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STATE OF WEST VIRGINIA

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



# ENROLLED

Com. Sub. for  
**HOUSE BILL No. 2695**

(By Mr. *Speaker, Mr. Chambers, & Del. Murphy*)



Passed ..... *April 8,* ..... 1989

In Effect ..... *July 1, 1989* ..... ~~Passage~~

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 2695**

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE MURPHY)

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[Passed April 8, 1989; in effect July 1, 1989.]

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AN ACT to amend chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen-b; to amend and reenact section seven, article three, chapter twenty-four; and to repeal article twenty-four, chapter twenty-nine, all relating to public port authority; creation; board of directors—members, officers, qualifications, terms, oath, compensation, quorum and delegation of power; executive director; appointment; powers and duties; compensation; purposes of authority; commerce; tourism; divisions; powers and duties of authority; special West Virginia public port authority operations fund; foreign trading zones; export trading company; division of tourist trains and transportation; disclaimer of any liability of the state of West Virginia; prohibition on funds inuring to the benefit of or being distributable to directors, officers or private persons; prohibition against certain financial interests; criminal penalties; permit to abandon services; certificate; hearing upon intervention by consumer advocate; alternative service; and repeal tourist train and transportation board.

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

That chapter seventeen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article sixteen-b; that section seven, article three, chapter twenty-four be amended and reenacted; and that article twenty-four, chapter twenty-nine be repealed, all to read as follows:

## **CHAPTER 17. ROADS AND HIGHWAYS.**

### **ARTICLE 16B. PUBLIC PORT AUTHORITY.**

#### **§17-16B-1. Creation of authority.**

1 The West Virginia public port authority is hereby  
2 created and shall be under the supervision of the  
3 secretary of the department of transportation pursuant  
4 to the provisions of chapter five-f of this code.

#### **§17-16B-2. Board of directors — Members, officers, qualifications, terms, oath, compensation, quorum and delegation of power.**

1 (a) The governing and administrative powers of the  
2 authority shall be vested in a board of directors  
3 consisting of nine members, six of whom shall be  
4 appointed by the governor with the advice and consent  
5 of the Senate.

6 All directors of the authority shall be residents of the  
7 state of West Virginia. The directors shall annually elect  
8 from the representatives of the private sector as  
9 provided in subsection (b), one of their members as  
10 chairman. The directors shall annually elect one of their  
11 members as vice chairman, one as secretary and one as  
12 treasurer. The board may elect such other officers from  
13 its membership or from its staff as it deems proper, and  
14 prescribe their powers and duties. Appointments to fill  
15 a vacancy of one of the appointed members shall be  
16 made in the same manner as the original appointment.

17 (b) Six members of the board shall be from the private  
18 sector, with one member of the board from each  
19 congressional district of the state as of the effective date  
20 of this article, and shall represent the public interest  
21 generally. At least one member may be appointed that  
22 has recognized ability and practical experience in

23 transportation. At least one member may be appointed  
24 that has recognized ability and practical experience in  
25 banking and finance. At least one member may be  
26 appointed that has recognized ability and practical  
27 experience in international trade. At least one member  
28 may be appointed that has recognized ability and  
29 practical experience in business management or  
30 economics.

31 (c) The governor shall appoint two members of the  
32 board whose terms shall expire on the first day of July,  
33 one thousand nine hundred ninety; two members of the  
34 board whose term shall expire on the first day of July,  
35 one thousand nine hundred ninety-one; two members of  
36 the board whose term shall expire on the first day of  
37 July, one thousand nine hundred ninety-two. Their  
38 respective successors shall be appointed for terms of  
39 three years from the first day of July of the year of  
40 appointment. Each member shall serve until his  
41 successor is appointed and qualified.

42 One ex officio member of the board shall be the  
43 secretary of transportation or his designee.

44 One ex officio member of the board shall be the  
45 director of the department of commerce or his designee.

46 One ex officio member of the board shall be the  
47 director of the governor's office of community and  
48 industrial development or his designee.

49 (d) Each director, before entering upon his duties,  
50 shall take and subscribe to the oath or affirmation  
51 required by the West Virginia constitution. A record of  
52 each such oath or affirmation shall be filed in the office  
53 of the secretary of state.

