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& then sent back
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ENROLLED
Senate Bill No. 283

(BY MR. TONKOVICH, MR. PRESIDENT AND MR. TOMBLIN)

[Passed March 29, 1985; in effect ninety days from passage.]

AN ACT to amend and reenact section five, article eleven, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section twenty-six, article two, chapter five-a of said code, all relating to legislative appropriation authority in respect of federal funds; providing authorization for the governor to approve and permit expenditure of certain unanticipated federal funds received when Legislature not in session, with limitations thereon, including governor seeking recommendation of council of finance and administration, during interim periods, in certain instances; and providing for commissioner of finance and administration to be primary approval official for, and repository agency of, information and activity in respect of federal funds by state agencies at times of application for, and change, receipt and expenditure of, federal funds.

Be it enacted by the Legislature of West Virginia:

That section five, article eleven, chapter four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section twenty-six, article two, chapter five-a of said code, be amended and reenacted, to read as follows:

CHAPTER 4. THE LEGISLATURE.

ARTICLE 11. LEGISLATIVE APPROPRIATION OF FEDERAL FUNDS.

§4-11-5. Legislative appropriation authority.

1 (a) No spending unit may make expenditures of any

2 federal funds, whether such funds are advanced prior to
3 expenditure or as reimbursement, unless such expendi-
4 tures are made pursuant to specific appropriations by the
5 Legislature, except as may be hereinafter provided.

6 (b) To the extent not precluded by the terms and con-
7 ditions under which federal funds are made available to
8 the spending unit by the United States government, the
9 spending unit shall use federal funds in accordance with
10 any purposes, policies or priorities the Legislature may
11 have established for the activity being assisted or for the
12 use of state, federal and other fiscal resources in a par-
13 ticular fiscal year.

14 (c) If the federal funds received by a spending unit for
15 a specific purpose are greater than the amount of such
16 funds contained in the appropriation by the Legislature
17 for such purpose, the total appropriation of federal funds
18 and any state matching funds for such purpose shall
19 remain at the level appropriated, except as hereinafter
20 provided.

21 (d) If federal funds become available to the spending
22 unit for expenditure while the Legislature is not in ses-
23 sion and the availability of such funds could not reason-
24 ably have been anticipated and included in the budget
25 approved by the Legislature for the next fiscal year, the
26 treasurer may accept such funds on behalf of the spend-
27 ing unit and the governor may authorize, in writing, the
28 expenditure of such funds by the spending unit during
29 that fiscal year as authorized by federal law and pursuant
30 to the provisions of article two, chapter five-a of the code,
31 which permits expenditure of amounts in excess of the
32 appropriation upon the filing of a proper expenditure
33 schedule: *Provided*, That the governor may not authorize
34 the expenditure of such funds received for the creation of
35 a new program or for a significant alteration of an exist-
36 ing program. For purposes of this article, a mere new
37 source of funding of federal moneys for a program which
38 has been prior approved by legislative appropriation will
39 not be deemed to be a "new program" or a "significant
40 alteration of an existing program" and the governor may
41 authorize the expenditure of such funds as herein pro-

42 vided. Should a question arise concerning whether such
 43 expenditures would constitute a new program or sig-
 44 nificant alteration of an existing program, while the
 45 Legislature is not in session, the governor shall seek the
 46 recommendation of the council of finance and administra-
 47 tion, as created and existing pursuant to the provisions
 48 of section three, article one, chapter five-a of the code.
 49 Upon application to the federal government for such
 50 funds and upon receipt of such funds, the governor shall
 51 submit to the legislative auditor two copies of a state-
 52 ment:

53 (1) Describing the proposed expenditure of such funds
 54 in the same manner as it would be described in the state
 55 budget; and

56 (2) Explaining why the availability of such federal
 57 funds and why the necessity of their expenditure could
 58 not have been anticipated in time for such expenditures
 59 to have been approved as part of the adopted budget for
 60 that particular fiscal year.

CHAPTER 5A. DEPARTMENT OF FINANCE AND ADMIN- ISTRATION.

