

Noted by Mr. [unclear]  
& then sent back  
to Leg. & passed.

## 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 ADMINISTRATION.**

### **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.

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*Chairman Senate Committee*

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*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker House of Delegates*

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The within \_\_\_\_\_ this the \_\_\_\_\_

day of \_\_\_\_\_, 1985.

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Governor