54 (e) Members of the board shall not be entitled to  
55 compensation for their services but shall be reimbursed  
56 for all necessary expenses actually incurred in connec-  
57 tion with the performance of their duties as members.

58 (f) Five members of the board shall constitute a  
59 quorum and the affirmative vote of the majority of  
60 members present at a meeting of the board shall be  
61 necessary and sufficient for any action taken by the

62 board, except that the affirmative vote of at least six  
63 members is required for the approval of any resolution  
64 authorizing the issuance of any bonds pursuant to this  
65 article.

66 (g) No vacancy in the membership of the board  
67 impairs the right of a quorum to exercise all rights and  
68 perform all duties of the board. Any action taken by the  
69 board may be authorized by resolution at any regular  
70 or special meeting and shall take effect upon the date  
71 the chairman certifies the action of the authority by  
72 affixing his signature to the resolution unless some other  
73 date is otherwise provided in the resolution.

74 (h) The board may delegate to one or more of its  
75 members or to its officials, agents or employees such  
76 powers and duties as it may deem proper.

**§17-16B-3. Executive director; appointment; powers and  
duties; compensation.**

1 (a) The board of directors shall appoint an executive  
2 director of the authority.

3 (b) The executive director shall be paid a salary to be  
4 determined by the board of directors. The executive  
5 director shall be responsible for managing and admin-  
6 istering the daily functions of the authority and for  
7 performing any and all other functions necessary or  
8 helpful for the effective functioning of the authority,  
9 together with all other functions and powers as may be  
10 delegated to him by the board. The executive director  
11 may, with the authorization of the board of director,  
12 employ support staff as deemed necessary to carry out  
13 the duties and responsibilities of the authority.

14 (c) The chairman of the board shall serve as tempor-  
15 ary director of the authority until appointment of the  
16 executive director pursuant to this section.

**§17-16B-4. Purposes of authority; commerce; tourism.**

1 (a) *Commercial activity.*—The Legislature finds that  
2 the state of West Virginia must look to new opportun-  
3 ities to expand and diversity its economy and the  
4 general welfare and well-being of its people. The

5 Legislature further finds that if West Virginia is to keep  
6 and attract industry, it must provide for a modern and  
7 efficient transportation infrastructure that will allow  
8 and facilitate business to compete on a regional, national  
9 and international basis. The Legislature finds that West  
10 Virginia has the potential to establish an efficient and  
11 low cost system of intermodal transportation by linking  
12 together its abundant navigable waters and rivers, its  
13 rail systems, its interstate and modern highway system,  
14 and its airports into intermodal transportation network  
15 connected and served by various intermodal ports,  
16 terminals and facilities located at strategic regional  
17 sites throughout the state.

18 The Legislature further finds that it would be the  
19 purpose of these intermodal ports and terminals, under  
20 the direction of the West Virginia public port authority,  
21 or local port authority districts, to negotiate, coordinate  
22 and supervise the shipment of products and natural  
23 resources from the producers in West Virginia to both  
24 domestic and international markets, including passage  
25 through other states and through the seaports of other  
26 states to the seaports of foreign countries.

27 The Legislature further finds that it is the corollary  
28 purpose of the public port authority to assist state  
29 businesses to engage in export trade activities, both  
30 domestic and international, in furtherance of its powers  
31 and duties, including the formation of export trading  
32 companies and foreign trade zones.

33 (b) *Tourism.*—The Legislature finds that the same  
34 intermodal transportation network, as set forth in this  
35 section for commercial purposes, may also serve to  
36 enhance tourism in West Virginia by providing access  
37 and linkage to the various tourist and historic attrac-  
38 tions around the state through the utilization of  
39 railroads, waterways, highways, airways and other  
40 forms of transportation.

41 The Legislature further finds that it would be the  
42 purpose of the public port authority to negotiate and  
43 coordinate the movement of tourists and travelers  
44 through the state by assisting the tourist and travel

45 industry, state agencies and other political subdivisions.

**§17-16B-5. Divisions.**

1 There shall be within the public port authority a  
2 division of commerce, a division of tourist trains and  
3 transportation, and such other divisions as are deemed  
4 necessary by the board of directors.

