the books of the Auditor shall constitute a proper recordation of such settlement; for all moneys belonging to or for the use of any county, such settlement shall be with the county court or other tribunal created by law in lieu thereof; for all moneys belonging to or for the use of any magisterial district such settlement shall be with the county court or other tribunal created by law in lieu thereof; for all moneys belonging to or for the use of any magisterial school district or independent school district, such settlement shall be with the county court, or other tribunal created by law in lieu thereof, and with the board of Education of such magisterial district or independent school district; for all moneys belonging to or for the use of any municipality, such settlement shall be with the council or other like body of such municipality, or with the board in charge thereof for the use of which the moneys are collected and disbursed in any municipality. Wherever the settlement is above required to be with the county court, or with any Board of Education, or with any municipal council or board, such settlement may be made by two commissioners of the county, one of whom shall have been appointed by the circuit court of the county, or judge thereof in vacation, and the other by such county court, or such Board of Education, or such municipal council or board.

WV Legislature

## §6-8-2. Contents of settlement; exceptions; confirmation.

Every such settlement shall show the several items of receipts and disbursements and to whom and for what purpose any public moneys are paid. Every such settlement shall be subject to exceptions by the body with which the same is made, by the prosecuting attorney, by the chief inspector and supervisor of public offices, or by any taxpayer who was assessed for and paid in any of the funds being settled for, and such exceptions shall be heard and determined by the body before which the settlement is made. If any exception be sustained, the settlement shall be modified and reformed accordingly, and shall then be confirmed, and upon being so confirmed shall be deemed prima facie correct.

WV Legislature

## §6-8-3. Fine and forfeiture for failure to make settlement.

If any officer required by this article to make settlement of his accounts shall fail to do so within the time required, he shall forfeit all right to commission on any moneys collected and disbursed by him, or if paid a salary and not commission, shall forfeit one half his salary, and shall moreover, in either case, be subject to a fine of not less than $100 nor more than $1,000, for the use of the school fund, which commission or salary, if already paid to such officer, and such fine, shall be recoverable by motion, upon ten days' previous notice, in the circuit court of the county of such officer's residence, of and from such officer and the sureties on his bond.

WV Legislature

## §6-8-4. Notice of settlement to chief inspector and supervisor of public offices.

Every officer who is required by law to settle his accounts shall, at least fifteen days before making such settlement, give, by registered mail, to the chief inspector and supervisor of public offices, notice of the time and place of such settlement, and the name of the court, officer, board, body or commission before or with whom the same is to be made.

WV Legislature

## §6-8-5. Sheriff as county treasurer; settlements; turning over money to successor.

The sheriff shall be ex officio treasurer of his county and of the several districts thereof, and the word or designation "sheriff" whenever used in this code shall, unless the context otherwise requires, be held to include the sheriff as ex officio treasurer of the county and of the several districts thereof. Between the fifteenth and thirty-first days of December of the year in which a sheriff's term of office expires, such sheriff shall make up a list of all uncollected taxes and shall make a complete settlement with the county court, or tribunal in lieu thereof, and the board of Education in such county, in the manner provided by law for settlements required at the end of the fiscal year. The sheriff shall receive credit in such settlement for the amount of taxes, remaining unpaid, and such list of taxes remaining unpaid shall be turned over to his successor in office January first. It shall be the duty of such successor to collect such taxes and to make up a delinquent list as provided and required by law; also to make settlement at the end of the fiscal year with the county court, or tribunal in lieu thereof, and the county board of education, in the manner provided by law. Every sheriff shall, on the first of January immediately following the expiration of his term of office, turn over to his successor all public moneys. Every sheriff who is appointed to fill a vacancy shall make such settlement with the county court, or tribunal in lieu thereof, and the county board of education, immediately upon the qualification of his successor, and at such time turn over to such successor all public moneys.

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**§6-8-6. Reports and settlements of sheriff; penalties for false affidavit.**

The sheriff shall from time to time make to the county court of his county, or other tribunal in lieu thereof, such reports as such court or tribunal may direct, respecting his receipts and disbursements, and the state of the county treasury; or any other matter committed to his charge, or pertaining to the finances of the county. But at the end of the fiscal year he shall render to such court or tribunal, whether especially requested or not, a full statement of his account for that fiscal year, showing the balance due by or to him at the commencement of the account, the amount of money collected by him during the year, and from what sources, and the date and amount of every county order paid, and to whom it was paid, together with such other particulars, if any, as such court or tribunal may specially require. If the court, or tribunal, upon an examination of such report, find the account to be correctly stated therein, it shall approve the same and cause it to be entered in full in a proper record book to be kept for the purpose in the office of the clerk of the county court. But if such account be found incorrect, the court or tribunal shall make a restatement thereof, correcting the errors and omissions in the account as stated by the sheriff, which corrected account shall be entered in full on such record book. And in either event the court or tribunal shall cause the county orders listed in such statement to be cancelled in some way not easily obliterated, but not so as to render them illegible; and the same shall then be filed and preserved in the office of the clerk of the county court. A certified copy of the entry in such record book shall be delivered by the clerk of the county court to the sheriff, which copy shall operate as a receipt to such sheriff for the county orders named in such account and cancelled as aforesaid. Before the making of any such settlement as aforesaid, the sheriff shall return and file a written statement of every draft, order and claim paid by him, for which he claims a credit, and of the true amount actually and in good faith paid by him thereon, together with the drafts and orders upon which such payments were made, and shall append to such statement his affidavit that the same is true; and, until he does so, no credit shall be allowed him for any such payment. If such affidavit be falsely made the sheriff making same shall be guilty of neglect of official duty, and, on conviction thereof, his office shall become vacant and he shall be punished by a fine of not less than $100 nor more than $1,000, or by imprisonment in the county jail for not less than one month nor more than one year, or by both such fine and imprisonment.

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## §6-8-7. Settlements by sheriff for school funds.

The county court of each county shall appoint a time immediately following July 1, in each year, and in any event within thirty days thereafter, and within thirty days following the expiration of the term of office of any sheriff, for the settlement of the school funds of the county. At the time so fixed, the school board of that county and the treasurer of the county board of education, unless the sheriff has been designated treasurer of the county board pursuant to section six, article nine, chapter eighteen of this code, shall meet with the county court. The sheriff of the county shall attend such meeting and lay before the county court and such Board of Education his account of school funds for the county, which account shall be then and there settled. The county court shall give at least five days' notice of the time fixed for the settlement of the county school funds to the county board of education, the treasurer of the county board of education and the sheriff.

WV Legislature

## §6-8-8. Same -- With what sheriff to be charged.

In his settlement of school funds the sheriff shall be charged with the amount of taxes and of general school fund apportioned to each county and the amount of taxes levied by the board of Education upon the property of the county and for all school funds, and for any other money received by during the current year on account of the free schools of the county.

WV Legislature

## §6-8-9. Same -- With what sheriff to be credited.

The sheriff shall be credited in such settlements with the amount of delinquent school tax in the county that has been duly certified by the clerk of the county court to the county board of education; and with all orders paid and produced by him, if found to be correct by the board of Education. He shall receive no other credits.

WV Legislature

## §6-8-10. Same -- Method of settlement.

In making such settlement it shall be the duty of the sheriff to prepare and present to the county board of education, in duplicate, separate lists of all the credits claimed by him against each of the several school funds collected by him, showing the amount, date and number of each voucher or order, and to whom payable, together with statements of the proper debits to the several funds to which he is chargeable; which lists and statements, together with the vouchers claimed as credits by the sheriff, shall, if found correct by such board, be endorsed by the treasurer of the board on the back of each with the words, "Settled by the board of Education," under which the treasurer shall sign his name and enter the date of the settlement, and such statements and lists, after being corrected, if corrections are necessary, shall be signed by the sheriff and by the president and treasurer of the board of Education in duplicate, one copy to be retained by such board, and the other, together with the vouchers and orders, to be turned over to the county court. Exceptions may be taken to such settlement as provided in section two of this article, which exceptions shall be heard and decided by the county court. If the county court finds the settlement to be correct, or after it has corrected the same, it shall be confirmed and made a matter of record by the clerk of the county court in a book kept for that purpose.

WV Legislature

## §6-8-11. Settlements by sheriff for school funds -- Failure to account for and pay over money.

If any sheriff shall fail to account for and pay over as required by law any school funds which may come into his hands, or for which he is liable, judgment may be rendered therefor against him and his sureties with interest and ten percent damages.

WV Legislature

## §6-8-12. Settlements by sheriff for school funds -- Failure of sheriff to make settlement; payment of balance to successor.

If any sheriff fails to make the settlement required by section seven of this article at the time required, without reasonable cause therefor, he shall be charged in such settlement with twelve percent interest on all school money in his hands for the time he is in default in making the settlement. If the sheriff fails to make the settlement at the time required, it shall be the duty of the prosecuting attorney to proceed by action against him and his sureties in the circuit court to recover the penalties imposed upon him by this section and by section three of this article.

Every retiring sheriff shall immediately after he shall have made his final settlement in the manner herein provided, pay and turn over to his successor in office such balance as may be shown to be due from him by such settlement.

WV Legislature

## §6-9-1. Tax commissioner to be chief inspector and supervisor; assistants, clerks and allowances.

The State Tax Commissioner shall be ex officio the chief inspector and supervisor of public offices, and as such officer (hereafter called the chief inspector) he shall have the power and authority and perform the duties hereafter set forth. He shall have such assistants and clerical help and allowances as may be necessary to enable him to carry out the purposes of this article.

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**§6-9-1a. Definitions.**

As used in this article:

(a) "Audit" means a systematic examination and collection of sufficient, competent evidential matter needed for an Auditor to attest to the fairness of management's assertions in the financial statements and to evaluate whether management has sufficiently and effectively carried out its responsibilities and complied with applicable laws and regulations. An audit shall be conducted in accordance with generally accepted auditing standards, standards issued by the chief inspector, and, as applicable, the single audit requirement of the Uniform Guidance, Title 2 of the Code of Federal Regulations, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, as amended or revised from time to time, or any successor circular or regulation of the Office of Management and Budget.

(b) "Examination" includes an audit, review, or small government monitoring as defined in this section.

(c) "Federal awards" means federal financial assistance and federal cost-reimbursement contracts that nonfederal entities receive directly from federal awarding agencies or indirectly from pass-through entities.

(d) "Federal financial assistance" means assistance that nonfederal entities receive or administer in the form of grants, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, or other assistance, but does not include amounts received as reimbursement for services rendered to individuals in accordance with guidance issued by the director of the federal office of management and budget.

(e) "Financial audit" includes financial statement audits and financial related audits, as defined by government auditing standards.

(f) "Government auditing standards" means the government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits of government organizations, programs, and activities.

(g) "Investigation" means an examination, inspection, or review of a local government's finances to determine or ascertain whether fraudulent, illegal, or improper conduct has occurred, including, but not limited to, misappropriation, waste, or misuse of moneys or assets.

(h) "Local government" means any unit of local government within the state, including a county, county board of education, municipality, and any other authority, board, commission, district, office, public authority, public corporation, or other instrumentality of a county, county board of education, or municipality or any combination of two or more local

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governments.

(i) “Nonfederal entity” means a state, local government, or nonprofit organization.

(j) “Office of Management and Budget” means the executive Office of the President of the United States, Office of Management and Budget.

(k) “Proper legal authority” means the prosecuting attorney of the county wherein the audited, examined, or investigated entity is located, the Attorney General, law enforcement, or other legal authority the chief inspector deems appropriate.

(l) “Review” means an inquiry or analytical procedures that provide the Auditor with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

(m) “Single audit” means a financial and compliance audit as defined in the federal Single Audit Act of 1996, as amended, in section 7502(d), chapter 75, title 31 of the United States Code, of a nonfederal entity that includes the entity’s financial statements and federal awards. Each single audit conducted for any fiscal year shall cover the operations of the entire nonfederal entity; or at the option of the nonfederal entity, the audit shall include a series of audits that cover departments, agencies, and other organizational units that expend or otherwise administer federal awards during the fiscal year being audited except that each such audit shall encompass the financial statements and schedule of expenditures of federal awards for each department, agency, and organizational unit, which shall be considered to be a nonfederal entity.