ARTICLE 2. BUDGET DIVISION.

**§5A-2-26. Approval of commissioner of requests for, changes,
 receipt and expenditure of federal funds by state
 agencies; copies or sufficient summary information
 to be furnished commissioner and legislative
 auditor; and consolidated report of federal funds.**

1 Every agency of the state government when making
 2 requests or preparing budgets to be submitted to the
 3 federal government for funds, equipment, material or
 4 services, the grant or allocation of which is conditioned
 5 upon the use of state matching funds, shall have such
 6 request or budget approved in writing by the commis-
 7 sioner before submitting it to the proper federal author-
 8 ity. At the time such agency submits such a request or
 9 budget to the commissioner for his approval, it shall send
 10 a copy thereof to the legislative auditor. When such
 11 federal authority has approved the request or budget,

12 the agency of the state government shall resubmit it to
13 the commissioner for recording before any allotment or
14 encumbrance of the federal funds can be made and the
15 commissioner shall send a copy of the federally approved
16 request or budget to the legislative auditor. Whenever
17 any agency of the state government shall receive from
18 any agency of the federal government a grant or alloca-
19 tion of funds which do not require state matching, the
20 state agency shall report to the commissioner and the
21 legislative auditor for their information the amount of
22 the federal funds so granted or allocated.

23 Unless contrary to federal law, any agency of state
24 government, when making requests or preparing budgets
25 to be submitted to the federal government for funds for
26 personal services, shall include in such request or budget
27 the amount of funds necessary to pay for the costs of any
28 fringe benefits related to such personal service. For the
29 purposes of this section "fringe benefits" means any
30 employment benefit granted by the state which involves
31 state funds, including, but not limited to, contributions to
32 insurance, retirement and social security, and which does
33 not affect the basic rate of pay of an employee.

34 In addition to the other requirements of this section,
35 the commissioner shall, as soon as possible after the end
36 of each fiscal year but no later than the first day of
37 October of each year, submit to the governor and the
38 legislative auditor a consolidated report which shall con-
39 tain a detailed itemization of all federal funds received
40 by the state during the preceding and current fiscal years,
41 as well as those scheduled or anticipated to be received
42 during the next ensuing fiscal year. Such itemization
43 shall show: (a) Each spending unit which has received
44 or is scheduled or expected to receive federal funds in
45 either of such fiscal years, (b) the amount of each sepa-
46 rate grant or distribution received or to be received, (c) a
47 brief description of the purpose of every such grant or
48 other distribution, with the name of the federal agency,
49 bureau or department making such grant or distribution:
50 *Provided*, That it shall not be necessary to include in such
51 report an itemization of federal revenue sharing funds

52 deposited in and appropriated from the revenue sharing
53 trust fund, or federal funds received for the benefit of the
54 department of highways and the state road fund.

55 The commissioner is authorized and empowered to ob-
56 tain from the spending units any and all information
57 necessary to prepare such report.

58 Notwithstanding the other provisions of this section
59 and in supplementation thereof, the Legislature hereby
60 determines that the department of finance and adminis-
61 tration and its commissioner need to be the single and
62 central agency for receipt of information and documents
63 in respect of applications for, and changes, receipt and
64 expenditure of, federal funds by state agencies. Every
65 agency of state government, when making application
66 for federal funds in the nature of a grant, allocation or
67 otherwise; when amending such applications or requests;
68 when in receipt of such federal funds; or when under-
69 taking any expenditure of federal funds; in all such
70 respective instances, provide to the commissioner of fi-
71 nance and administration document copies or sufficient
72 summary information in respect thereof as to enable the
73 commissioner to provide approval in writing for such
74 activity in respect to the federal funds, and such state
75 agencies shall, at the same time, provide such a document
76 copy or sufficient summary information report to the
77 legislative auditor's office; in order to permit continuing
78 meaningful cooperative overview of federal funds and
79 their use budgetarily and in establishing state fiscal
80 policies.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within _____ this the _____

day of _____, 1985.

Governor