**§17-16B-6. Powers and duties of authority.**

1 (a) The authority is granted the following powers and  
2 duties:

3 (1) The authority shall initiate meetings with political  
4 subdivisions of the state to assess specific transportation  
5 needs and shall determine the needs of the state as a  
6 whole in terms of transportation, as well as consider  
7 feasibility studies for the purpose of determining the  
8 best site locations for transportation centers, terminals,  
9 ports and harbors, and foreign trade zones.

10 The authority shall give first consideration to selected  
11 high priority opportunities as set forth in the document  
12 entitled "Development of an Inland Port Authority," as  
13 submitted to the governor's office of community and  
14 industrial development on the second day of March, one  
15 thousand nine hundred eighty-nine.

16 (2) On or before the fifteenth day of January, one  
17 thousand nine hundred ninety, the authority shall  
18 prepare and file a comprehensive report, with the  
19 governor and the Legislature setting forth the overall  
20 strategic plan both short term and long term for  
21 accomplishing the purposes set forth in this article.

22 (3) The public port authority shall coordinate with the  
23 West Virginia turnpike commission or other parkways  
24 authority, established pursuant to article sixteen-a,  
25 chapter seventeen of this code in the exercise of its  
26 powers and duties hereunder and development of  
27 appropriate intermodal transportation within the state.

28 (b) The authority has the following additional powers  
29 and duties:

30 (1) The powers of a body corporate, including the

31 power to sue and be sued, to make contracts, and to  
32 adopt and use a common seal and to alter the same as  
33 may be deemed expedient;

34 (2) Acquire, purchase, install, lease, construct, own,  
35 hold, operate, maintain, equip, use and control ports,  
36 terminals, buildings, roadways, rights-of-way, rails and  
37 such structures, equipment, facilities or improvements  
38 necessary to carry out the provisions of this article, and  
39 in connection therewith shall have the further right to  
40 lease, install, construct, acquire, own, maintain, control  
41 and use any and every kind or character of motive  
42 powers and conveyances or appliances necessary or  
43 proper to carry goods, wares and merchandise over,  
44 along, upon or through the railway, highway, waterway  
45 or airway or other conveyance of such transportation  
46 system, excluding pipelines.

47 (3) To apply for and accept loans, grants or gifts of  
48 money, property or service from any federal agency or  
49 the state of West Virginia or any political subdivision  
50 thereof or from any public or private sources available  
51 for any and all of the purposes authorized in this article,  
52 or imposed thereon by any such federal agency, the state  
53 of West Virginia, or any political subdivision thereof, or  
54 any public or private lender or donor, and to give such  
55 evidences of indebtedness as may be required;

56 (4) To act as agent for the United States of America,  
57 or any agency, department, corporation or instrumental-  
58 ity thereof, in any manner coming within the purposes  
59 or powers of the board;

60 (5) To initiate preservation of railroad, waterway,  
61 highway and airway facilities, to promote economic  
62 development and tourism of a specific nature in this  
63 state;

64 (6) To meet and cooperate with similar authorities or  
65 bodies of any of the several states contiguous with this  
66 state, whose purpose in their respective states is to  
67 establish an interstate or intermodal transportation  
68 network;

69 (7) To enter into agreements, contracts or other



70 transactions with any federal, state, county, municipal  
71 agency or private entity;

72 (8) To report annually to the Legislature by the first  
73 day of January of each year on the status of projects,  
74 operations, financial condition and other necessary  
75 information relating to the statewide tourist intermodal  
76 transportation system and public port authority  
77 activities.

78 (9) To enter into agreements or contracts with the  
79 West Virginia railroad maintenance authority, for the  
80 preservation, operation, and use of railroad lines.

81 (10) To assist and encourage the West Virginia  
82 railroad maintenance authority to purchase railroad  
83 tracks being abandoned by any common carrier, and to  
84 financially assist the railroad maintenance authority in  
85 making such purchase.

86 (11) To collect reasonable fees and charges in connec-  
87 tion with making and servicing loans, notes, bonds,  
88 obligations, commitments and other evidence of in-  
89 debtedness, and in connection with providing technical,  
90 consultive and project assistance services.