(n) “Small government monitoring” means specialized procedures, performed on certain qualifying local governments as a lower cost alternative to an audit or review.

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## §6-9-2. Uniform system of accounting and reporting for local governmental offices and agencies; form and uniform system for receipts; additional power and authority.

The chief inspector shall formulate, prescribe and install a system of accounting and reporting in conformity with the provisions of this article, which shall be uniform for all local governmental offices and agencies and for all public accounts of the same class and which shall exhibit true accounts and detailed statements for all public funds collected, received and expended for any purpose by all local governmental officers, employees or other persons. The accounts shall show the receipt, use and disposition of all public property under the control of local governmental officers, employees or other persons and any income derived therefrom and of all sources of public income, the amounts due and received from each source, all receipts, vouchers and other documents kept or required to be kept and necessary to identify and prove the validity of every transaction, all statements and reports made or required to be made for the internal administration of the office to which they pertain and all reports published or required to be published for the information of the people regarding any and all details of the financial administration of public affairs. The chief inspector shall prescribe receipt forms for all local governmental offices and agencies and shall formulate, prescribe and install a uniform system with respect to the utilization, processing and disposition of receipts given as evidence of moneys or property collected or received by local governmental offices and agencies. The chief inspector shall also formulate, prescribe and install a system of accounting for the civil accounts of the offices of the magistrates, which shall exhibit true accounts and detailed statements of the services rendered, the name and address of the persons for whom rendered, the charges made and collected therefor and other information as may be necessary to identify the transaction.

The chief inspector is vested and charged with the duties of administering and enforcing the provisions of this article and is authorized to promulgate and to enforce such rules as may be necessary to implement the administration and enforcement. The chief inspector shall use due diligence to ensure that all reports and audits are issued in a timely manner and to comply with all federal audit and bonded indebtedness requirements so as not to jeopardize the entity's funding. The power and authority herein granted shall be in addition to all other power and authority vested by law in the State Tax Commissioner as chief inspector or otherwise.

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## §6-9-2a. Local Government Purchasing Card Program.

Notwithstanding any provisions of the code to the contrary, the Auditor may authorize and administer a purchasing card program for local governments under the auspices of the chief inspector division. The purchasing card program shall be conducted so that procedures and controls for the procurement and payment of goods and services are made more efficient and so that the accounting and reporting of such payments shall be uniform for all local governments utilizing the program. The program shall permit local governments to use a purchase charge card to purchase goods and services. Notwithstanding any other code provisions to the contrary, local government purchases may be made with the purchase charge card for any payment authorized by the Auditor, including regular routine payments, travel and emergency payments, and shall be set at an amount to be determined by the Auditor: Provided, That purchasing cards may not be utilized for the purpose of obtaining cash advances, whether the advances are made in cash or by other negotiable instrument: Provided, however, That purchasing cards may be used for cash advances for travel purchases upon approval of the Auditor. Selection of a charge card vendor to provide local government purchasing cards shall be based upon expressions of interest submitted by charge card vendors. The Auditor shall contract with the successful institution for provision of local government purchasing cards. The selection shall be based upon the combination of competence and qualification in the provision of services and a determination of the best financial arrangement for the program. The Auditor may propose rules for promulgation to govern the implementation of the local government purchase card program and may promulgate emergency rules for emergency payments to effectuate the provision of such services.

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## §6-9-2b. Local Government Purchasing Card Expenditure Fund Created.

There is hereby created a local Government Purchasing Card Expenditure Fund. Money received by the Auditor pursuant to an agreement with vendors providing local government purchasing charge cards and any interest or other return earned on the money shall be deposited in the special revenue revolving local Government Purchasing Card Expenditure Fund in the state Treasury to be administered by the Auditor. The fund shall be used to pay all expenses incurred by the Auditor in the implementation and operation of the local government purchasing card program. The Auditor may also utilize the fund to provide a proportionate share of rebate back to the General Fund of local governments based upon utilization of the program. Expenditures from the fund shall be made in accordance with appropriations by the Legislature pursuant to the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code.

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## §6-9-2c. Fraudulent or unauthorized use of purchasing card prohibited; penalties.

(a) It is unlawful for any person to use a local government purchasing card, issued in accordance with the provisions of section two-a of this article, to make any purchase of goods or services in a manner which is contrary to the provisions of section two-a of this article or the rules promulgated pursuant to that section.

(b) It is unlawful for any person to knowingly or intentionally possess with the intent to use a purchasing card without authorization pursuant to section two-a of this article or the rules promulgated pursuant to that section.

(c) Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility not less than one year nor more than five years, or fined no more than $5,000, or both fined and imprisoned.

(d) A violation of this section may be prosecuted in the county in which the card was issued, unlawfully obtained, fraudulently used, used without authorization, or where any substantial or material element of the offense occurred.

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## §6-9-3. Separate accounts for different appropriations or funds, departments, undertakings, etc.; transfer of unexpended balances.

Separate accounts shall be kept for every appropriation or fund made or levied by a local governing body, showing the date and manner of each payment made out of the funds provided by such appropriation or levy, the name, address and vocation of each person, organization, corporation or association to whom paid, and for what purpose paid. Separate accounts shall be kept for each department, public improvement, undertaking, institution and public service industry under the jurisdiction of every local governing agency; and all service rendered by or property transferred from one department, public improvement, undertaking, institution or public service industry to another shall be paid for at its true and full value by the department, public improvement, undertaking, institution or public service industry receiving the same; and no department, public improvement, undertaking, institution or public service industry shall benefit in any financial manner whatever by an appropriation or fund made for the support of another department, public improvement, undertaking, institution or public service industry. All unexpended balances or appropriations shall be transferred to the credit of the fund from which originally appropriated or levied whenever the account with an appropriation is closed.

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## §6-9-4. Separate accounts for each public service industry; contents.

Separate accounts shall be kept for every public service industry, which shall show the true and entire cost of the ownership and operation thereof, the amount collected annually by general or special taxation for services rendered to the public and the amount and character of the service rendered therefor, and the amount collected annually from private users (if any) for service rendered to them, and the amount and character of the service rendered therefor.

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## §6-9-5. Reports to and by chief inspector.

The chief inspector shall require from every local taxing agency financial reports covering a full period of each fiscal year, in accordance with the forms and methods prescribed by him which shall be uniform for all accounts of the same class. Such reports shall contain an accurate statement in summarized form of all collections made by or receipts received by the officers from all sources, (of) all accounts due the public but not collected, and of all expenditures for every purpose, and by what authority authorized, and also: (a) A statement of all costs of ownership and operation and of all income of each and every public service industry owned and operated by a municipality; (b) a statement of the entire public debt of every taxing body to which power has been delegated by the state to create a public debt, showing the purpose for which each item of the debt was created, the provisions made for the payment of the debt, together with such other information as may be required by the chief inspector. Such reports shall be certified as to their correctness by the chief inspector or by his assistant appointed by for the purpose. Their substance shall be published in a biennial volume of comparative statistics that shall be issued for each class of accounts at the expense of the state as a public document, and shall be submitted by the chief inspector to the Governor for transmittal to the Legislature.

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## §6-9-6. Accounts and reports by local public officers remitting funds collected to proper officer.

All local governing officers, departments, boards and commissions shall keep their financial accounts in records and forms approved or prescribed by the chief inspector of public offices and shall furnish promptly to the chief inspector of public offices such information and reports as may be requested. Refusal or neglect to comply with the requirements of this section shall subject the person offending to removal from office. In case an officer or employee of a local governing agency collects or receives funds for the account of a local governing agency of which he is not an officer or employee, he shall remit to the proper officer of the local governing agency for whose account the collection was made or payment was received, the full amount collected or received for the account of such local governing agency.

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## §6-9-7. Examinations into affairs of local public offices; penalties.

(a) The chief inspector has the power by himself or herself, or by any person appointed, designated, or approved by the chief inspector to perform the service, to examine into all financial affairs of every local governmental office or political subdivision and all boards, commissions, authorities, agencies or other offices created under authority thereof. An examination shall be made annually, if required, to comply with the Single Audit Act and when otherwise required by law or contract. When that act does not apply, unless otherwise required by law or by contract, the examination shall be made at least once a year, if practicable. Furthermore, the chief inspector shall furnish annually to the Legislature a list of each local government office or political subdivision and all boards, commissions, authorities, agencies, or other offices created under authority thereof and the year of its most recent completed audit.

(b) When required for compliance with regulations for federal funds received or expended by county boards of education the chief inspector or his or her designee, including any certified public accountant approved by the chief inspector shall conduct and issue an audit report within the time specified in controlling federal regulations. Examinations of other local governments shall be conducted and audit, review, or monitoring reports issued in accordance with uniform procedures of the chief inspector.

(c) In cooperation with institutions of higher education located in the State of West Virginia, the chief inspector may establish and maintain a small government monitoring program. The small government monitoring program shall authorize local governments which are not otherwise required to undergo a single audit or a financial audit to apply to the chief inspector, on an annual basis, for participation in the program. The chief inspector shall prescribe and oversee monitoring procedures that shall be performed by higher education students in the field of accounting. Participating institutions of higher education shall enter into a cooperative agreement with the chief inspector to provide the service. The chief inspector shall prescribe policies and procedures for the administration of the small government monitoring program.

(d) A county board of education may elect, by May 1 of the fiscal year to be audited, to have its annual examination performed by a certified public accountant approved by the chief inspector to perform the examinations. When this election is made, a copy of the order of the county board making the election shall be filed with the chief inspector and the State Board of School Finance. The county board of education is allowed to contract with any certified public accountant on the chief inspector’s then current list of approved certified public accountants, unless the State Board of School Finance or the prosecuting attorney of the county in which the board is located timely submits to the chief inspector a written request for the examination to be performed by the chief inspector or a person appointed by the chief inspector, or the chief inspector determines that a special or unusual situation exists. The county board shall follow the audit bid procurement procedures established by the chief inspector in obtaining the audit.

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(e) The chief inspector shall, at least annually, prepare a list of certified public accountants approved by the chief inspector to perform examinations of local governments. Names shall be added to or deleted from that list in accordance with uniform procedures of the chief inspector. When each list or updated list is issued, the chief inspector shall promptly file a copy of the list in the State Register and send a copy to the State Board of Education, the State Board of School Finance, and to local governments who request a copy.

(f) A county board of education, when procuring the services of a certified public accountant on the chief inspector's list, shall follow the procurement standards prescribed by the Uniform Guidance, Title 2 of the Code of Federal Regulations, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, in effect for the fiscal year being examined, or in any replacement circular or regulation of the Office of Management and Budget and in addition shall follow those standards as determined by the office of chief inspector.

(g) The approved independent certified public accountant making examinations under this section shall comply with requirements of this section applicable to examinations performed by the chief inspector, including applicable requirements of the federal government and uniform procedures of the chief inspector applicable to examinations of county boards of education.

(1) Upon completion of the certified public accountant's examination and audit or review report, the certified public accountant shall promptly send two copies of the certified report to the county board of education who shall file one copy with the federal Audit Clearing House. The certified public accountant shall send one copy of the certified report to the State Board of School Finance, and one copy to the chief inspector.

(2) If any examination discloses misfeasance, malfeasance, or nonfeasance in office on the part of any public officer or employee, the certified public accountant shall submit his or her recommendation to the chief inspector regarding the legal action the approved certified public accountant considers appropriate, including, but not limited to, whether criminal prosecution or civil action to effect restitution is appropriate, and three additional copies of the certified audit report. After review of the recommendations and the audit report, the chief inspector shall proceed as provided in §6-9-7(n) of this code. For purposes of this section and §18-9B-13 of this code, a certified audit report of an approved certified public accountant shall be treated in the same manner as a report of the chief inspector.