91 (12) To do any and all things necessary to carry out  
92 and accomplish the purposes of this article.

93 (c) Incidental to the development of a comprehensive  
94 strategic plan for intermodal transportation, the  
95 executive director and staff of the authority shall  
96 analyze the shipment of products through the ports of  
97 the state for the purpose of expediting such shipments,  
98 and shall be authorized to collect and analyze such  
99 information, which is maintained in the ordinary course  
100 of business by the person, firm or corporation providing  
101 such information, pertaining to the transportation of  
102 products which has been moved by rail, water, highway  
103 or air to and from points within and without this state.

104 (1) Any such information and data supplied to the  
105 executive director of the authority shall be for exclusive  
106 use of the executive director and the staff of the  
107 authority. Such information is deemed confidential and  
108 is not subject to disclosure under the freedom of

109 information act. Neither the executive director nor any  
 110 staff member of the authority shall publicly disclose this  
 111 information and data to any member of the board of the  
 112 authority, nor to any person, firm, corporation or agent.  
 113 It shall be unlawful for any officer or employee of this  
 114 state to divulge or make known in any manner any  
 115 information obtained pursuant to this subsection or  
 116 disclose information concerning the personal or business  
 117 affairs of any individual or the business of any single  
 118 firm or corporation, or disclose any particulars set forth  
 119 or disclosed in any report or other information provided  
 120 to the authority.

121 (2) Any officer or employee (or former officer or  
 122 employee) of this state who violates this subsection shall  
 123 be guilty of a misdemeanor, and, upon conviction  
 124 thereof, shall be fined not more than one thousand  
 125 dollars or imprisoned for not more than one year, or  
 126 both, together with costs of prosecution.

127 (3) In carrying out the functions theretofore described,  
 128 the authority shall be deemed to be performing an  
 129 essential governmental function as an instrumentality of  
 130 the state of West Virginia.

**§17-16B-7. Special West Virginia public port authority  
 operations fund.**

1 There is hereby established a special West Virginia  
 2 public port authority operations fund which shall  
 3 operate as a special revolving fund. All proceeds and  
 4 revenues of the authority shall be credited to the fund  
 5 by the state treasurer on a monthly basis. At the end  
 6 of each fiscal year, any unexpended funds in this  
 7 account shall be reappropriated and available for  
 8 expenditure for the subsequent fiscal year: *Provided,*  
 9 That no funds shall be appropriated from the general  
 10 revenue fund of the state of West Virginia for the  
 11 operation of the authority.

**§17-16B-8. Designation of local port authority districts,  
 powers and duties; plan for development.**

1 (a) Upon application by a local governmental entity,  
 2 groups of local governmental entities, or joint venture

3 of local government entity or entities and private  
4 industry, the board may grant authority for the creation  
5 of a local inland port authority district. In so authorizing  
6 such entities, political subdivisions of this state are  
7 authorized to join with other political subdivisions of  
8 this and sister states to form a local port authority. In  
9 deciding on a local port district designation, consider-  
10 ation shall be given to the following:

11 (1) Areas which have entered into a joint venture with  
12 private industry;

13 (2) Areas for which the political subdivision(s) seeking  
14 designation has made or will make the greatest effort,  
15 both financially and otherwise, to encourage the  
16 establishment of facilities to enhance the efficiency and  
17 cost of the movement of goods and services to and from  
18 markets in West Virginia, or will make the greatest  
19 effort to encourage the construction and completion of  
20 infrastructure projects, including all types of transpor-  
21 tation systems;

22 (b) A local port authority district provided for in this  
23 article has the authority to establish a local board of  
24 directors, and has powers only as provided for by the  
25 state board of directors. In no event shall the powers of  
26 a local port authority district supersede the powers of  
27 the state authority.

28 Any board of directors of a port authority district  
29 shall prepare or cause to be prepared a plan for the  
30 future development, construction and improvement of  
31 its services and facilities.