(h) On every examination, inquiry shall be made as to the financial conditions and resources of the agency having jurisdiction over the appropriations and levies disbursed by the office and whether the requirements of the Constitution and statutory laws of the state and the ordinances and orders of the agency have been properly complied with and also inquire into the methods and accuracy of the accounts and such other matters of audit and accounting as the chief inspector may prescribe.

(i) If a local government office is not subject to a single audit requirement under federal

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regulations or if it is not otherwise required by law or contract to undergo an annual audit and its expenditures from all sources are less than $500,000 during the fiscal year the chief inspector may choose to perform either a review or audit on the local government office and may in his or her discretion determine the frequency of such review or audit.

(j) The chief inspector or any authorized assistant may issue subpoenas and compulsory process, direct the service thereof by any sheriff, compel the attendance of witnesses and the production of books and papers at any designated time and place, selected in their respective county, and administer oaths.

(k) If any person refuses to appear before the chief inspector or his or her authorized assistant when required to do so, refuses to testify on any matter or refuses to produce any books or papers in his or her possession or under his or her control, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 and confined for not more than six months.

(l) A person convicted of willful false swearing in an examination is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 and confined in jail not more than six months.

(m) Except as otherwise provided in this section, a copy of the certified report of each examination shall be filed in the office of the commissioner, chief inspector with the governing body of the local government and with other offices as prescribed in uniform procedures of the chief inspector.

(n) If any audit, examination or investigation discloses misfeasance, malfeasance, or nonfeasance in office on the part of any public officer or employee, a certified copy of the report shall be published electronically by the chief inspector with notice of the publishing sent in writing to the proper legal authority of the entity being audited, examined, or investigated the chief inspector deems appropriate for such legal action as is proper. At the time the certified audit, examination, or investigation report is published, the chief inspector shall notify the proper legal authority of the entity being audited, examined, or investigated he or she deems appropriate in writing of his or her recommendation as to the legal action that the chief inspector considers proper, whether criminal prosecution or civil action to effect restitution, or both.

(o) If the proper legal authority or prosecuting attorney, within 90 days of receipt of the certified audit report and recommendations, refuses, neglects, or fails to take efficient legal action by a civil suit to effect restitution or by prosecuting criminal proceedings, in accordance with the recommendations, the chief inspector may institute the necessary proceedings or participate therein and prosecute the proceedings in any court of the state to a final conclusion.

(p) A local government that is not a county board of education may elect, by May 1 of the fiscal year to be audited, to have its annual examination performed by a certified public

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accountant approved by the chief inspector to perform the examinations. When this election is made, a copy of the order of the governing body making the election shall be filed with the chief inspector. An electing local government is allowed to contract with any certified public accountant on the chief inspector's then current list of approved certified public accountants, unless the prosecuting attorney of the county in which the local government is located timely submits to the chief inspector a written request for the examination to be performed by the chief inspector or a person appointed by the chief inspector, or the chief inspector determines that a special or unusual situation exists: Provided, That the audit of a local government may be performed by the chief inspector at his or her discretion. The local government shall follow the audit bid procurement procedures established by the chief inspector in obtaining the audit: Provided, however, That the chief inspector may elect to conduct the audit of a local unit of government with one or more members of his or her audit staff where, in the opinion of the chief inspector, a special or unusual situation exists.

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## §6-9-8. Payment of cost of services of chief inspector; revolving fund.

(a) The cost of any service or act performed by the chief inspector under the provisions of this article as to any county or district office, officer or institution shall be paid by the county commission of the county; the cost of any service or act to any board of education shall be paid by the board; the cost of any service or act to any municipal corporation shall be paid by the authorities of the municipal corporation: *Provided*, That in municipalities in which the total revenue from all taxes does not exceed the sum of $2,000 annually, the cost including the per diem and all actual costs and expenses of the services shall not exceed the sum of $200. The cost of this service shall be the actual cost and expense of the service performed, including transportation, hotel, meals, materials, per diem compensation of deputies, assistants, clerical help, and the other costs that are necessary to enable them to perform the services required, but the costs shall not exceed the sum of $3,000 for services rendered to a Class IV municipality: *Provided, however*, That the chief inspector may charge up to an additional $3,000 for costs incurred for each service or act performed for a utility or park system owned by a Class IV municipality and for each policemen's and firemen's pension and relief fund maintained by the municipality: *Provided further*, That if a municipality is required to undergo a single audit by the federal agency or agencies making a grant, the cost limitations of this subsection do not apply: And provided further, That the chief inspector shall provide a written quote for all costs in advance for all services required by this article. The chief inspector shall render to the agency liable for the cost a statement of the cost as soon after the cost was incurred as practicable and the agency shall allow the cost and cause it to be paid promptly in the manner that other claims and accounts are allowed and paid and the total amount constitutes a debt against the local agency due the state. Whenever there is in the State Treasury a sum of money due any county commission, board of education or municipality from any source, upon the application of the chief inspector, the sum shall be at once applied on the debt against the county commission, board of education or municipality and the fact of the application of the fund shall be reported by the Auditor to the county commission, board of education or municipality, which report shall be a receipt for the amount named in the report. All money received by the chief inspector from this source shall be paid into the State Treasury, shall be deposited to the credit of an account to be known as chief inspector's fund and shall be expended only for the purpose of covering the cost of the services, unless otherwise directed by the Legislature. The cost of any examination, service, or act by the chief inspector made necessary, or the part thereof that was made necessary, by the willful fault of any officer or employee, may be recovered by the chief inspector from that person, on motion, on 10-days' notice in any court having jurisdiction.

(b) For the purpose of permitting payments to be made at definite periods to deputy inspectors and assistants for per diem compensation and expenses, there is hereby created a revolving fund for the chief inspector's office. The fund shall be accumulated and administered as follows:

(1) Subject to legislative appropriation, the sum of $25,000 to be transferred to this fund to create a revolving fund which, together with other payments into this fund as provided in



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this article, shall constitute a fund to defray the cost of this service;

(2) Payments received for the cost of services of the chief inspector's office and interest earned on the invested balance of the chief inspector's revolving fund shall be deposited into this revolving fund, which shall be known as the Chief Inspector's Fund;

(3) Any appropriations made to this fund may not be considered to have expired at the end of any fiscal period; and

(4) The chief inspector may transfer an amount not to exceed $400,000 from the Chief Inspector's Fund to the special operating fund created in §32-4-401 *et seq*. of this code: *Provided*, That any transfers shall be completed prior to July 1, 2003.

(c) Notwithstanding §61-11A-4 of this code, a court may, in its discretion, when sentencing a defendant convicted of a felony or misdemeanor based upon any audit, examination, or investigation by the State Auditor, which discloses misfeasance, malfeasance, or nonfeasance in the office on the part of any public officer or employee, order reimbursement to the State Auditor for the actual costs of auditing, investigating, or prosecuting a violation.

(1) There is hereby established a special fund in the State Treasury known as the "State Auditor's Public Integrity and Fraud Fund." The fund shall be administered by the State Auditor to enhance fraud detection, prevention, transparency and enforcement efforts for the purposes of carrying out the duties under this article, and §12-4A-3 of this code and shall consist of moneys deposited in the fund pursuant to this subsection, any other funds appropriated by the Legislature, and the interest or other earnings on the moneys in the fund.

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**§6-9-8a. Audit cost amnesty program.**

(a) Notwithstanding any other code provision to the contrary, the chief inspector shall establish a one time audit cost amnesty program to be conducted during the 2014 fiscal year.

(b) The amnesty program shall apply only to:

(1) Audits conducted by the chief inspector; and

(2) Audit costs that are for fiscal years prior to the two most recent audits completed or in progress as of July 1, 2013.

(c) The chief inspector shall establish procedures and forms for processing applications to the program.

(d) An entity is not eligible to participate in the amnesty program unless fees related to its two most recent audits completed or in progress as of July 1, 2013, have been paid in full prior to its request for amnesty.

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## §6-9-9. Deputies of chief inspector.

Any duty or act required by this article to be performed by the chief inspector may be performed with like effect by any deputy or assistant appointed by the chief inspector.

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## §6-9-9a. Public inspection of reports of examinations.

All reports of examinations and audits of public offices made in accordance with the provisions of §6-9-7 of this code, and the copies thereof, when filed in the office of the chief inspector of public offices or in the office of the State Tax Commissioner, shall be public documents and shall be available for public inspection: Provided, That if an examination or investigative report discloses misfeasance, nonfeasance, or malfeasance, the chief inspector may direct that a report remain confidential until such time that the proper legal authority, as described in §6-9-7(n) of this code, has completed its investigation or adjudication of the matter and authorizes public disclosure.

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## §6-9-9b. Documentation of chief inspector.

(a) The audit working papers created by the chief inspector division during examinations or investigations shall be considered confidential, and shall not be deemed public records for purposes of §29B-1-1 et seq. of this code.

(b) For purposes of this section, “audit working papers” includes, but is not limited to, the books and records of the entity being audited, intra- and inter-agency communications, draft reports, summaries, schedules, notes, memoranda, and all other records relating to an examination or investigation by the chief inspector division.

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## §6-9-10. Statutory references to audits or examinations of state offices by Tax Commissioner or inspector or supervisor of public offices.

Whenever any statute refers to an audit or examination of a state department or agency by the Tax Commissioner or inspector and/or supervisor of public offices, if within the prescribed functions and duties of the Legislative Auditor in making post audit of such state department or agency, and in order to avoid duplication, the reference shall be deemed to be made to the Legislative Auditor to whom such functions and duties have been transferred.

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**§6-9-11. Transfer of certain powers and duties of Tax Commissioner to State Auditor; rules; interagency agreement; report to Legislature.**

(a) Effective July 1, 1999, the State Auditor shall be the chief inspector and supervisor of local government offices. For the purposes of this section and any section of this code relating to the chief inspector, "local government office" means any unit of local government within the state, including a county, county board of education, municipality, and any other authority, board, commission, district, office, public authority, public corporation or other instrumentality of a county, county board of education or municipality or any combination of two or more local governments.

The State Auditor shall assume and perform those duties previously vested in the Tax Commissioner under this section and any section of this code relating to the chief inspector, which sections are identified in subsection (d) of this section, pertaining to:

(1) Making annual or special financial and compliance examinations or audits of local government offices;

(2) Providing annual training to county officials pertaining to their work: Provided, That this annual training may not include matters directly or indirectly pertaining to determining the appraised or assessed value of property or equalization of assessed values of property for ad valorem property tax purposes;

(3) Reviewing and approving annual budgets and changes in budgets during the fiscal year; and

(4) Approving proposed levy rates, whether regular or special.

(b) Effective July 1, 1999, all records, property of whatever kind and character, including, but not limited to, current office space occupied by the chief inspector division of the Tax Division, all personnel in positions assigned to the chief inspector division and the fund established in section eight of this article shall be transferred to the State Auditor.

(c) The State Auditor shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the provisions of this section and any section of this code relating to the chief inspector.