**§17-24-9. Construction and operation of facilities by  
private enterprise; leasing of facilities by  
port authority.**

1 (a) The authority or local port authority districts shall  
2 foster and encourage the participation of private  
3 enterprise in the development of the port facilities to the  
4 fullest extent it deems practicable in the interest of  
5 limiting the necessity of construction and operation of  
6 such facilities by the port authority. In this respect, the  
7 authority or local port authority districts may upon its

8 own motion or upon the written request of any other  
9 party, advertise and solicit for the construction, opera-  
10 tions and/or maintenance of any facility included in the  
11 development plan in accordance to plans, specifications  
12 and regulations therefor prepared by the board of  
13 directors.

14 (b) It is further provided that in the event the board  
15 of directors of the port authority or the local port  
16 authority districts deem it advisable and practicable,  
17 said board may cause certain facilities included in the  
18 development plan to be installed by private enterprise  
19 and leased back to the authority or local port authority  
20 districts on an installment contract or option to pur-  
21 chase: *Provided*, That any such lease back arrangement  
22 must be financially feasible and any bonds or loans  
23 utilized to enter into such lease bank arrangement shall  
24 be repayable in full from the expected rentals to be  
25 generated by such facility.

**§17-16B-10. Foreign trade zones; free trade zones; ports  
of entry and customs zones.**

1 The authority is empowered and directed to develop,  
2 maintain and operate foreign trade zones, free trade  
3 zones, ports of entry and customs zones under such  
4 terms and conditions as are or may be prescribed by  
5 federal law, and to keep foreign trade zone status for,  
6 and to assist in the applications for foreign trade zone  
7 status of political subdivisions and eligible private  
8 corporations under federal law.

**§17-16B-11. Study of feasibility of establishment of  
export trading company.**

1 (a) The authority may assist business in the formation  
2 of joint venture to function as an export trading  
3 company. The authority may conduct feasibility studies  
4 to ascertain the feasibility of such a joint venture.

5 (b) The authority shall study whether the formation  
6 of such an entity would aid and assist West Virginia  
7 businesses in the export of goods. In the event that such  
8 company is financially feasible, the authority is autho-  
9 rized to create a quasi-public corporation, under the

10 authority's control, to perform such function. The  
11 authority may advance seed money to such corporation  
12 to get it established: *Provided*, That the obligations of  
13 such quasi-public corporation shall not be considered  
14 obligations of the authority.

15 (c) The authority is authorized to promulgate rules  
16 and regulations to establish the duties, powers and  
17 obligations of any export trading company to be  
18 established under this section.

**§17-16B-12. Division of tourist trains and transportation;  
duties.**

1 (a) The division of tourist trains and transportation  
2 shall develop a plan to assess the feasibility, financial  
3 and otherwise, of establishing a statewide intermodal  
4 network of tourist transportation, so as to coordinate,  
5 link and supervise the various means of transportation  
6 including highway, rail, waterway and air and such  
7 plan shall also include, if feasible, the development of  
8 a comprehensive strategy and state plan for tourist  
9 transportation.

10 (b) The division shall cooperate and assist the efforts  
11 of public and private groups, agencies and political  
12 subdivisions in establishing components of the tourist  
13 transportation plan.

14 (c) The division shall specifically work to establish a  
15 pilot project for the purpose of creating a tourist train  
16 network in the area from Bluefield, West Virginia, to  
17 Bramwell, West Virginia, to Matoaka, West Virginia,  
18 and to Pocahontas, Virginia.

**§17-16B-13. Disclaimer of any liability of state of West  
Virginia.**

1 The state of West Virginia is not liable on notes or  
2 other evidences of indebtedness of the public port  
3 authority and such notes or other evidences of indebted-  
4 ness are not a debt of the state of West Virginia, and  
5 such notes or other evidences of indebtedness shall  
6 contain on the face thereof a statement to such effect.

**§17-16B-14. Prohibition on funds inuring to the benefit of**

**or being distributable to directors, employees, officers or private persons; prohibition against certain financial interests; criminal penalties.**

1 (a) No part of the funds of the public port authority  
2 may inure to the benefit of or be distributable to its  
3 directors, employees, officers or other private persons  
4 except that the public port authority may pay reason-  
5 able compensation to its officers and employees for  
6 services rendered and to make loans and exercise its  
7 other powers as previously specified in furtherance of  
8 its corporate purposes: *Provided*, That no such loans  
9 may be made, and no property may be purchased or  
10 leased from, or sold, leased to or otherwise disposed of,  
11 to any director or officer of the public port authority.