(d) Notwithstanding any provision of this code to the contrary, after June 30, 1999, whenever the words "Tax Commissioner" or "State Tax Commissioner" appear in the following subsections, sections or articles of this code, these words shall mean the "State Auditor in his or her capacity as the chief inspector and supervisor of local government offices": Article nine, chapter six; section nine, article one, chapter seven; sections sixteen and eighteen, article five of chapter seven; sections two, three, four and seventeen, article seven of chapter seven; section twelve, article twelve of chapter seven; section nine, article thirteen of chapter seven; section seventeen, article seventeen of chapter seven; section

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sixteen, article eight of chapter eight; sections seven, eighteen, nineteen and twenty-three, article thirteen of chapter eight; section seven, article sixteen of chapter eight; section four, article twenty-three of chapter eight; section sixteen, article twenty-nine of chapter eight; section four, article twenty-nine-a of chapter eight; section two, article thirty-two of chapter eight; section eight, article thirty-three of chapter eight; section six, article one of chapter ten; sections six-b, six-c, seven, eight, ten, ten-a, eleven, twelve, twelve-a, thirteen, fourteen, fourteen-a, fifteen, eighteen, twenty, twenty-one, twenty-three, twenty-four, twenty-five-a, twenty-six-a and thirty, article eight of chapter eleven; subsections (i) and (j), section five-a and subsections (i) and (j), section six, article thirteen-a of chapter eleven; sections eight, twelve and thirteen, article one of chapter eleven-a; section eleven, article two of chapter eleven-a; sections fourteen, thirty-two and sixty-four, article three of chapter eleven-a; section twenty, article three of chapter twelve; section five, article four of chapter twelve; section twenty, article one of chapter thirteen; section twenty-five, article two of chapter eighteen; section three-a, article nine of chapter eighteen; sections one, three, six, nine, twelve and thirteen, article nine-b of chapter eighteen; section five, article nine-d of chapter eighteen; section thirteen-b, article twenty-one-a of chapter nineteen; section eight, article two of chapter twenty-four; section nineteen, article twenty-one of chapter twenty-nine; section twenty, article one of chapter fifty-two; and section thirty, article one of chapter fifty-nine, all of this code.

(e) On or before July 1, 1999, the State Auditor and the State Tax Commissioner shall file with the Governor, the President of the Senate and the Speaker of the House of Delegates, an interagency agreement clarifying transition procedures and respective powers of the Auditor and Tax Commissioner. A copy of the interagency agreement shall be filed with the Secretary of State, and shall be a public record.

(f) On or before December 1, 1999, the State Auditor and the State Tax Commissioner shall jointly report to the Legislature as to any conflicts in this code created by the enactment of this section for which legislation is recommended for enactment during the 2000 regular session.

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## §6-9-12. Business intern program.

Beginning July 1, 2002, the chief inspector shall develop in conjunction with the graduate business programs at West Virginia University and Marshall university an intern program which utilizes students pursuing a graduate degree in business, economics or accounting to assist in the auditing function of the office of the chief inspector. This program shall provide that those students who satisfactorily complete the program shall receive up to two hours credit toward their degree.

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## §6-9A-1. Declaration of legislative policy.

The Legislature hereby finds and declares that public agencies in this state exist for the singular purpose of representing citizens of this state in governmental affairs, and it is, therefore, in the best interests of the people of this state for the proceedings of public agencies be conducted openly, with only a few clearly defined exceptions. The Legislature hereby further finds and declares that the citizens of this state do not yield their sovereignty to the governmental agencies that serve them. The people in delegating authority do not give their public servants the right to decide what is good for them to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government created by them.

Open government allows the public to educate itself about government decisionmaking through individuals' attendance and participation at government functions, distribution of government information by the press or interested citizens, and public debate on issues deliberated within the government.

Public access to information promotes attendance at meetings, improves planning of meetings, and encourages more thorough preparation and complete discussion of issues by participating officials. The government also benefits from openness because better preparation and public input allow government agencies to gauge public preferences accurately and thereby tailor their actions and policies more closely to public needs. Public confidence and understanding ease potential resistance to government programs.

Accordingly, the benefits of openness inure to both the public affected by governmental decisionmaking and the decision makers themselves. The Legislature finds, however, that openness, public access to information and a desire to improve the operation of government do not require nor permit every meeting to be a public meeting. The Legislature finds that it would be unrealistic, if not impossible, to carry on the business of government should every meeting, every contact and every discussion seeking advice and counsel in order to acquire the necessary information, data or intelligence needed by a governing body were required to be a public meeting. It is the intent of the Legislature to balance these interests in order to allow government to function and the public to participate in a meaningful manner in public agency decisionmaking.

WV Legislature

**§6-9A-2. Definitions.**

As used in this article:

(1) "Decision" means any determination, action, vote or final disposition of a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required at any meeting at which a quorum is present.

(2) "Emergency meeting" means any meeting called by a governing body for the purpose of addressing an unexpected event which requires immediate attention because it poses:

(A) An imminent threat to public health or safety;

(B) An imminent threat of damage to public or private property; or

(C) An imminent material financial loss or other imminent substantial harm to a public agency, its employees or the members of the public which it serves.

(3) "Executive session" means any meeting or part of a meeting of a governing body which is closed to the public.

(4) "Governing body" means the members of any public agency having the authority to make decisions for or recommendations to a public agency on policy or administration, the membership of a governing body consists of two or more members; for the purposes of this article, a governing body of the Legislature is any standing, select or special committee, except the commission on special investigations, as determined by the rules of the respective houses of the Legislature.

(5) "Meeting" means the convening of a governing body of a public agency for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter which results in an official action. Meetings may be held by telephone conference or other electronic means. The term meeting does not include:

(A) Any meeting for the purpose of making an adjudicatory decision in any quasi-judicial, administrative or Court of Claims proceeding;

(B) Any on-site inspection of any project or program;

(C) Any political party caucus;

(D) General discussions among members of a governing body on issues of interest to the public when held in a planned or unplanned social, educational, training, informal, ceremonial or similar setting, without intent to conduct public business even if a quorum is present and public business is discussed but there is no intention for the discussion to lead to an official action; or

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(E) Discussions by members of a governing body on logistical and procedural methods to schedule and regulate a meeting.

(6) "Official action" means action which is taken by virtue of power granted by law, ordinance, policy, rule, or by virtue of the office held.

(7) "Public agency" means any administrative or legislative unit of state, county or municipal government, including any department, division, bureau, office, commission, authority, board, public corporation, section, committee, subcommittee or any other agency or subunit of the foregoing, authorized by law to exercise some portion of executive or legislative power. The term "public agency" does not include courts created by article eight of the West Virginia Constitution or the system of family law masters created by article four, chapter forty-eight-a of this code.

(8) "Quorum" means the gathering of a simple majority of the constituent membership of a governing body, unless applicable law provides for varying the required ratio.

(9) "Regular meeting" means a meeting of a governing body at which the regular business of the public is conducted.

(10) "Special meeting" means a meeting of a governing body other than a regular meeting or an emergency meeting.

WV Legislature

**§6-9A-3. Proceedings to be open; public notice of meetings.**

(a) Except as expressly and specifically otherwise provided by law, whether heretofore or hereinafter enacted, and except as provided in section four of this article, all meetings of any governing body shall be open to the public.

(b) Any governing body may make and enforce reasonable rules for attendance and presentation at any meeting where there is not room enough for all members of the public who wish to attend.

(c) This article does not prohibit the removal from a meeting of any member of the public who is disrupting the meeting to the extent that orderly conduct of the meeting is compromised: Provided, That persons who desire to address the governing body may not be required to register to address the body more than fifteen minutes prior to time the scheduled meeting is to commence.

(d) Each governing body shall promulgate rules by which the date, time, place and agenda of all regularly scheduled meetings and the date, time, place and purpose of all special meetings are made available, in advance, to the public and news media.

(e) Each governing body of the executive branch of the state shall electronically file a notice of each meeting with the Secretary of State for publication on the Secretary of State's website.

(1) Each notice shall state the date, time, place and purpose of the meeting.

(2) Each notice of a special meeting or a regular meeting shall be filed in a manner to allow each notice to appear on the Secretary of State's website at least five business days prior to the date of the meeting.

(3) When calculating the days, the day of the meeting is not to be counted. If a meeting notice is filed anytime other than during the Secretary of State's regular business hours, the date of filing will be considered the next business day.

(f) The Secretary of State shall retain copies of all notices filed for ten years.

(g) The Secretary of State may promulgate procedural rules governing the electronic filing of meeting notices.

(h) In the event of an emergency a governing body may call an emergency meeting.

(1) The governing body of a state executive branch agency shall electronically file a notice for an emergency meeting with the Secretary of State, as soon as practicable prior to the meeting. Any other governing body shall notice an emergency meeting in a manner which is consistent with this article and the Ethics Commission Committee on Open Governmental Meeting's opinions issued pursuant to the authority of section ten of this article, as soon as

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practicable prior to the meeting.

(2) The emergency meeting notice shall state the date, time, place and purpose of the meeting and the facts and circumstances of the emergency.

(i) Upon petition by any adversely affected party any court of competent jurisdiction may invalidate any action taken at any meeting for which notice did not comply with the requirements of this section.

WV Legislature

**§6-9A-4. Exceptions.**

(a) The governing body of a public agency may hold an executive session during a regular, special or emergency meeting, in accordance with the provisions of this section. During the open portion of the meeting, prior to convening an executive session, the presiding officer of the governing body shall identify the authorization under this section for holding the executive session and present it to the governing body and to the general public, but no decision may be made in the executive session.

(b) An executive session may be held only upon a majority affirmative vote of the members present of the governing body of a public agency. A public agency may hold an executive session and exclude the public only when a closed session is required for any of the following actions:

(1) To consider acts of war, threatened attack from a foreign power, civil insurrection or riot;

(2) To consider:

(A) Matters arising from the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of a public officer or employee, or prospective public officer or employee unless the public officer or employee or prospective public officer or employee requests an open meeting; or

(B) For the purpose of conducting a hearing on a complaint, charge or grievance against a public officer or employee, unless the public officer or employee requests an open meeting. General personnel policy issues may not be discussed or considered in a closed meeting. Final action by a public agency having authority for the appointment, employment, retirement, promotion, transfer, demotion, disciplining, resignation, discharge, dismissal or compensation of an individual shall be taken in an open meeting;

(3) To decide upon disciplining, suspension or expulsion of any student in any public school or public college or university, unless the student requests an open meeting;

(4) To issue, effect, deny, suspend or revoke a license, certificate or registration under the laws of this state or any political subdivision, unless the person seeking the license, certificate or registration or whose license, certificate or registration was denied, suspended or revoked requests an open meeting;

(5) To consider the physical or mental health of any person, unless the person requests an open meeting;

(6) To discuss any material the disclosure of which would constitute an unwarranted invasion of an individual's privacy such as any records, data, reports, recommendations or other personal material of any educational, training, social service, rehabilitation, welfare, housing, relocation, insurance and similar program or institution operated by a public agency pertaining to any specific individual admitted to or served by the institution or

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program, the individual's personal and family circumstances;

(7) To plan or consider an official investigation or matter relating to crime prevention or law enforcement;

(8) To develop security personnel or devices;

(9) To consider matters involving or affecting the purchase, sale or lease of property, advance construction planning, the investment of public funds or other matters involving commercial competition, which if made public, might adversely affect the financial or other interest of the state or any political subdivision: Provided, That information relied on during the course of deliberations on matters involving commercial competition are exempt from disclosure under the open meetings requirements of this article only until the commercial competition has been finalized and completed: Provided, however, That information not subject to release pursuant to the West Virginia freedom of information act does not become subject to disclosure as a result of executive session;

(10) To avoid the premature disclosure of an honorary degree, scholarship, prize or similar award;

(11) Nothing in this article permits a public agency to close a meeting that otherwise would be open, merely because an agency attorney is a participant. If the public agency has approved or considered a settlement in closed session, and the terms of the settlement allow disclosure, the terms of that settlement shall be reported by the public agency and entered into its minutes within a reasonable time after the settlement is concluded;

(12) To discuss any matter which, by express provision of federal law or state statute or rule of court is rendered confidential, or which is not considered a public record within the meaning of the freedom of information act as set forth in article one, chapter twenty-nine-b of this code.

WV Legislature

## §6-9A-5. Minutes.

Each governing body shall provide for the preparation of written minutes of all of its meetings. Subject to the exceptions set forth in section four of this article, minutes of all meetings except minutes of executive sessions, if any are taken, shall be available to the public within a reasonable time after the meeting and shall include, at least, the following information:

(1) The date, time and place of the meeting;

(2) The name of each member of the governing body present and absent;

(3) All motions, proposals, resolutions, orders, ordinances and measures proposed, the name of the person proposing the same and their disposition; and

(4) The results of all votes and, upon the request of a member, pursuant to the rules, policies or procedures of the governing board for recording roll call votes, the vote of each member, by name.

WV Legislature

## §6-9A-6. Enforcement by injunctions; actions in violation of article voidable; voidability of bond issues.

The circuit court in the county where the public agency regularly meets has jurisdiction and is a proper venue to enforce this article upon civil action commenced by any citizen of this state within 120 days after the action complained of was taken or the decision complained of was made. Where the action seeks injunctive relief, no bond may be required unless the petition appears to be without merit or made with the sole intent of harassing or delaying or avoiding return by the governing body.

The court is empowered to compel compliance or enjoin noncompliance with the provisions of this article and to annul a decision made in violation of this article. An injunction may also order that subsequent actions be taken or decisions be made in conformity with the provisions of this article: Provided, That no bond issue that has been passed or approved by any governing body in this state may be annulled under this section if notice of the meeting at which the bond issue was finally considered was given at least 10 days prior to the meeting by a Class I legal advertisement published in accordance with the provisions of §59-3-1 et seq. of this code in a qualified newspaper having a general circulation in the geographic area represented by that governing body.

In addition to or in conjunction with any other acts or omissions which may be determined to be in violation of this article, it is a violation of this article for a governing body to hold a private meeting with the intention of transacting public business, thwarting public scrutiny and making decisions that eventually become official action.

Any order which compels compliance or enjoins noncompliance with the provisions of this article, or which annuls a decision made in violation of this article shall include findings of fact and conclusions of law and shall be recorded in the minutes of the governing body.

WV Legislature

## §6-9A-7. Violation of article; criminal penalties; attorney fees and expenses in civil actions.

(a) Any person who is a member of a public or governmental body required to conduct open meetings in compliance with the provisions of this article and who willfully and knowingly violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500: Provided, That a person who is convicted of a second or subsequent offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000.

(b) A public agency whose governing body is adjudged in a civil action to have conducted a meeting in violation of the provisions of this article may be liable to a prevailing party for fees and other expenses incurred by that party in connection with litigating the issue of whether the governing body acted in violation of this article, unless the court finds that the position of the public agency was substantially justified or that special circumstances make an award of fees and other expenses unjust.

(c) Where the court, upon denying the relief sought by the complaining person in the action, finds that the action was frivolous or commenced with the primary intent of harassing the governing body or any member thereof or, in the absence of good faith, of delaying any meetings or decisions of the governing body, the court may require the complaining person to pay the governing body's necessary attorney fees and expenses.

WV Legislature

## §6-9A-8. Acting by reference; written ballots.

(a) Except as otherwise expressly provided by law, the members of a public agency may not deliberate, vote, or otherwise take official action upon any matter by reference to a letter, number or other designation or other secret device or method, which may render it difficult for persons attending a meeting of the public agency to understand what is being deliberated, voted or acted upon. However, this subsection does not prohibit a public agency from deliberating, voting or otherwise taking action by reference to an agenda, if copies of the agenda, sufficiently worded to enable the public to understand what is being deliberated, voted or acted upon, are available for public inspection at the meeting.

(b) A public agency may not vote by secret or written ballot.

WV Legislature

## §6-9A-9. Broadcasting or recording meetings.

(a) Except as otherwise provided in this section, any radio or television station is entitled to broadcast all or any part of a meeting required to be open.

(b) A public agency may regulate the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting, so as to prevent undue interference with the meeting. The public agency shall allow the equipment to be placed within the meeting room in such a way as to permit its intended use, and the ordinary use of the equipment may not be declared to constitute undue interference: Provided, That if the public agency, in good faith, determines that the size of the meeting room is such that all the members of the public present and the equipment and personnel necessary for broadcasting, photographing, filming and tape-recording the meeting cannot be accommodated in the meeting room without unduly interfering with the meeting and an adequate alternative meeting room is not readily available, then the public agency, acting in good faith and consistent with the purposes of this article, may require the pooling of the equipment and the personnel operating it.

WV Legislature

## §6-9A-10. Open governmental meetings committee.

The West Virginia Ethics Commission, pursuant to subsection (j), section one, article two, chapter six-b of this code, shall appoint from the membership of the commission a subcommittee of three persons designated as the West Virginia Ethics Commission committee on open governmental meetings. The chairman shall designate one of the persons to chair the committee. In addition to the three members of the committee, two additional members of the commission shall be designated to serve as alternate members of the committee.

The chairman of the committee or the executive director shall call meetings of the committee to act on requests for advisory opinions interpreting the West Virginia open government meetings act. Advisory opinions shall be issued in a timely manner, not to exceed thirty days.

WV Legislature

## §6-9A-11. Request for advisory opinion; maintaining confidentiality.

(a) Any governing body or member thereof subject to the provisions of this article may seek advice and information from the executive director of the West Virginia Ethics Commission or request in writing an advisory opinion from the West Virginia Ethics Commission Committee on Open Governmental Meetings as to whether an action or proposed action violates the provisions of this article. The executive director may render oral advice and information upon request. The committee shall respond in writing and in an expeditious manner to a request for an advisory opinion. The opinion is binding on the parties requesting the opinion.

(b) Any governing body or member thereof that seeks an advisory opinion and acts in good faith reliance on the opinion has an absolute defense to any civil suit or criminal prosecution for any action taken in good faith reliance on the opinion unless the committee was willfully and intentionally misinformed as to the facts by the body or its representative.

(c) A governing body or member thereof that acts in good faith reliance on a written advisory opinion sought by another person or governing body has an absolute defense to any civil suit or criminal prosecution for any action taken based upon a written opinion of the West Virginia Ethics Commission committee, as long as underlying facts and circumstances surrounding the action were the same or substantially the same as those being addressed by the written opinion.

(d) The committee and commission may take appropriate action to protect from disclosure information which is properly shielded by an exception provided in section four of this article.

WV Legislature

## §6-9A-12. Duty of Attorney General, Secretary of State, clerks of the county commissions and city clerks or recorders.

It is the duty of the Attorney General to compile the statutory and case law pertaining to this article and to prepare appropriate summaries and interpretations for the purpose of informing all public officials subject to this article of the requirements of this article. It is the duty of the Secretary of State, the clerks of the county commissions, joint clerks of the county commissions and circuit courts, if any, and the city clerks or recorders of the municipalities of the state to provide a copy of the material compiled by the Attorney General to all elected public officials within their respective jurisdictions. The clerks or recorders will make the material available to appointed public officials. Likewise, it is their respective duties to provide a copy or summary to any newly appointed or elected person within thirty days of the elected or appointed official taking the oath of office or an appointed person's start of term.

WV Legislature

## §6-9B-1. Legislative findings.

(a) The Legislature finds that taxpayers should be able to easily access the details of how the state is spending their tax dollars and what performance results are achieved for those expenditures. It is the intent of the Legislature, therefore, to direct the State Auditor to create and maintain a searchable financial transparency website detailing where, how much, and for what purpose taxpayer moneys in state government are expended.

(b) It is also the intent of the Legislature that the searchable website be made compatible for future inclusion of counties or municipalities that desire to have their own searchable financial transparency website.

WV Legislature

## §6-9B-2. Definitions.

For the purpose of this article:

(a) “Auditor” means the State Auditor of West Virginia, by himself or herself, or by any person appointed, designated or approved by the State Auditor to perform the service.

(b) “Funding action or expenditure” includes details on the type of spending (grant, contract, appropriations, etc.). This includes, but is not limited to, tax exemptions, tax credits or any expenditure from any civil contingency or similar fund. Where possible, a hyperlink to the actual grants or contracts shall be provided.

(c) “Funding source” means the state account from which the funding action or expenditure is appropriated.

(d) “Governmental Agency” means a state department, office, board, commission, bureau, division, institution or institution of higher education under the direction and control of the Executive Branch, Legislative Branch or Judicial Branch of state government. This includes individual state agencies and programs, elected offices, as well as those programs and activities that cross agency lines.

(e) “Recipients” means any individual, person, corporation, association, union, limited liability corporation, limited liability partnership, legal business entity including nonprofit organizations, grantee, contractor or any county, municipal or other local government entity that directly receives the benefit of a funding action or expenditure.

(f) “Searchable financial transparency website” means a website that allows the public at no cost to search and aggregate information regarding the state’s budget and spending.

WV Legislature

## §6-9B-3. Searchable financial transparency website created.

No later than July 1, 2018, the State Auditor shall develop and make publicly available a searchable financial transparency website containing the information specified in §6-9B-4 of this code.

WV Legislature

## §6-9B-4. Contents of the searchable website.

(a) The Auditor shall include as part of the searchable financial transparency website the following content for a given fiscal year and the 3 immediately preceding fiscal years:

(1) The name and the address, principal location or residence of the recipients of a given funding action or expenditure: Provided, That all federal and state laws and regulations and rules regarding the confidentiality of information and privacy apply;

(2) The amount of funds expended in a given funding action or expenditure;

(3) The governmental agency making a given funding action or expenditure;

(4) The funding source a given funding action or expenditure;

(5) The budget program or activity related to a given funding action or expenditure; and

(6) Additional information as to the funding action or expenditure the Auditor deems valuable for the public.

(b) The searchable financial transparency website shall be updated periodically as new data becomes available. All governmental agencies shall provide to the Auditor, in a format specified by the Auditor, all data that is required to be included in the searchable financial database website no later than 30 days after the data becomes available to the agency. The Auditor shall provide guidance and specifications to governmental agencies to promote compliance with this section.

(c) The Auditor shall make publicly known those governmental agencies that have failed to comply with the requirements of this article.

WV Legislature

## §6-9C-1. Short title.

This article may be cited as the Public Meetings During Emergencies Act.

WV Legislature

## §6-9C-2. Definitions.

In this article:

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Emergency" means an event or condition that is an emergency, disaster, or public health emergency as addressed in §15-5-2 and §15-5-6 of this code.

"Emergency declaration" means a declaration of emergency issued by a person or agency authorized to do so under §15-5-6 of this code and that is in effect.

"Meeting" has the same definition as in §6-9A-2 of this code.

"Person" has the same definition as in §6-9A-2 of this code. The term does not include a public corporation, government or governmental subdivision, agency, or instrumentality.

"Public agency" has the same definition as in §6-9A-2 of this code, however, for purposes of this article, it does not include the Legislature.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Virtual meeting" or "virtually" means a meeting of a public agency or any part thereof, at which some or all of the members of the public agency participate wholly or partly by electronic means.

WV Legislature

## §6-9C-3. Virtual meetings.

(a) A public agency may meet virtually during an emergency that is the subject of an emergency declaration if otherwise permitted by law, or all or part of the jurisdiction of the public agency is subject to the emergency declaration; and the person authorized by law or by rule of the public agency to act for the public agency determines that due to the emergency it would not be practical or prudent for the public agency to meet physically or if the emergency declaration prohibits physical meetings.

(b) If a virtual meeting of a public agency authorized by §6-9C-3(a) of this code complies with the requirements of §6-9C-4, §6-9C-5, and §6-9C-6 of this code, then any action taken at a virtual meeting has the same legal force and effect as an action taken at a physical meeting of the public agency. All other laws of the state that apply to a physical meeting of a public agency shall, to the extent practicable and not inconsistent with a virtual meeting, apply to a virtual meeting of the public agency.

WV Legislature

## §6-9C-4. Authorization for virtual meeting.

(a) A public agency may conduct a virtual meeting while an emergency declaration is in effect that applies to all or part of the jurisdiction of the public agency if:

(1) The emergency declaration prohibits, limits, or has the effect of prohibiting or limiting an in-person meeting of the public agency; or

(2) The presiding officer of the public agency or other individual authorized to act for the public agency determines it is not practical or prudent for the public agency to conduct an in-person meeting because of the emergency; and

(A) Communicates to the members of the public agency that the meeting shall be a virtual meeting; and

(B) Takes reasonable steps to inform members of the public that the meeting shall be a virtual meeting.