12 (b) No officer, member or employee of the authority  
13 may be financially interested, directly or indirectly, in  
14 any contract of any person with the authority, or in the  
15 sale of any property, real or personal to or from the  
16 authority during such person's employment with the  
17 authority or for a period of twelve months after  
18 termination of such person's employment with the  
19 authority. This section does not apply to contracts or  
20 purchases of property, real or personal, between the  
21 authority and any governmental agency. Any officer,  
22 member or employee of the authority who has such  
23 financial interest in a contract or sale of property  
24 prohibited hereby, is guilty of a misdemeanor, and, upon  
25 conviction thereof, shall be fined not more than one  
26 thousand dollars, or imprisoned in the county jail not  
27 more than one year, or both fined and imprisoned.

**§24-3-7. Permit to abandon service; certificate; hearing upon intervention by consumer advocate; alternative service.**

1 (a) No railroad or other public utility shall abandon  
2 all or any portion of its service to the public or the  
3 operation of any of its lines which would affect the  
4 service it is rendering the public unless and until there  
5 shall first have been filed with the public service  
6 commission of this state an application for a permit to

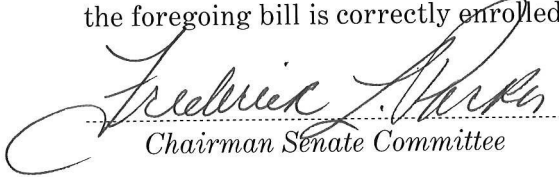
7 abandon service and obtained from the commission an  
8 order stating that the present and future public  
9 convenience and necessity permits such abandonment.

10 (b) The consumer advocate's office shall be notified of  
11 all notices to abandon rail service. Within five (5) days  
12 of the receipt of such notice the consumer advocate shall  
13 notify the West Virginia public port authority of such  
14 proposed abandonment. The public port authority shall  
15 advise the consumer advocate as to whether such  
16 abandonment is in the public interest or if such rail line  
17 or service is an integral part of the inter modal  
18 transportation system within West Virginia. If the  
19 public port authority deems such abandonment to be not  
20 in the public interest, then the consumer advocate shall  
21 intervene to block such abandonment before all approp-  
22 riate state and federal agencies or courts.

23 (c) The public service commissioner, to the extent  
24 permitted by federal law, shall promulgate rules and  
25 regulations to govern the abandonment of rail lines and  
26 rail service, including but not limited to the providing  
27 of a hearing for the presentation of evidence in cases  
28 where the consumer advocate seeks intervention pursu-  
29 ant to subsection (b).

30 (d) In the event the commission determines that an  
31 application to abandon gas service or any part thereof  
32 is in the public interest and required by the present and  
33 future public convenience and necessity, it shall include  
34 in its order, as a condition of releasing any such utility  
35 from its public service obligation to provide gas service,  
36 a provision requiring the utility, prior to discontinuing  
37 service, to pay the cost reasonably necessary to convert  
38 each customer to an alternate fuel source.

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

  
Chairman Senate Committee

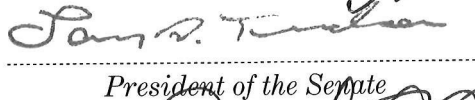
  
Chairman House Committee

Originating in the House.

Takes effect July 1, 1989.

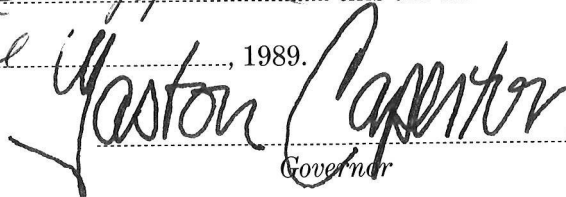
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 21<sup>st</sup>  
day of April, 1989.

  
Governor



PRESENTED TO THE

GOVERNOR

Date 4/28/89

Time 2:14