WV Legislature

**§6-9C-5. Conduct of virtual meeting.**

(a) A public agency shall, to the extent practicable, select a means to conduct a virtual meeting that is compatible with assistive technology commonly used by individuals with disabilities and that facilitates the accommodation needs of individuals with disabilities to access the meeting.

(b) Except as provided in §6-9C-5(c) or §6-9C-5(d) of this code, the means used to conduct a virtual meeting shall permit each member of the public agency who attends the meeting to see and hear during the meeting and to be seen and heard by, the other members of the public agency who attend the meeting.

(c) If a member of a public agency is unable to obtain visual access to the virtual meeting but is able to obtain audio access that permits the member, during the meeting, to hear and be heard by the other members of the public agency who attend the meeting, the member may attend by audio access.

(d) If a public agency lacks the capacity to provide contemporaneous visual access to a virtual meeting for members of the public agency, the public agency may conduct the meeting by audio-only access that permits each member of the public agency who attends the meeting, to hear and be heard during the meeting by the other members of the public agency who attend the meeting.

(e) A member of a public agency who attends a virtual meeting is considered present for all

purposes, including for determination of a quorum and voting, if during the meeting, the member may:

(1) For a meeting conducted in compliance with §6-9C-5(b) of this code, see and hear and be seen and heard by the other members of the public agency who attend; or

(2) For a meeting conducted in compliance with §6-9C-5(c) or (d) of this code, may hear and be heard by the other members of the public agency who attend.

(f) A member of a public agency who attends a virtual meeting through electronic means that provide audio-only access to the meeting shall state the member's name each time the member speaks. Failure by a member to state the member's name does not invalidate an action taken at the virtual meeting.

(g) A vote taken at a virtual meeting shall be by a process that identifies how each member of the public agency votes.

(h) The minutes of a virtual meeting shall include any vote taken, that the meeting was conducted by electronic means, the technology used, and which members of the public agency attended by electronic means.

WV Legislature

**§6-9C-6. Public observation.**

(a) If the open meetings law requires that the public be able to observe all or part of a meeting of a public agency in real time:

(1) The public agency shall permit the public to observe a virtual meeting or the part of the virtual meeting that would be required to be open to the public if it were part of an in-person meeting; and

(2) The public agency shall provide the technological means to allow the members of the public who observe the virtual meeting to see and hear or, if the public agency conducts the meeting by audio-only access under §6-9C-5(d) of this code, to hear any members of the public authorized by the public agency to speak in the meeting.

(b) A document, exhibit, or other record presented to a public agency at a virtual meeting that, under the open meetings law, would have been available to the public at an in-person meeting, including members of the public observing or participating in a virtual meeting under §6-9C-7 of this code, shall be made available to the public at the same time as the virtual meeting to the extent practicable.

WV Legislature

## §6-9C-7. Public participation.

(a) If a law of this state or a political subdivision of the state or a rule, practice, or procedure adopted by the public agency requires that members of the public be permitted to participate in a meeting of the public agency, the public agency to the extent practicable shall permit members of the public to participate in a virtual meeting, subject to the conditions that apply at an in-person meeting of the public agency.

(b) If members of the public are permitted to speak at a virtual meeting, the technology used to conduct the meeting shall permit the members of the public agency and members of the public attending the meeting to hear the members of the public who speak at the meeting.

(c) If a public agency considers at a virtual meeting a matter affecting the right or interest of a person entitled by other law of the state or a political subdivision of this state or by rule of the public agency to participate, present evidence, or examine or cross-examine witnesses at an in-person meeting, the public agency shall permit the person to use the same technology that the public agency uses to conduct the virtual meeting, or provide equivalent access, to attend the meeting and present evidence, or examine or cross-examine witnesses in the meeting.

(d) If a person to which §6-9C-7(c) of this code applies objects that the virtual meeting does not allow the person to effectively protect the right or interest referred to in §6-9C-7(c) of this code, the public agency shall consider the objection and may proceed with the matter at a virtual meeting if the agency determines that the virtual meeting will allow the person to effectively protect the right or interest. The determination and the reason for the determination shall be stated in a record.

WV Legislature

## §6-9C-8. Notice.

(a) In addition to any other requirement concerning notice, a public agency, for a meeting of the public agency, shall give notice of a virtual meeting and shall specify that the meeting will be a virtual meeting and the technology that will be used for the virtual meeting.

(b) Notice of a virtual meeting shall specify how:

(1) Members of the public may observe the meeting in real time pursuant to §6-9C-6 of this code;

(2) Members of the public permitted to participate, present evidence, or examine or cross-examine witnesses at the meeting pursuant to §6-9C-7 of this code may do so;

(3) A member of the public may alert the public agency of a technical or quality problems that prevents the member from accessing the meeting; and

(4) A member of the public with a disability may request a reasonable accommodation to access the meeting.

WV Legislature

## §6-9C-9. Procedural rules.

A public agency may adopt rules for conducting a virtual meeting under this article, comparable to rules for conducting an in-person meeting of the public agency. The rules may include:

(1) The means by which the public agency will inform members of the public that a virtual meeting will be held;

(2) The effect of a technical or quality problems that interferes with meeting or access to a meeting by a member of the public agency or the public;

(3) The means by which a record considered at a meeting is made available to the public agency and, if required by other law, the public;

(4) The means for access to a meeting by an individual with a disability; and

(5) The process by which a person may object under §6-9C-7 of this code to the conduct of a meeting on the ground that the procedure denies the person due process of law.

WV Legislature

## §6-9C-10. Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 *et seq*., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103 (b) of that act, 15 U.S.C. § 7003(b).

WV Legislature

## §6-9D-1. Legislative findings.

(a) The Legislature finds:

(1) That local governments are instrumentalities of this state, and the Legislature must act for the public health, safety and welfare of its citizens to promote fiscal integrity of local governments to prevent future emergencies;

(2) That negative economic changes, waste, fraud or abuse by public officials, or a combination thereof, necessarily result in a significant impact on the revenues and effectiveness of local governments, and cause significant indebtedness without any current possibility for recovery; and

(3) That the failure of a local government to take actions on its own to address such a condition will adversely affect the health, safety and welfare not only of the residents of the local government, but also of other people of the state.

(b) It is the intent of the Legislature to direct the State Auditor or a designee to:

(1) Take necessary and appropriate actions to limit and restrict the powers of local governments to prevent the abuse of statutory powers;

(2) Require reports and examinations of their financial condition, transactions, operations and undertakings;

(3) Ensure the fiscal integrity of local governments so that they may provide for the health, safety and welfare of their citizens; and

(4) Determine if local governments have paid due principal and interest on their debt obligations, meet financial obligations to their employees, vendors and suppliers, and provide for proper financial accounting procedures, budgeting and taxing practices.

(c) The Legislature further finds that the fiscal emergency conditions described in this article result from and constitute abuses of the powers of a local government to borrow money, contract debts and levy taxes, and that those conditions impair and threaten the health, safety and welfare of the people of the state within and beyond the local government.

WV Legislature

**§6-9D-2. Definitions.**

As used in this article:

“Committee” means a financial planning and supervision group created pursuant to this article.

“Debt obligations” means bonds, notes, certificates of indebtedness, bond anticipation notes, current revenue notes, local government fund notes, leases or other obligations issued or incurred in borrowing money, or to renew, refund, fund or refinance, or issued in exchange for, such obligations, and any interest coupons pertaining thereto.

“Default” means failure to pay the principal of or the interest on a debt obligation, or failure to make other payment to be made to the holder or owner of a debt obligation, in the full amount and at the time provided for in the contractual commitment with respect thereto, unless the time for such payment has been extended by the owner or holder of the debt obligation without penalty or premium and without the effect of subjecting the local government to the initiation of remedies pertaining to such debt obligation or other debt obligations.

“Deficit fund” means the general fund or any other fund of a local government that, as at the time indicated, has a deficit balance or a balance that is less than the amount required to be in such fund pursuant to law or pursuant to contractual requirements, demonstrating that over a period of time expenditures charged or chargeable to the fund have exceeded moneys credited to the fund, or that moneys credited to the fund have not been in the amounts required by law or contractual requirements.

“Effective financial accounting and reporting system” means an accounting and reporting system as prescribed by the West Virginia State Auditor’s Office.

“Employee benefits” means expenditures for goods and services furnished to local government officers or employees by the local government, including, but not limited to, such benefits as food, temporary housing and clothing, and the provision of pension, retirement, disability, hospitalization, health care, insurance or other benefits to employees requiring the advance payment of money other than directly to employees or other beneficiaries, or the deposit or reservation of money for such purpose.

“Estimated revenues” means the aggregate estimates of revenue receipts in the budget of the general fund of a local government and other funds as estimated and supplemented, modified, or amended by the local government, as approved by the West Virginia State Auditor’s Office or other regulatory agency.

“Financial recovery plan” means the financial plan approved by the committee in accordance with §6-9D-6 of this code, as it may from time to time be amended in accordance with this article.

WV Legislature

"Fiscal emergency" means the existence of fiscal emergency conditions as set forth in this article.

"Fiscal emergency period" means the period of time commencing on the date when the determination of a fiscal emergency is made by the State Auditor or a designee and ending when the determination of termination is made and certified.

"Fiscal watch" means the existence of fiscal watch conditions as provided in this article.

"General fund" means the fund used to account for and report the primary operating activities of the local government.

"General fund budget" means the estimates of revenue and expenditure as a plan of financial operation of the general fund during the applicable fiscal year as approved by the West Virginia State Auditor's Office.

"Local government" means any unit of local government within the state, including a county, municipality, and any other authority, board, commission, district, office, public authority, public corporation, or other instrumentality of a county, municipality, or any combination of two or more local governments.

"Other funds" means funds other than the general fund, including, but not limited to, special revenue funds, capital project funds, debt service funds, permanent funds, enterprise funds, internal service funds, pension trust funds, custodial funds, investment trust funds, and private purpose trust funds.

"Payroll" means compensation due and payable to employees of local government other than employee benefits.

WV Legislature

## §6-9D-3. Auditable Condition of Local Governments.

Notwithstanding the powers and duties granted to the State Auditor in §6-6-1 *et seq*. the State Auditor or designee may determine that a local government's accounts, records, files, or reports have not been maintained in accordance with §6-9-2 of this code. The State Auditor or designee shall notify the local government, in writing, of the deficiencies present and the action necessary to present the accounts, records, files, or reports in an auditable condition. Furthermore, the State Auditor or designee may prescribe the deadline for the local government in completing the necessary action and institute a fiscal monitoring plan to improve the local government's financial records.

WV Legislature

## §6-9D-4. Initiating fiscal watch review.

(a) A local government may undergo a fiscal watch review by the State Auditor to determine whether it is approaching a state of fiscal emergency. A fiscal watch review shall be initiated by a written request to the State Auditor or a designee from the governing body when duly authorized by a majority of the members of such body; or may be initiated by the State Auditor or a designee if conditions for a fiscal watch have been determined to exist. Fiscal watch conditions include but are not limited to: (1) The inability of a local government to meet financial obligations; (2) the lack of adequate financial records necessary to conduct an examination pursuant to §6-9-1 *et seq*. of this code; or (3) an examination pursuant to §6-9-1 *et seq*. of this code would cause an undue financial burden to the local government.

(b) The State Auditor or a designee will notify the local government when a fiscal watch review will or will not be conducted. The State Auditor's Office will perform the fiscal watch review, which may be substituted for an examination, as required by §6-9-1 *et seq*. of this code at the discretion of the State Auditor or a designee.

(c) All working papers acquired or created to produce the fiscal watch review shall be considered confidential pursuant to §6-9-9b of this code.

WV Legislature

## §6-9D-5. Guidelines for identifying potential for declarations of fiscal watch or fiscal emergency; rulemaking authority.

(a) The State Auditor or a designee shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code, setting forth guidelines for identifying fiscal practices and budgetary conditions of local government that, if uncorrected, could result in declaration of a fiscal watch or fiscal emergency.

(b) If the State Auditor or a designee determines that a local government is engaging in any of the practices set forth in the legislative rule promulgated pursuant to the provisions of this section or that any of those conditions exist, the State Auditor or a designee may declare the local government to be under a fiscal watch.

(c) The State Auditor or a designee, may visit and inspect any local government that is declared to be under a fiscal watch. The State Auditor or a designee may provide technical assistance to the local government in implementing proposals to eliminate the practices or budgetary conditions that prompted the declaration of fiscal watch and may make recommendations concerning those proposals.

WV Legislature

## §6-9D-6. Conditions constituting grounds for fiscal watch.

In addition to the conditions set out in the legislative rule promulgated pursuant to the provisions of §6-9D-11 of this code the following also constitute grounds for a fiscal watch may include, but are not limited to:

(1) Accounts have been due and payable for more than 30 days or for which a penalty was added for failure to pay. Accounts include, but are not limited to, final judgments, employee benefits payments due and payable, and amounts due and payable to persons and other governmental entities and including any interest and penalties thereon. Accounts that are due and payable do not include any account, or portion of any account, that is being contested in good faith.

(2) The deficit amount within the general fund for the preceding fiscal year exceed the estimated revenues made in the general fund budget of the current fiscal year.

(3) The local government has failed to comply with debt covenants as required by the issuer of any debt with such requirement.

WV Legislature

**§6-9D-7. Declaring existence of fiscal watch; financial recovery plan.**

(a) Upon determining that one or more of the conditions constituting grounds for a fiscal watch are present, the State Auditor or a designee shall issue a written declaration of the existence of a fiscal watch and provide the same to the governing body of the local government.

(b) The fiscal watch shall be in effect until the State Auditor or a designee determines that the conditions have been satisfactorily addressed, cancels the watch, or until the State Auditor or a designee determines that a state of fiscal emergency exists. The State Auditor or a designee, shall provide such technical and support services to the municipal corporation, county or political subdivision after a fiscal watch has been declared to exist as the State Auditor or a designee considers necessary and provide recommendations to address the fiscal watch conditions.

(c) Within 90 days after the day a written declaration of the existence of a fiscal watch is issued under this section, the governing body of the local government for which a fiscal watch was declared shall submit to the State Auditor or a designee a financial recovery plan that shall identify actions to be taken to eliminate all of the conditions described in §6-9D-6 of this article, and shall include a schedule detailing the approximate dates for beginning and completing the actions and a five-year forecast reflecting the potential effects of the actions. The financial recovery plan also shall evaluate the feasibility of entering into shared services agreements with other political subdivisions for the joint exercise of any power, performance of any function, or rendering of any service, if not precluded by statute. The financial recovery plan is subject to review and approval by the State Auditor or a designee pursuant to the provisions of the rules promulgated pursuant to this article. The State Auditor or a designee may extend the amount of time by which a financial recovery plan is required to be filed, for good cause shown.

(d) The State Auditor or a designee may declare that a fiscal emergency condition exists under this article in the municipal corporation, county or political subdivision if either of the following applies:

(1) A feasible financial recovery plan for a local government filed pursuant to the provisions of this article and for which a fiscal watch was declared is not submitted within the time period prescribed by this section, or within any extension of time thereof; or

(2) The State Auditor or a designee finds that a local government for which a fiscal watch has been declared has not made reasonable proposals or otherwise taken action to discontinue or correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal watch, and the State Auditor or a designee determines a fiscal emergency declaration is necessary to prevent further decline.

(e) If the State Auditor or a designee finds that a local government declared to be under a fiscal watch has not made reasonable proposals or otherwise taken action to discontinue or

WV Legislature

correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal watch, and if the State Auditor or a designee considers it necessary to prevent further fiscal decline, the State Auditor or a designee may determine that the local government should be in a state of fiscal emergency as set forth in this article

WV Legislature

## §6-9D-8. Determining existence of fiscal emergency conditions.

(a) The existence of fiscal emergency conditions as set forth in §6-9D-9 of this code shall be determined by the State Auditor or a designee as set forth in rules authorized pursuant to this article. Fiscal emergency condition determinations shall be set forth in written reports by the State Auditor or a designee, which shall be filed with the governing body, the State Treasurer, Secretary of State, Governor, and Legislative Auditor.

(b) In making such determination, the State Auditor or a designee may rely on reports or other information filed or otherwise made available by the local government, accountants' reports, or other sources and data the State Auditor or a designee considers reliable for such purpose. The determination of a fiscal emergency condition may be made without need of the specific amounts noted related to such conditions.

WV Legislature

## §6-9D-9. Fiscal emergency conditions.

(a) The conditions constituting a fiscal emergency of a local government may include, but are not limited to:

(1) The existence, of a default on any debt obligation for more than 30 days.

(2) The failure to make payment of all payroll to employees of the local government in the amounts and at the times required by law, ordinances, resolutions, or agreements.

(3) The failure to make payment of all employee benefits of the local government in the amounts and at the times required by law, ordinances, resolutions, or agreements.

(4) The existence of a condition in which accounts were due and payable from the general fund and that either had been due and payable for at least 30 days or to which a penalty has been added for failure to pay, including, but not limited to, final judgments, employee benefits payments due and payable, and amounts due and payable to persons and other governmental entities and including any interest and penalties thereon. Accounts due and payable do not include any account, or portion of any account, that is being contested in good faith.

(5) The deficit amount within the general fund for the preceding fiscal year exceed the estimated revenues made in the general fund budget of the current fiscal year.

(6) The local government has failed to comply with debt covenants as required by the issuer of any debt with such requirement.

(7) Any such rule, as proposed by the State Auditor or a designee for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, identified as indicators of a financial emergency condition.

(8) The State Auditor or a designee declares a fiscal emergency pursuant to §6-9D-8 of this code.

(b) Any condition described in subdivisions (4), (5), (6) or (7) of subsection (a) of this section shall not constitute a fiscal emergency condition if the local government clearly demonstrates to the satisfaction of the State Auditor or a designee that such condition no longer exists prior to the time of the determination.

(c) Neither the time periods nor the amounts used in subsection (a) of this section to determine what constitutes a fiscal emergency condition of a local government for purposes of this article authorize actions otherwise contrary to law or any agreement of the local government.

WV Legislature

## §6-9D-10. Appeal of decision of State Auditor.

(a) A determination by the State Auditor or a designee that a fiscal emergency condition does not exist is final, conclusive and not appealable. A determination by the State Auditor or a designee under this section that a fiscal emergency exists is final, except that the governing body affected by a determination of the existence of a fiscal emergency condition under this section, when authorized by a majority of the members of their governing body, may appeal the determination of the existence of a fiscal emergency condition to the circuit court of the county having territorial jurisdiction over the local government. The appeal shall be heard expeditiously by the circuit court for good cause shown and, except as otherwise provided in this code, shall take precedence over all other civil matters except earlier matters of the same character. Notice of such appeal must be filed with the State Auditor or a designee and such court within 30 days after the notification of a fiscal emergency determination by the State Auditor or a designee to the governing body of the local government as provided for in subsection (a) of this section.

(b) Upon such appeal, determinations of the State Auditor or a designee shall be presumed to be valid and the local government shall have the burden of proving, by clear and convincing evidence, that each of the determinations made by the State Auditor or a designee as to the existence of a fiscal emergency condition under this article was in error. If the local government fails, upon presentation of its case, to prove by clear and convincing evidence that each such determination by the State Auditor or a designee was in error, the court shall dismiss the appeal. The local government and the State Auditor or a designee may introduce any evidence relevant to the existence or nonexistence of such fiscal emergency conditions at the times indicated in the applicable provisions of subsections (a) and (b) of this section.

(c) The pendency of any such appeal shall not affect or impede the operations of this article; no restraining order, temporary injunction, or other similar restraint upon actions consistent with this article shall be imposed by the court or any court pending determination of such appeal; and the actions of the State Auditor taken pursuant to this article may continue regardless of the pendency of any such appeal. Any action taken or contract executed pursuant to this article during the pendency of such appeal is valid and enforceable among all parties, notwithstanding the decision in such appeal. If the circuit court reverses the determination of the existence of a fiscal emergency condition by the State Auditor or a designee, the determination no longer has any effect, and any procedures undertaken as a result of the determination shall be terminated.

(d) All expenses incurred by the State Auditor or a designee relating to a determination or termination of a fiscal emergency or a fiscal watch under this article, including providing technical and support services, or for conducting a financial review, shall be reimbursed from an appropriation for that purpose. If necessary, the governing body of the local government may provide sufficient funds for these purposes.

WV Legislature

## §6-9D-11. Financial planning and supervision committee; rule-making authority.

(a) Upon the occurrence of a fiscal emergency in any local government, there is established, with respect to that local government, a supervising committee to perform essential governmental functions of the local government to be known as the "financial planning and supervision committee for (name of local government)", which, in that name, may exercise all authority vested in such a committee provided by this article. Furthermore, if a local government in which fiscal watch or fiscal emergency exists has failed to develop a financial recovery plan the "financial planning and supervision committee for (name of local government)" may develop such a plan for the local government.

(b) The State Auditor shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code, setting forth the following:

(1) Minimum requirements for the composition of the members of said committee;

(2) The rules of governance for such a committee;

(3) Requirements for the detailed financial recovery plan to be submitted by the subject local government;

(4) The powers, duties and functions of the committee;

(5) The payment of expenses and obligations;

(6) The establishment of enhanced financial reporting;

(7) The requirements of the local government operating under the plan;

(8) Recourse for a noncompliant local government;

(9) Limitations for appropriations;

(10) Communications of the committee;

(11) The approval of debt obligations;

(12) The issuance of general obligation, special obligation, or revenue bonds and notes in anticipation of bonds; and

(13) The continuance and dissolution of the committee.

WV Legislature

## §6-9D-12. Compliance.

(a) Local government officials shall:

(1) Take the necessary corrective action recommended by the State Auditor or designee pursuant to §6-9D-3 of this code to present financial records in an auditable condition.

(2) Complete any recommendations imposed by the State Auditor or designee pursuant to §6-9D-7 of this code.

(3) Provide a financial recovery plan in accordance with §6-9D-7 of this code.

(4) Make reasonable proposals or otherwise take action to discontinue or correct the fiscal practices or budgetary conditions that prompted the declaration of fiscal watch or fiscal emergency.

(5) Comply with the financial recovery plan instituted by a financial planning and supervision committee created pursuant to §6-9D-11 of this code.

(b) If local government officials fail to adequately comply with the provision of this section, the State Auditor or designee may institute appropriate recourse measures pursuant to the rules authorized by §6-9D-11 of this code.

WV Legislature

## §6-9D-13. Prohibition against relief under federal bankruptcy laws unless authorized.

(a) No county, municipality, school district, authority, division, instrumentality, political subdivision, or public body corporate created under the Constitution or laws of this state shall be authorized to file a petition for relief from payment of its debts as they mature or a petition for composition of its debts under any federal statute providing for such relief or composition or otherwise to take advantage of any federal statute providing for the adjustment of debts of political subdivisions and public agencies and instrumentalities without the express, written permission of the State Auditor.

(b) No chief executive, mayor, board of commissioners, city council, board of trustees, or other governmental officer, governing body, or organization shall be empowered to cause or authorize the filing by or on behalf of any county, municipality, school district, authority, division, instrumentality, political subdivision, or public body corporate created under the Constitution or laws of this state of any petition for relief from payment of its debts as they mature or a petition for composition of its debts under any federal statute providing for such relief or composition or otherwise to take advantage of any federal statute providing for the adjustment of debts of political subdivisions and public agencies and instrumentalities without the express, written permission of the State Auditor.

WV Legislature

## §6-9D-14. Severability.

(a) In case any section or provision of this article, including any condition or prerequisite to any action or determination thereunder, or in case any act or action, or part thereof, made, or taken under this article, or any application thereof, is for any reason held to be illegal or invalid, such illegality or invalidity shall not affect the remainder thereof or any other section or provision of this article, including any condition or prerequisite to any action or determination thereunder, or any agreement, act or action, or part thereof, made, entered into, or taken under such article, which shall be construed and enforced and applied as if such illegal or invalid portion were not contained therein, nor shall such illegality or invalidity or any application thereof affect any legal and valid application thereof, and each such section, provision, agreement, act, or action, or part thereof, shall be deemed to be effective, operative, made, and entered into or taken in the manner and to the full extent permitted by law.

(b) Any action or proceeding bringing into question the interpretation, legality, or validity of any provision of this article, the existence or authority, or the legality or validity of any act, of the committee or the State Auditor or of any action taken under this article, is a matter of great public interest to the state and shall be advanced on the docket of the court and expedited to final determination.

WV Legislature

## §6-10-1. Employment of wife at public expense prohibited.

The employment of his wife at public expense by any official or employee of the state is expressly prohibited.

WV Legislature

## §6-11-1. Persons entitled to leave.

Any person holding any office or position of public trust, responsibility or service, elective or appointive, in the government of this state or in any county, municipality or any other unit or combined unit of government therein, who may enter the military, naval, marine corps or coast guard service of the United States of America, may obtain a leave of absence from such office or position and, upon the completion of and discharge from any of such armed services, shall have the right to reassume for the unexpired or remaining term thereof, the office or position held by such person at the time of entering any of such armed services. The officer, court, tribunal, board or person having the power to make an original appointment to such office or position, or to make an appointment to fill a vacancy therein, shall, upon request, grant such leave of absence. The reassumption of any office or position as herein provided shall be without any prejudice whatsoever to the status, merit rating or standing of the holder thereof by reason of his absence therefrom while in the aforesaid armed services of the United States.

WV Legislature

## §6-11-2. Period of replacement appointment.

Whenever the holder of any such public office or position enters any of the services mentioned in section one hereof and another is named to perform the duties of said person's office or position, such other person shall not be named for a period longer than the period served by the holder of such office in the aforesaid armed services of the United States. The holder of any executive office other than Governor mentioned in section 1 of article VII of the Constitution of this state shall have the right to name the person who shall perform the duties of his office, and the person so named by such executive officer shall take over and perform all the duties of the office and may exercise all the power and authority of such executive office, in any manner pertaining thereto, and shall receive the salary of such executive officer. Such person shall be known as an "acting" officer.

WV Legislature

## §6-11-3. Article not to affect terms or authorize compensation to persons not performing duties.

This article shall not be construed:

(a) As any attempt to enlarge or to extend the length of term of any such public office or position or to create a definite term where no definite term with respect to such office or position has heretofore existed.

(b) As providing that the salary or wages payable to any person holding any such public office or position and performing the duties thereof shall be paid to such person when not performing said duties because of such services in the Armed Forces of the United States.

WV Legislature

## §6-11-4. Provisions of article retroactive.

The provisions of this article shall be retroactive as to all such persons who have entered the armed services of the United States since July one, 1940.

WV Legislature

**§6-11A-1.**

Repealed.

Acts, 1945 Reg. Sess., Ch. 150

WV Legislature

## §6-12-1. General liability insurance for proprietary functions; bodily injury and property damage motor vehicle insurance at public expense; contractors to provide like insurance.

Officers, boards, commissions or agencies of the state or of any county, municipality or any other unit of local or state government, authorized to spend public funds, or to direct the expenditure of public funds, may provide at public expense for liability insurance against risks engendered in their proprietary functions, bodily injury liability and property damage liability insurance against the negligence of the drivers of motor vehicles operated by or for such officers, boards, commissions and agencies in such amount as such officers, boards, commissions and agencies may specify, and any such officer, board, commission or agency having the authority to contract for the use in the service of such officer, board, commission or agency, of any motor vehicle, may require the contractor to provide like insurance at his own expense in such amount as such officer, board, commission or agency may specify.

WV Legislature

## §6-12-2. Policy may authorize action against insurance company with or without joining driver as defendant.

Any insurance policy obtained in pursuance of the provisions of section one of this article may, by agreement between the insurance company issuing the policy and the officer, board, commission or agency applying for such insurance, contain a provision authorizing an action on such policy to be maintained against the insurance company issuing the policy by or in the name of any person sustaining bodily injury or property damage, either with or without joining the driver of such motor vehicle as a party defendant, or in the name of the personal representative of a deceased person, the proximate cause of whose death was the negligence of the driver. Such provision shall be valid and enforceable if set forth in the body of the policy or in a rider attached to the policy as a part thereof.

WV Legislature

## §6-12-3. Article not to create new right of action.

This article shall not be so construed as to authorize a right of action against any officer, board, commission or agency where no right of action has heretofore existed.

WV Legislature

## §6-13-1. Definitions.

(a) “Active duty” or “active-duty service” means full-time duty in the armed forces of the United States, as defined in 10 USC §101(d) or 32 USC §502, §503, or §904.

(b) “Active duty for training” means full-time duty in the armed forces of the United States for a period of more than 90 consecutive days for training purposes performed by members of the National Guard or Military Reserves.

(c) “Armed forces” shall have the same definition as provided in 5 U.S.C. §2101(2) and means the Army, Navy, Air Force, Marine Corps, Coast Guard, and Space Force.

(d) “Certification” means any written document from the armed forces that certifies that a service member is expected to be discharged or released from active-duty service in the armed forces under honorable conditions not later than 120 days after the date the certification is submitted for consideration in the hiring process, at the time and in the manner prescribed by the applicable job opportunity announcement. Prior to appointment, the service member's character of service and qualifying discharge release must be verified through a DD Form 214 or equivalent documentation.

(e) “Disabled veteran” means a person who has been discharged or released from active-duty service under honorable conditions performed at any time, or who has a certification as defined in subsection (c) of this section, and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or a pension because of a statute administered by the Department of Veterans Affairs or by a military department.

(f) “Rule of 3” refers to the rule under which managers are required to select new employees from among the top three available candidates rated and referred to them by an examining office.

(g) “Veteran” means a person who has been discharged or released from active-duty service in the armed forces under honorable conditions, or who has completed active duty for training for a period of more than 90 consecutive days as a member of the National Guard or Military Reserves.

WV Legislature

**§6-13-2. Preference rating categories for veterans; benefits to be granted on written examinations for positions in state departments filed under nonpartisan merit system; other benefits.**

(a) For positions in any agency as defined in §5F-1-4 of this code or any other political subdivision of this state in which positions are filled under civil service or any job classification system, a 5-Point Preference category or a 10-Point Compensable Disability Preference category shall be applied to qualifying veterans. A veteran who qualifies for either the 5-Point Preference category or the 10-Point Compensable Disability Preference category shall have the corresponding preference points added to his or her regular numerical score on employment examinations or category ratings: *Provided, however*; That the preference points may only be added to a passing score.

(b) If a veteran who qualifies for either the 5-Point Preference category or the 10-Point Compensable Disability Preference category also qualifies for another preference category, the veteran shall only be qualified to receive the benefits that correspond with the highest numerical preference category.

(c) To receive preference under this article, the veteran's separation from active duty must have been under honorable conditions.

(d) The benefits conferred pursuant to this article shall be made for the benefit and preference in appointment of all veterans who have heretofore, or who shall hereafter, take examinations, but shall not operate to the detriment of any person previously appointed to a position in any agency defined in §5F-1-4 of this code or any other political subdivision of this state.

(e) 5-Point Preference category applicability. — A 5-Point Preference shall be used for veterans who participated in active duty service as set forth in §6-13-1(a) and §6-13-1(b) of this code.

(f) 5-Point Preference benefits. — Under the 5-Point Preference, a qualifying veteran:

(1) Shall receive an additional five points that shall be added to the regular numerical score or rating of an employment examination: *Provided, however*; These preference points may only be added to a passing score or rating prior;

(2) Shall receive preference points as other eligibles do when the Rule of 3 is applied;

(3) Shall be entitled to be listed ahead of non-preference eligibles with the same score on an examination, or listed ahead of non-preference eligibles in the same quality category when agencies are using category rating;

(4) Shall be entitled to receive the same pass-over rights as other preference eligibles; and

(5) Shall be entitled to credit experience in the armed forces to meet the qualification

WV Legislature

requirements for employment.

(g) 10-Point Compensable Disability Preference category applicability. — A 10-Point Compensable Disability Preference shall be used for veterans who:

(1) Served on active duty for any period of time and meet the definitional requirement of "disabled veteran" as set forth in §6-13-1(e) of this code; or

(2) Received a Purple Heart medal.

(h) 10-Point Compensable Disability Preference benefits. — Under the 10-Point Compensable Disability Preference, a qualifying veteran:

(1) Shall receive an additional 10 points that shall be added to the regular numerical score or rating of an employment examination: *Provided, however*; These preference points may only be added to a passing score or rating;

(2) Shall receive preference points as other eligibles do when the Rule of 3 is applied;

(3) Shall be entitled to be listed ahead of non-preference eligibles with the same score on an examination, or listed ahead of non-preference eligibles in the same quality category when agencies are using category rating;

(4) Shall be entitled to receive the same pass-over rights as other preference eligibles; and

(5) Shall be entitled to credit experience in the armed forces to meet the qualification requirements for employment.

WV Legislature

## §6-14-1. Definitions.

As used in this article:

(a) "Public security" means a bond, note, certificate of indebtedness or other obligation for the payment of money issued by this state or by any of its departments, agencies, boards, commissions or other instrumentalities or by any of its public corporations, political subdivisions, municipal corporations or other governmental units.

(b) "Instrument of payment" means a check, draft, warrant or order for the payment, delivery or transfer of funds.

(c) "Authorized officer" means any official of this state or of any of its departments, agencies, boards, commissions or other instrumentalities or of any of its public corporations, political subdivisions, municipal corporations or other governmental units whose signature to a public security or instrument of payment is required or permitted.

(d) "Facsimile signature" means a reproduction by engraving, imprinting, stamping or other means of the manual signature of an authorized officer.

WV Legislature

## §6-14-2. Facsimile signature; use; legal effect.

Any authorized officer, after filing with the Secretary of State his manual signature certified by under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(a) Any public security, provided that at least one signature required or permitted to be placed thereon shall be manually subscribed. If a public security is required to be manually signed by a trustee, issuing agent, fiscal agent, registrar, or other agent or custodian, the signature of any or all authorized officers may be executed by facsimile; and

(b) Any instrument of payment.

Upon compliance with this article by the authorized officer, his facsimile signature shall have the same legal effect as his manual signature.

WV Legislature

## §6-14-3. Facsimile seal; use; legal effect.

When the seal of this state or of any of its departments, agencies, boards, commissions or other instrumentalities or of any of its public corporations, political subdivisions, municipal corporations or other governmental units is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped or otherwise placed in facsimile thereon. The facsimile seal shall have the same legal effect as the impression of the seal.

WV Legislature

## §6-14-4. Use with intent to defraud; penalty.

Any person who with intent to defraud uses on a public security or an instrument of payment:

(a) A facsimile signature of any authorized officer or any reproduction of such facsimile signature, or

(b) Any facsimile seal of this state or of any of its departments, agencies, boards, commissions or other instrumentalities or of any of its public corporations, political subdivisions, municipal corporations or other governmental units, or any reproduction of such facsimile seal is guilty of a felony and, shall be imprisoned in the penitentiary not less than one nor more than ten years.

WV Legislature

## §6-14-5. Construction.

This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

WV Legislature

## §6-14-6. Citation.

This article may be known and cited as the "Uniform Facsimile Signatures of Public Officials Act."

WV Legislature

### §6-14-7. Severability provision.

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

WV Legislature

### §6-14-8. Inconsistent articles repealed.

All articles and parts of articles inconsistent with the provisions of this article are, to the extent of such inconsistency only, hereby repealed.

WV Legislature